

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

CRIMINAL APPLICATION (APL) NO.1329 OF 2019

Mahendra s/o Deoraji Jaunjal
Aged about 42 years,
Occ: Service, R/o Near Water Tank,
Deori, Tah. Deori, Dist. Gondia. **APPLICANT**

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

1. Vaishali w/o Mahendra Jaunjal
Aged about 34 years,
Occ: Proprietor of Coaching Classes,
R/o C/o Keshavrao Karare, Satva Mata
Mandir, Saoner, Tah. Saoner, Dist. Nagpur.
2. Master Piyush s/o Mahendra Jaunjal
Aged about 7 years, Occ: Nil,
through his natural guardian mother
R/o C/o Keshavrao Karare,
Satva Mata Mandir, Saoner,
Tah. Saoner, Dist. Nagpur. **NON-APPLICANTS**
RESPONDENTS

Mr. S.S. Sohoni, Advocate for Applicant.
Ms. Priya Thakre, Advocate for Non-Applicants.

CORAM: **ROHIT B. DEO, J.**
DATE: **2nd MARCH, 2021.**

ORAL JUDGMENT:

The applicant is aggrieved by the order dated 21.05.2019 rendered by the Civil Judge, Junior Division, Saoner in Miscellaneous Criminal Application 299/2018 whereby the said

application is partly allowed and the applicant – the original non-applicant is directed to pay interim maintenance of Rs.10,000/- per month to non-applicant 1 effective from the date of filing of the application, and the judgment dated 23.10.2019 rendered by the learned Additional Sessions Judge-9, Nagpur in Criminal Appeal 179/2019 which upholds the order of interim maintenance and dismisses appeal.

2. The wedding of the applicant and non-applicant 1 was solemnized on 24.03.2010. Non-applicant 2 is the child from the wedlock.

3. Non-applicant 1 preferred Miscellaneous Criminal Application 299/2018 invoking the provisions of Sections 12, 18, 19 and 23 the Protection of Women from Domestic Violence Act, 2005 (D.V. Act). The domestic abuse to which non-applicant 1 was allegedly subjected, is described vividly and with particularity.

4. Non-applicant 1 further preferred application Exh.16 seeking interim maintenance of Rs.25,000/- per month. She alleged that after subjecting her to mental and physical abuse in connection with the demand of dowry, and otherwise subjecting her to cruelty, her husband – the applicant herein deserted her

forcing her to live with her parents at their mercy. She avers that the husband is in a government service and earns monthly salary of Rs.50,000/-.

5. The husband opposed the application, *inter alia* on the ground that he was already making payment of Rs.1500/- as maintenance in view of order dated 05.02.2015 in Miscellaneous Criminal Application 123/2012 which is initiated under Section 125 of the Criminal Procedure Code, 1973 (Code). The husband generally denied the allegations levelled by the wife and in particular pleaded that the wife is highly educated and holds the qualification B.A. B.Ed with English Literature. The husband averred that the wife is conducting coaching and tuition classes at Saoner and is earning Rs.30,000/- to Rs.35,000/- per month. Notably, the husband did not come clean on his monthly income although he generally denied the averment that his monthly income is Rs.60,000/-.

6. I called upon the learned counsel for the applicant husband to make available for my perusal the copy of the salary slip. In response, the learned counsel states that he is not possessing copy of the salary slip and that the income of the

husband is referred to in the order rendered by the learned Magistrate.

7. The learned Magistrate observes, and rightly so, that while deciding entitlement to interim maintenance, the merit need not be examined minutely and it would suffice if the application makes out a *prima facie* case of the wife not being in a position to maintain herself. The learned Magistrate notes that the wife is maintaining the child from the wedlock. It is further noted that the gross monthly income of the husband is Rs.42,406/-. It is observed, again rightly, that the deduction towards payment of the loan installment is not statutory or compulsory deduction, and therefore, will have to be ignored while determining the payment capacity of the husband.

8. The learned Appellate Court notes that the order impugned is interim and that the husband would be entitled to prove his defence by leading evidence. The learned Appellate Court found no reason to interfere in exercise of appellate jurisdiction under Section 29 of the D.V. Act.

9. I have heard the learned counsel Mr. S.S. Sohoni, who appears on behalf of the husband and the learned counsel Ms.

Priya Thakre who appears on behalf of the wife.

10. In my considered view, there is no reason to interfere with the concurrent views of the courts below.

11. Grant of interim maintenance, is essentially in the domain of discretion. It is true that the exercise of discretion must not be arbitrary. However, in the factual matrix, I see no error whatsoever in directing the husband to pay interim maintenance of Rs.10,000/- to the wife who has also assumed the responsibility of maintaining and bringing up the child. The amount of interim maintenance is neither arbitrary nor disproportionate to the payment capacity of the husband and if at all, is on the lower side.

12. The bald and vague statement in the reply apart there is no material whatsoever placed to demonstrate that the wife is earning and is in a position to maintain herself. That apart, even if it is assumed *arguendo* that the wife is earning some amount, the interim maintenance is still justified since there is a child from the wedlock. The child cannot be denied maintenance on the premise that his mother is a working woman.

13. The learned counsel Mr. Sohoni points out that the

legality of the judgment of the District Judge, Gondia who set aside the decree of dissolution of marriage is *sub-judice* in Second Appeal 513/2018. The submission is irrelevant. Admittedly, as of today, the marriage is subsisting.

14. In any view of the matter, there is no merit in the application and the same is dismissed. Every observation in the orders of the courts below and in this order is made for an extremely limited purpose of deciding the entitlement to interim maintenance. The same shall not influence the learned Magistrate while deciding the quantum of the maintenance finally, if such occasion arises.

15. The learned Magistrate is requested to conclude the proceedings as expeditiously as possible and in any event within six months.

JUDGE