

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION 26 OF 2020

(Shri Jagdish Mansaram Shamnani & Ors..vs.. Radha wd/o. Kishankumar Shamnani & Ors)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri M. Anilkumar, counsel for petitioners.
Shri Shyam Dewani, counsel for respondents 1 to 3.

CORAM: ROHIT B. DEO, J.
DATE:28.02.2020.

The challenge is to the order dated 15.10.2019, rendered by the Additional Sessions Judge in Criminal Appeal 59 of 2018, whereby the appeal preferred by respondents seeking enhancement of the interim maintenance, was partly allowed and the appeal preferred by the petitioners, was dismissed.

2. The appellate order emanates from the order of the learned Magistrate, who directed the petitioners 1 to 3 to pay interim maintenance of ₹ 4000/- each to respondents 2 and 3 herein, in addition to monthly rental of ₹ 2,000/-. This order was assailed by the petitioners herein and the respondents. As noted supra, the appeal preferred by the petitioners is rejected and the appeal preferred by the respondents is allowed to the extent that not only petitioners 1 and 3, the other petitioners are held jointly liable to pay interim maintenance.

3. At the very outset, the learned counsel for the respondents Shri Sahil Dewani would submit that since the petitioners are in contempt, this Court ought not to exercise writ jurisdiction. Shri Sahil Dewani would submit that the order dated 31.3.2018 is not complied with. The learned counsel for the petitioner is not disputing that the order impugned is not complied with.

4. The learned counsel for the petitioners states that out of arrears of approximately Rs. 2,80,000/-, the petitioners have either paid or deposited ₹ 80,000/-. Shri Sahil Dewani would submit that the amount paid or deposited is ₹ 56,000/- as pr the instructions received by him from his client.

5. Be that as it may, it is not in dispute that the order of maintenance is not complied with.

6. I put a specific query to the learned counsel for the petitioner whether they would deposit balance arrears in the Court and the candid response was in the negative. The learned counsel submits that his clients are not in a position to deposit the amount of interim maintenance as directed by the learned Magistrate and confirmed by the appellate Court.

7. In the facts of the case, I am not inclined to exercise extraordinary jurisdiction under Article 226 of the

Constitution of India, since the petitioners are not ready to comply with the order, if not entirely, even substantially. The arrears even according to the learned counsel for the petitioners is ₹ 2 lacs. In order to give a final opportunity to the petitioners, I asked the counsel whether his client would deposit at least 50% of the arrears and again answer is no.

8. This petition is dismissed.

Judge

Belkhede RS