

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4014 OF 2019

Arpana Vijay Manore,
Age : 29 years, Occu. Doctor,
R/o House No.823, Subhash Peth,
Pensionpura, Chavani Parishad,
Aurangabad

PETITIONER

VERSUS

Dr. Vijay Tukaram Manore,
Age : 31 years, Occu. Medical Officer,
R/o House No.31, Police Colony,
Mill Corner, Aurangabad,
at present, Plot No.6, Soubhagya Chowk,
Near Indian Oil Petrol Pump,
Harsul, Aurangabad

RESPONDENT

Mr. B.R. Warma, Advocate holding for Mr. Shrirang B. Varma,
Advocate for the petitioner
Mr. A.M. Gholap, Advocate for the respondent

CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 07.12.2020
JUDGMENT PRONOUNCED ON : 09.12.2020

JUDGMENT :

Heard.

2. Rule. The rule is made returnable forthwith. With the consent of learned Advocates for both the sides, the matter is heard finally at the

stage of admission.

3. In this petition under Article 227 of the Constitution of India, the petitioner-wife is impugning the order dated 02.02.2019, passed by the learned Judge of the Family Court, Aurangabad rejecting her application (Exhibit-14), seeking interim alimony under Section 24 of the Hindu Marriage Act, 1955 in a proceeding for divorce filed by the respondent-husband under Section 13 (i-a) of that Act.

4. By application (Exh-14), the petitioner submitted that she was unable to maintain herself since the couple has separated in the year 2016. She has been residing with her parents. She is unable to work because of the psychological pressure and harassment meted out to her by the respondent. As against this, the respondent is a Medical Officer earning around Rs.60,000/- to Rs.65,000/- salary. No-one is dependent on him and therefore, she claimed interim maintenance at the rate of Rs.15,000/- per month and also claimed Rs.200/- for rickshaw fare for attending the Court for each date and Rs.25,000/- for engaging Advocate.

5. The respondent-husband opposed the application by his say (Exh-19). He contended that the petitioner is also a doctor by profession and is also a Dermatologist. She was also earning Rs.50,000/- to Rs.60,000/- per month. She has continued her profession in a flat owned by her father. He denied that she was suffering from any psychological pressure and was

unable to pursue her profession. He denied that he earns Rs.60,000/- to Rs.65,000/- per month and prayed to reject the application.

6. After hearing both the sides, the learned Judge of the Family Court rejected the application (Exh-14). Hence this petition.

7. Mr. Warma, learned Advocate, by referring to the recent judgment of the Supreme Court in the case of ***Rajnesh Vs. Neha and Anr.; Criminal Appeal No.730 of 2020***, decided on 04.11.2020, submitted that the Supreme Court has now laid down several guidelines and directions in the matters of grant of maintenance/alimony, including interim maintenance, awardable under different Statutes. He would point out that assuming that that the petitioner is a duly qualified medical practitioner, still she is entitled to claim interim alimony as has been laid down in this decision of the Supreme Court. Her capacity to earn her livelihood cannot come in her way to claim alimony. As against this, the respondent is also a Medical Officer regularly earning sumptuous salary. The learned Judge of the Family Court has grossly erred in appreciating the law and the facts and has illegally refused interim alimony, which order may be reversed.

8. Mr. A.M. Gholap, learned Advocate for the respondent strongly opposed the petition. He submitted that the petitioner has not come with clean hands and has hidden that she is pursuing medical profession. The record was produced before the Family Court to that effect and no error is

committed by the learned Judge in refusing interim alimony to her.

9. As far as right of a wife, who is capable of earning, to claim alimony is concerned, the Supreme Court in the case of ***Rajnish*** (supra) has considered it in clause (c) of Part-III under the head of 'Criteria for determining quantum of maintenance', which reads thus :-

“(c) Where wife is earning some income

The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

In *Shailaja & Anr. V Khobbanna*, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival.

In *Sunita Kachwaha & Ors. V Anil Kachwaha*, the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

The Bombay High Court in *Sanjay Damodar Kale v Kalyani Sanjay Kale* while relying upon the judgment in *Sunita Kachwaha* (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn

sufficiently to maintain his family, as held by the Delhi High Court in *Chander Prakash Bodhraj v Shila Rani Chander Prakaash*. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

This Court in *Shamima Farooqui v Shahid Khan* cited the judgment in *Chander Prakash* (supra) with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.”

10. Suffice for the purpose, therefore, to conclude that even if the petitioner in the matter in hand is a medical practitioner and is earning something for her livelihood, it cannot be a ground to refuse alimony to her under Section 24 of the Hindu Marriage Act.

11. Now coming to the quantum of maintenance, though the petitioner has produced her Income Tax returns, the respondent has not reciprocated the gesture. It is to meet such situations that the Supreme Court in the case of *Rajnesh* (supra) has also laid down several guidelines requiring both the parties to make several disclosures in the form of affidavits inter alia touching the income aspect as well. Conspicuously, in that matter, the Supreme Court had directed the husband to produce Income Tax returns before passing the order for granting interim maintenance. In my view, instead of resorting to such a course now, which is likely to further delay the proceeding, it would be appropriate to draw an adverse inference, which is also held to be permissible in this order of the Supreme Court in the case of

Rajnish (supra). Consequently, without indulging into further discussion, failure of the respondent to come with a disclosure as to his own income and taking into consideration all the aforementioned facts and circumstances and bearing in mind the guidelines laid down by the Supreme Court in the case of **Rajnish** (supra) and resorting to an inevitable guesswork, it would be just and proper to award interim maintenance to the petitioner at the rate of Rs.10,000/- per month from the date of her application i.e. 03.10.2017.

12. Simultaneously the petitioner is also impugning the order dated 02.02.2019 passed by the Family Court on her application (Exh-40) whereby she prayed for return of her stridhan enlisted in the application. Though the petitioner is impugning the order, rejecting her this application, in my view, as has been rightly observed by the learned Judge of the Family Court, since the dispute being raised by this application (Exh-40) touches debatable issues of facts, it would require some evidence to be led by both the sides before deciding this application. The learned Judge, therefore, has rightly observed that the application (Exh-40) would be decided with the main petition. There is no apparent impropriety or illegality in following such a course. Therefore, to that extent, there is no substance in the Writ Petition.

13. The Writ Petition is partly allowed. The impugned order passed by the Family Court on the application (Exhibit-14) is quashed and set aside. The application is partly allowed. The respondent shall pay to the petitioner an amount of Rs.10,000/- per month from the date of application i.e.

03.10.2017 towards alimony pendente lite under Section 24 of the Hindu Marriage Act. He shall pay all the arrears upto date to her within twelve weeks from the date of this judgment and continue to pay the alimony during pendency of the proceeding before the Family Court. The Rule is made absolute accordingly.

14. The Writ Petition, to the extent of challenge to the order dated 02.02.2019 passed on the application (Exhibit-40) is dismissed.

[MANGESH S. PATIL]
JUDGE

npj/WP4014-2019