

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

CRIMINAL WRIT PETITION NO. 84 OF 2021

Rajnish s/o Rajendrapal Naidu

vs.

Mrs. Neha w/o Rajendra Naidu (Joshi) and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Gopal Sawal, Advocate for petitioner.
Dr. Renuka Sirpurkar, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 11/08/2021

By this writ petition, the petitioner has challenged order dated 15/07/2017, passed by the Family Court No.3, Nagpur, whereby an application filed under Section 26 of the Protection of Women from Domestic Violence Act, 2005, has been allowed, with a specific direction to the petitioner to provide suitable alternate accommodation to the respondent wife and the minor child, the rent of which shall not exceed Rs.25,000/- per month.

2. At the outset, the learned counsel appearing for the petitioner submits that although the impugned order is dated 15/07/2017, the present

writ petition came to be filed in the year 2021, for the reason that the petitioner had filed an appeal before the Sessions Court at Nagpur under the impression that such an appeal was maintainable. By an order dated 02/01/2021, the Court of Additional Sessions Judge, Nagpur allowed the petitioner to withdraw the appeal, in view of the provisions of law concerning the Family Court and its jurisdiction under the Family Courts Act, 1984. On this basis, the delay in approaching this Court is sought to be explained.

3. In this writ petition, although formal notice has not been issued, the respondents have appeared through counsel and therefore, the writ petition is taken up for hearing.

4. Mr. Gopal Sawal, learned counsel appearing for the petitioner vehemently submits that the impugned order passed by the Family Court is wholly unsustainable, for the reason that surmises and conjectures have led to finding against the petitioner as regards his financial capacity to provide suitable accommodation upto the rent of Rs.25,000/- per month to the respondents. It is submitted that reference to property allegedly belonging to the petitioner and sold by him are wholly incorrect, for the reason that the property in question was owned

by the father and the uncle of the petitioner and he had not received a single rupee from the amount of consideration exchanged for the sale of the property.

5. It is further submitted that the business concerning one Rajind Motors was already closed down and there was no income from the said source for the petitioner. It was further submitted that the petitioner was constrained to work as an employee in a company and there too his employment was adversely affected, because of the pending legal proceedings and the approach adopted by respondent No.1. Reference was made to income tax returns to indicate that prior to marriage and even thereafter, the income of the petitioner is not noteworthy and that he simply cannot afford the amount foisted upon him towards payment of rent for appropriate accommodation for the respondents.

6. Mr.Gopal Sawal, further submitted that factors taken into consideration by the Family Court while passing the impugned order are wholly irrelevant, for the reason that reference is made to chart prepared by respondent No.1 herself regarding alleged expenses incurred by the petitioner for self-consumption during the five years preceding the decision made on the application. It was submitted

that the contents of such chart were not borne out by the material on record and that the documents which were not exhibited were also taken into consideration. It was further submitted that due to the pandemic, the financial situation of the petitioner had taken a downturn that therefore, the impugned order deserved to be set aside.

7. On the other hand, Dr.Mrs.Renuka Sirpurkar, appearing for the respondents brought to the notice of this Court the extent of arrears that the petitioner had fallen into, not only in respect of the impugned order, but also amounts directed to be paid towards interim maintenance in the the proceeding pending under Section 125 of the Cr.PC. It is submitted that the order granting monthly interim maintenance of Rs.25,000/- per month by the Family Court was confirmed by this Court and even by the Hon'ble Supreme Court and yet, the petitioner has been unilaterally paying sum of only Rs.10,000/- per month, thereby showing that he is in arrears of payment of amount towards interim maintenance also. It is submitted that he has been approaching the Family Court in an attempt to justify non-payment of arrears on the ground that he has moved application for extension for payment of arrears before the Hon'ble Supreme Court. It is brought to

the notice of this Court that the Hon'ble Supreme Court, did show indulgence and granted the petitioner an opportunity to clear the amount towards arrears by the month of May, 2021, but the petitioner has failed to comply with the said order also. The learned counsel appearing for the petitioner could not dispute in the said position. It is submitted that the subsequent application purported to have been moved for extension of time before the Hon'ble Supreme Court has not been listed for consideration.

