

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

CRIMINAL WRIT PETITION 57 OF 2021

Mr. Atul s/o. Vasant Rao Parmarthi,
aged about 46 yrs, Occ. Service,
r/o. Railway Qtr No. R.B.1/977/B,
Near 15 Bungalow, Nirmal Nursery,
Bhusawal, Tq. Bhusawal, Dist. Jalgaon

.....**PETITIONER**

...V E R S U S...

Sau. Pallavi Atul Parmarthi,
aged about 39 yrs, Occ. Household,
r/o. C/o. Laxman Sonopant Patharkar,
1st Floor, Chintamani Apartment,
Opp. S.V.C. Bank, Umari Road,
Jatharpeth, Akola, Tq. Dist. Akola

... **RESPONDENT**

Mrs. P.S. Kshirsagar, counsel for petitioner.

CORAM: ROHIT B. DEO, J.

DATE : 20.01.2021

ORAL JUDGMENT:

Heard Mrs. P. S. Kshirsagar, the learned counsel for
the petitioner.

2. The petitioner is challenging the order dated 4.1.2021
rendered by the learned Judge, Family Court, Akola below Exh. 42
in ERP 10/2019.

3. Exh. 42 is an application moved by the respondent – wife under section 125(3) of the Code of Criminal Procedure, 1973 (“Code”), seeking attachment of the salary of the husband. It is specifically averred that the amount of arrears to be recovered, as on the date of the application is ₹ 89, 064/-. The application is preferred on 19.8.2020.

4. The petitioner – husband filed reply (Exh. 44) in which he stated that the order of interim maintenance is subjudice before the Supreme Court. It is further stated that since the challenge to the order of interim maintenance is pending, the recovery / execution proceedings be kept in abeyance. Notably, there is no averment in the reply that the amount of arrears is not ₹ 89,064/-.

5. An extremely vague and general statement is made in the passing, that the husband has paid (अमानत) in the Court.

6. The learned Judge of the Family Court was pleased to direct that the amount of arrears be recovered by deducting ₹ 15,000/- from the salary of the petitioner – husband. I do not see any error in the direction issued, much less error warranting

interference in exercise of writ jurisdiction.

7. The submission of the learned counsel is that the petitioner has deposited certain amounts in the Court, and therefore, is not in arrears of ₹ 89,064/-. In the memo of petition, the averment is that the petitioner deposited approximately ₹ 14,000/- from time to time from 27.9.2019 to 19.12.2020, which is not considered. The petitioner – husband admits that ₹ 75,064/- is the amount of arrears.

8. The learned Judge of the Family Court was not invited to decide the discrepancy since there is not even a whisper in the reply Exh. 44 suggesting that some amount will have to be adjusted.

9. In this view of the matter, while the direction to deduct ₹ 15,000/- from the salary of the petitioner – husband is confirmed, after recovery of ₹ 75,000/-, the learned Judge of the Family Court shall address the issue of adjustment, if any, obviously also taking into consideration whether the maintenance for the period subsequent to application Exh. 42 is paid regularly, and then record an appropriate finding.

10. Subject to the aforesaid observation and direction, the petition is dismissed.

Judge

Belkhede RS