

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2270 OF 2019

Rehan Sayyed

.. Petitioner

vs.

Sahista Rehan Sayyad

.. Respondent

Mr.Hemant kenjalkar a/s Ms.Minal Kamble for the petitioner

Mr.Kunal Tiwari i/b M/s.K.Juris for the respondent no.1

**CORAM : K. K. TATED, J
DATE : AUGUST 1, 2019**

P.C.:

. Heard.

2 By this Writ Petition, Petitioner husband is challenging the order dated 15.02.2019 passed by Family Court, Mumbai at Bandra in Interim Application No.106 of 2018 in Petition E-217 of 2017 directing Petitioner to pay sum of Rs.20,000/- per month by way of interim maintenance to the Respondent wife and Rs.15,000/- per month each for the two children i.e. total sum of Rs.50,000/- per month from the date of Application i.e. 1.6.2018 till the decision of the main petition.

3 The learned counsel for the Petitioner submits that by this Writ Petition, Petitioner is challenging the maintenance awarded in favour of wife only i.e. sum of Rs.20,000/- per month.

4 The learned counsel for the Petitioner submits that Family Court, without going into the papers and proceedings, as placed on record by the Petitioner, erred in coming to the conclusion that the Respondent wife is entitled sum of Rs.20,000/- per month by way of maintenance charges. He submits that Petitioner placed on record his Income Tax return, bank statement and other documents to show that his net income per month is not more than Rs.40,000/- to 45,000/- per month. In spite of that, Family Court directed Petitioner to pay sum of Rs.50,000/- p.m. to the Respondent and both the children. He further submits that Family Court wrongly recorded in paragraph 5 of the impugned order that Petitioner failed to produce bank statement of his personal account as well as credit card statement and the statement of asset and liabilities for the reasons best known to the Petitioner. He submits that as per the order passed by the Family Court, Petitioner placed on record all the documents. He further submits that even Income Tax return for the Assessment Year 2018-19 shows Petitioner's gross total income of Rs.5,89,113/- only. He submits that without considering these documents, Family Court erred in coming to the conclusion that Respondent is entitled sum of Rs.20,000/- p.m. by way of interim maintenance for wife.

5 The learned counsel for the Petitioner submits that Family Court failed to consider the income of the Respondent wife at the

time of deciding maintenance charges. He submits that as per the Petitioner's knowledge, Respondent wife is taking private tuition and earning nearabout Rs.1,00,000/- per month. He submits that it is very difficult for the Petitioner to place on record any documentary evidence about the private tuitions taken by the Respondent wife. He submits that though these facts were stated by the Petitioner on affidavit before the Family Court, Family Court failed to consider the same at the time of deciding the quantum of maintenance charges to the wife. He submits that Apex court in the matter of Bhagwan Dutt v. Smt. Kamla Devi and another¹ held that at the time of deciding maintenance Application filed by the wife, Magistrate is competent to take into consideration the separate income and means of the wife. He relies on paragraph 20 and 21 of the authority which reads thus:

"20. There is nothing in these provisions to show that in determining the maintenance and its rate, the Magistrate has to inquire into the means of the husband alone, and exclude the means of the wife altogether from consideration. Rather, there is a definite indication in the language of the associate Section 489(1) that the financial resources of the wife are also a relevant consideration in making such a determination. Section 489(1) provides inter alia, that "on proof of a change in the circumstances of any person receiving under Section 488 a monthly allowance, the Magistrate, may make such alteration in the allowance as he

1 AIR 1975 SC 83

thinks fit". The "circumstances" contemplated by Section 489(1) must include financial circumstances and in that view, the inquiry as to the change in the circumstances must extend to a change in the financial circumstances of the wife."

"21. Keeping in view the object, scheme, setting and the language of these associate provisions in Chapter XXXVI, it seems to us clear that in determining the amount of maintenance under Section 488(1), the Magistrate is competent to take into consideration the separate income and means of the wife."