8. After emphasizing on the conduct of the petitioner, the learned counsel appearing for the respondents submitted that the impugned order passed by the Family Court is based on material available on record and it cannot be said to be suffering from perversity. The charts prepared by the respondent No.1 showing the amounts spent by the petitioner towards self-consumption were based on statements of accounts produced before the Family Court from the Banks, on specific direction issued by the Family Court.

9. On this basis, it was submitted that facts and figures stated in the charts were not imagination of the respondent No.1, but they were based on

cogent material available on record with the Family Court. On this basis, it was submitted that the writ petition deserved to be dismissed.

10. Heard learned counsel for the rival parties and perused the material on record. Insofar as delay in approaching this Court is concerned, this Court has perused the order passed by the Sessions Court, permitting withdrawal of the appeal, which was said to have been inadvertently filed by the petitioner. Since the petitioner was pursuing remedy of appeal on a misconception and after realizing the mistake, withdrew the appeal to approach this Court, it cannot be said that the delay on the part of the petitioner was deliberate. But, what is relevant in the present case is that even during the pendency of the misconceived appeal filed before the Sessions Court, admittedly there was no interim order in favour of the petitioner and yet he failed to comply with the direction given in the impugned order. It is brought to the notice of this Court that when distress warrants were issued in the matter that the petitioner deposited an amount of Rs.2,75,000/-, before the Family Court on 14/12/2020 towards arrears in terms of the direction given in the impugned order. It is also an admitted position that thereafter, the petitioner has continued to violate the direction given

in the impugned order, as a result of which the arrears have once again mounted.

11. The charts placed before this Court by the learned counsel appearing for the respondents demonstrates that not only is the petitioner in arrears towards the rental amount directed to be paid as per the impugned order, but he is in arrears of large amounts towards monthly interim maintenance granted to the respondents by the Family Court and confirmed right upto the Hon'ble Supreme Court. This indicates the conduct of the petitioner in repeatedly violating the directions of Courts, including the Hon'ble Supreme Court. It is significant that the Hon'ble Supreme Court showed indulgence to the petitioner by granting him time for payment of arrears through installments upto May, 2021 and yet, the said direction given by the Hon'ble Supreme Court has not been complied with. A litigant who has no respect for the majesty of law and the Courts does not deserve hearing, particularly in writ jurisdiction which by its very nature is discretionary.

12. Yet, this Court has considered the impugned order passed by the Family Court. The factors on which the learned counsel for the petitioner has placed reliance in seeking to

demonstrate errors in the impugned order pertain to events subsequent to the passing of the impugned order dated 15/07/2017. The emphasis on the pandemic and the situation created due to the same cannot be relied upon by the petitioner to demonstrate errors in the impugned order passed by the Family Court. The pandemic came in March, 2020, while the impugned orders was passed way back on 15/07/2017.

13. The Family Court in paragraphs 15 onwards has taken into consideration various factors to come to a conclusion as to the lifestyle of the petitioner and his capacity to provide appropriate accommodation to the respondents. There can be no doubt about the fact that the petitioner is obliged to provide lifestyle to the respondents, which is similar to one that he has been enjoying. The Family Court has taken into consideration charts of expenses prepared on the basis of bank statements received from respective banks about the financial status of the petitioner and therefore, it cannot be said that the Family Court has committed any error in holding that the respondents are entitled to appropriate alternate accommodation consisting of two bedrooms, hall and kitchen in the city of Nagpur. The lifestyle of the petitioner and his capacity to provide for appropriate

accommodation have been taken into consideration by the Family Court and the amount of Rs.25,000/- per month towards rent cannot be said to be exorbitant in the facts and circumstances of the present case. Therefore, this Court is of the opinion that no error can be attributed to the Family Court in passing the impugned order.

14. Accordingly, the writ petition is found to be without any merit and it is dismissed. No costs.

JUDGE