

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

CRIMINAL APPLICATION (APPW) NO. 295 OF 2019

IN

CRIMINAL WRIT PETITION NO. 963 OF 2019

(Vijay Prakashchandra Wadhwani ..vs.. Palak Vijay Wadhwani @ Anita Rajkumar Das and another)

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

Court's or Judge's orders

Mr. N.S. Warulkar, Counsel for the petitioner,
Mr. Piyush Pande, Counsel h/f. Mr. R.M. Pande, Counsel for the
respondents.

CORAM : ROHIT B. DEO, J.

DATE OF RESERVING THE ORDER : 17-12-2020

DATE OF PRONOUNCING THE ORDER : 22-12-2020

This motion is moved by the respondents seeking modification/correction of order dated 26-11-2019.

2. The modification sought in the order dated 26-11-2019 is that substituting the amount "Rs.1,34,000/-" the petitioner may be directed to deposit "Rs.2,42,000/-" towards the amount of interim maintenance in arrears. It is averred that the learned Counsel for the respondents did not realise the miscalculation and, therefore, did not bring the same to the notice of the Court when the order dated 26-11-2019 was dictated in the open Court. In essence, according to the respondents, the error in calculation has occurred since the respondents are entitled to receive the amount of interim maintenance from the date of the application i.e. 18-12-2010 while the amount is calculated from the

date of the order i.e. 13-9-2011.

3. In my considered view, the application seeking modification merits rejection.

4. I am not concerned with the legality or otherwise of the order of the learned Magistrate which does not specifically make the maintenance payable from the date of the order. I am conscious of the recent decision of the Apex Court in *Rajnesh vs. Neha and Another (Criminal Appeal 730/2020)*, which directs that maintenance shall be effective from the date of the application.

5. However, the order of the learned Magistrate merely allows the application and directs payment of interim maintenance. Neither the application nor the order make a reference to the effective date. In this view of the matter, it cannot be assumed that the learned Magistrate made the payment of interim maintenance effective from the date of the application. Notably, the law was not settled and there was indeed a cleavage of opinion as regards the effect to be given to the order of interim maintenance/maintenance. Be that as it may, an error, assuming that the learned Magistrate erred, could have been corrected by challenging the order before the appropriate forum.

6. Keeping every contention open and without prejudice to the rights of the parties, the application

seeking modification is rejected.

adgokar

JUDGE