6 The learned counsel for the Petitioner also relies on the judgment of the Apex Court in the matter of Kirtikant D. Vadodaria vs. State of Gujarat and Another ². He submits that in this authority also Apex Court held that at the time of deciding maintenance charges, payable to the wife, court has to consider the income of the wife also. In support of this contention, he relies on paragraph 15 of this authority which reads thus:

"15) The point in controversy before us however is whether a 'stepmother' can claim maintenance from the step-son or not, having regard to the aims and objects of Section 125 of the Code. While dealing with the ambit and scope of the provision

2 1996 SCC (Cri) 762

contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation, Having regard to this social object the provisions of Section 125 of the Code have to be given a liberal construction to fulfil and achieve this intention of the Legislature. consequently, to achieve this objective, in our opinion, a childless step-mother may claim maintenance from her step-son provided she is widow or her husband, if living, is also incapable of supporting and maintaining her. The obligation of the son to maintain his father, who is unable to maintain himself, is unquestionable, When she claims maintenance from her natural born children, she does so in her status as their 'mother'. such an

interpretation would be in accord with the explanation attached to Section 20 of the Hindu Adoptions and maintenance Act.1956 because to exclude altogether the personal Law applicable to the parties from consideration in matters of maintenance under Section 125 of the Code may not be wholly justified. However, no intention of Legislature can be read in Section 125 of the Code that even though a mother has her real and natural born son or sons and a husband capable of maintaining her, she could still proceed against her step-son to claim maintenance. Since, in this case we are not concerned with, we express no opinion, on the question of liability, if any, of the step-son to maintain the step-mother, out of the inherited family estate by the step-son and leave that question to be decided in an appropriate case. Our discussion is confined to the obligations under Section 125 Cr.P.C. only."

7 On the basis of these submissions and the authorities, the learned counsel for the Petitioner submits that impugned order passed by Family Court is required to be set aside. He further submits that even bare reading of the Application filed by the Respondent wife under section 125 of the Criminal Procedure Code for interim maintenance clearly shows that she failed and neglected to give itemwise bifurcation of the maintenance charges. He submits that Respondent wife actually claimed sum of Rs.4,50,000/- per month by way of maintenance charges.

Unless and until bifurcation is provided by the Respondent wife, there is no question of directing Petitioner to pay maintenance of Rs.20,000/- per month to the Respondent wife. On this ground also impugned order passed by Family Court directing Petitioner to pay sum of Rs.20,000/- per month to the Respondent wife is required to be set aside.

8 On the other hand, the learned counsel for the Respondent wife vehemently opposed the present Criminal Writ Petition. He filed Affidavit-in-Reply dated 1.8.2019. Same is taken on record. Along with affidavit, he placed on record receipt issued by the Schools of both the children. He also placed on record other receipt showing the transportation charges which she is paying for both the children.

9 The learned counsel for the Respondent submits that even awarding sum of Rs.20,000/- to the Respondent wife is on lower side. He submits that it is difficult for the person to survive in Rs.20,000/- per month at Mumbai. He submits that at present, Respondent is staying with her brother. Therefore, at least she can save the amount for acquiring separate accommodation. If she requires to take separate accommodation, it will be impossible to survive in the sum of Rs.20,000/- only. Therefore, there is no question of entertaining the Criminal Writ Petition. He further submits that in any case, main Application is pending for hearing and final disposal on its own merits. At that time, court can decide exact amount of maintenance for wife.

10 I have heard both the sides at length.

11 It is to be noted that, in the present proceedings, Family Court specifically recorded in paragraph 5 of the impugned order that Petitioner failed and neglected to place on record, bank statement of personal account as well as credit card statement and statement of assets and liabilities for the reasons best known to him. Apart from that, for the Assessment Year 2018-19, Petitioner gross profit was shown to Rs.33,82,223. This is sufficient to show that Petitioner can pay sum of Rs.20,000/- per month to the Respondent wife in addition to Rs.30,000/- for both minor children. In any case, in Mumbai to survive for three persons. Rs.20,000/- may or may not be sufficient, but that can be decided at the time of final hearing of main Application. At present, I do not find any reason to entertain the present Writ Petition by which the Petitioner is challenging the maintenance charges of Rs.20,000/- awarded to the wife.

12 At this stage, the learned counsel for the Respondent wife submits that as per the order passed by this court, Petitioner deposited sum of Rs.3,00,000/- in the Registry of this court. He submits that in view of dismissal of Criminal Writ Petition, the Respondent wife may be permitted to withdraw the same.

13 For this purpose, the learned counsel for the Petitioner after taking instruction from his client who is present in court, makes a statement that, they have no objection in allowing, Respondent to withdraw the said amount. Hence, Respondent wife is permitted to withdraw the said amount deposited by the

Petitioner in this court along with accrued interest if any, without furnishing any security.

14 Hence, following order is passed:

- a. Criminal Writ Petition stands dismissed.
- b. Respondent wife is permitted to withdraw amount deposited by the petitioner in the Registry of this court, with accrued interest, if any, without furnishing any security.
- c. No order as to costs.
- d. At the time of deciding Main Application, Family Court should not influence the order passed by this court.

(K.K.TATED, J.)