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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3724 OF 2019

Amit Hiralal Chavan

... **Petitioner.**

Versus

Archana Amit Chavan and Anr.

... **Respondents.**

.....

Mr. Aditya Sharma for the Petitioner.

Mr. Sachin Chandan a/w Vijay Pattebhadur for the Respondent No.1.

.....

CORAM : A. S. GADKARI, J.

DATE : 14th NOVEMBER, 2019

P. C. :

1. By the present petition under Article 227 of the Constitution of India, the petitioner – husband has impugned Order dated 28th May 2019 passed by the learned Judge, Family Court No.2, Mumbai in Interim Application No. 62 of 2018, thereby allowing the application for maintenance filed below Exhibit-6 by the respondent No.1.

2. Heard Mr. Sharma, learned counsel for the petitioner and Mr. Chandan, learned counsel for the respondent No.1. Perused the entire record annexed to the petition.

3. The respondent No.1 has filed Marriage Petition No.E-89 of 2018 before the Family Court Mumbai at Bandra for maintenance under Section 125 of the Code of Criminal Procedure (for short “Cr.P.C.”). She also filed an application for interim maintenance below Exhibit-6. The Trial

Court after hearing the parties, and after assessing the material available on record has granted interim maintenance @ Rs.20,000/- per month to the respondent No.1 under Section 125 of Cr. P.C. from the date of filing of the said application i.e. from 15th March 2018 till final disposal of the said petition.

4. Mr. Sharma, learned counsel for the petitioner submitted that the Trial Court has failed to take into consideration the fact that as of today, the petitioner has changed his job and his earning is about Rs.20,000/- per month. That the petitioner has to pay home loan installment of Rs.15,663/- per month to the financial institutions. He submitted that, the petitioner is paying the said installment of home loan to the financial institution by availing financial help extended by his well wishers. He further submitted that the aged parents are depending on him and the petitioner has to incur substantial expenses for their medical treatment. He submitted that, the Trial Court has taken into consideration the salary slip of the erstwhile establishment where petitioner was working and not the latest salary slip and other related documents produced by the petitioner. In view thereof, the impugned Order dated 28th May 2019 may be set aside.

Per contra, Mr. Chandan, learned counsel for the Respondent No.1 vehemently opposed the petition and submitted that, the petitioner has not produced on record affidavit of any of the alleged well wishers to support his case and except a bold statement made by the petitioner, there is no material available on record to support it. He further submitted that, the

Trial Court after assessing material produced by both the parties before it, has granted interim maintenance by the impugned Order. He submitted that, main application is still pending for final adjudication before the Trial Court and in view thereof, the impugned Order granting interim maintenance to the respondent No.1 may not be interfered with at this stage and prayed that the present petition may be summarily dismissed.

5. The Trial Court has recorded a categorical finding that, the petitioner has suppressed his income from it. Even otherwise as noted in the foregoing paragraphs, it is a specific plea of the petitioner that he is paying monthly installment of home loan to the financial institution of Rs. 15,663/-, by taking financial assistance from his well wishers. It *prima facie* appears that, the said statement is made only with a view to shrug off the liability of making payment of interim maintenance to the respondent No.1.

The record indicates that, apart from various expenses as enumerated by the Trial Court in the impugned Order, the petitioner also spends substantiate funds to provide medical treatment to his parents for which high amounts are being paid to the concerned. Certainly this can not happen in the alleged salary of Rs. 20,000/- being earned by the petitioner.

6. Perusal of record would further indicate that, the petitioner is trying to conceal the correct facts from the Court only with a view to avoid to pay the maintenance granted by the Trial Court to the Respondent No.1 and shrug of the responsibility to pay the maintenance. The facts on record *prima facie* clearly indicate that, the interim maintenance granted by the Trial

Court in favour of the respondent No.1 is reasonable, just, right and proper.

7. The impugned order passed by the Trial Court is judicious and well reasoned Order and needs no interference by this Court in its jurisdiction under Article 227 of the Constitution. I find no merits in the petition and the petition is accordingly rejected.

8. As the petition filed by the respondent No.1 is under Section 125 of Cr. P.C. simplicitor, the learned Judge seized of the Marriage Petition No. E-89 of 2018, is hereby requested to expedite the hearing of the said petition and to make an endeavor to conclude the hearing of the same within a period of one year from today.

(A. S. GADKARI, J.)