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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6511 OF 2021**

VISAHL AJIT BUDHWANI

....Applicant.

V/s

SARAH VISHAL BUDHWANI

.....Respondent

Mr. Asadullah Shaikh a/w Farzeen Shaikh i/b AAK Legal for the Applicant.

Mr. Digvijay Patil for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 22, 2021

P.C.:-

1] The order impugned dated August 20, 2018 passed under Section 125 of the Criminal Procedure Code awarding maintenance of Rs 10,000/- to Respondent-wife and Rs 7,000/- to minor child is questioned on the ground that income of the Petitioner-husband is reduced from Rs 70,000/- to Rs 50,000/-. This Court is not required to go into such challenge in view of remedy available to the Petitioner under Section 127 of the Criminal Procedure Code under which Petitioner always can approach the Family Court seeking modification/

reduction of payment of amount of maintenance. As far as challenge on the issue of higher qualification of Respondent-wife and before marriage she was gainfully employed is concerned, it is to be noted that in 2018, the order of award of maintenance was passed which is challenged before this Court after inordinate delay of about three years. As such, aforesaid issue of Respondent's capacity to earn independently need not be gone into at this stage.

2] However, it is made clear that Petitioner-husband shall be at liberty to canvass the said issue at the time of award of final maintenance based on the judgment of the Apex Court in the case of *Bhushan Kumar Meen vs. Mansi Meen alias Harpreet Kaur* reported in (2010) 15 SCC 372.

3] In regard to challenge to directions issued against the Petitioner vide order dated 10/2/2021 towards payment of EMI is concerned, parties are in agreement that monthly EMI towards flat is Rs 15,000/- per month. When the order of award of maintenance was passed, the income of the Petitioner was of Rs 70,000/- which was taken into account. As such, it is to be presumed that when the award of

maintenance of Rs 17,000/- was ordered, it was at the back of mind of the court below i.e. Family Court that Petitioner had liability to pay EMI of Rs 15,000/-. Merely because Respondent-wife alongwith daughter born out of wedlock are staying in the said flat that by itself will not give any right to the Petitioner-husband to question the authority of the Court below under which directions are issued to the Petitioner to pay the EMI. This Court expects the Petitioner to clear the EMI as directed by the Family Court expeditiously.

4] Petition stands disposed of with the above liberty.

(NITIN W. SAMBRE, J.)