

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

919 CRIMINAL WRIT PETITION NO.112 OF 2022

Gorakhnath Ekanath Wakle  
Age 44 years, Occ. Service,  
R/o Plot No.01, Prabha Aashis  
Hou. Society, Near K J  
Mehta School, Nashik Road,  
Nashik.

...Petitioner

Versus

Ashwini @ Asha Gorakhnath Wakle  
Age 39 years, Occ. Service,  
R/o Annasaheb Kachru Pawar  
Hari Sagar Ro-House No.2,  
Karda Construction, Opp. Farnandis  
Wadi Jaibhawani Road, Nashik.

...Respondent

Mr. N.L. Choudhari, Advocate for Petitioner

Mr Rakesh C. Brahmarkar h/f Mr N.L. Jadhav, Advocate for Respondent

**CORAM : SHRIKANT D. KULKARNI, J.**  
**DATE : 23<sup>rd</sup> SEPTEMBER, 2022**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith. Heard finally with consent of both the sides at admission stage.
2. The petitioner/husband is challenging the order of interim maintenance passed by the learned Additional Chief Judicial Magistrate, Kopergaon in Criminal Misc. Application No.49/2021 dated 20<sup>th</sup> December, 2021 mainly on the ground that the respondent/wife is leading adulterous life.
3. Heard Mr N.L. Choudhari, learned counsel for the petitioner and Mr Rakesh C. Brahmarkar holding for Mr N.L. Jadhav, learned counsel for the respondent.

4. Perused the impugned order passed by the learned Magistrate below Exh.6 in Misc. Criminal Application No.49/2021 whereby the learned Additional Chief Judicial Magistrate was pleased to grant interim protection of Rs.5,000/- per month to the wife.

5. Mr N.L. Choudhari, learned counsel for the petitioner vehemently submitted that respondent/wife is leading adulterous life though the couple is blessed with two children. He invited my attention to the copies of affidavits filed by the parents of the respondent/wife as well as affidavit of her brother. He submitted that the parents of the respondent/wife have stated in their respective affidavits that respondent/wife is leading adulterous life with one Mr Dinkar Changev Dange, who is serving in Sai Baba Sansthan Trust, Shirdi. He further invited my attention to the affidavit sworn by brother of respondent Arvind Annasaheb Pawar and submitted that he has also stated about adulterous life of respondent/wife. He submitted that when parents and brother of the wife are stating on affidavits that respondent/wife is leading adulterous life, there is no reason to disbelieve their statements.

6. Mr Choudhari, learned counsel for the petitioner further invited my attention to section 125 (4) of Cr.PC. He pointed out that in view of provisions of section 125 (4) of Cr.PC, the wife, who is leading adulterous life, is not entitled to get maintenance/interim maintenance. By taking help of this provision and the affidavits sworn by the parents and brother of the respondent/wife, Mr Choudhari urged to quash and set aside the order of

interim maintenance passed by the learned Additional Chief Judicial Magistrate, Kopargaon.

7. Per contra, Mr R.C. Brahmarkar, learned counsel for the respondent supported the order of interim maintenance passed by the learned Additional Chief Judicial Magistrate, Kopargaon. He submitted that the petitioner is serving as a Professor and drawing salary of more than Rs.1,00,000/- per month. Since last 9 months, the petitioner has not complied with the order of interim maintenance. He has not paid a single penny towards arrears of interim maintenance. He submitted that the learned Additional Chief Judicial Magistrate after taking into consideration the material on record was pleased to determine the order of interim maintenance allowance. It is now mandatory on the part of the petitioner to comply the same. He submitted that the affidavits relied upon by the petitioner are false and those cannot be taken into consideration. He submitted that the impugned order passed by the learned Additional Chief Judicial Magistrate, Kopargaon is valid and legal and it does not call for interference in writ jurisdiction.

8. Mr R.C. Brahmarkar, learned counsel for the respondent has placed his reliance on following citations in support of his submissions :-

- (i) *Veerbhadrapa Vs. Vedavathi (Smt.) reported in 1999 Cri.L.J. 144 (Karnataka High Court)*
- (ii) *Shalu Ojha Vs. Prashant Ojha reported in 2015 AIR (SC) 170.*

9. I have considered the submissions of learned counsel for both the sides. Further, I have gone through the impugned order passed by the learned Additional Chief Judicial Magistrate, Kopargaon, thereby awarding interim maintenance of Rs.5,000/- per month to the respondent/wife, which is under challenge.

10. Main focus of the argument of Mr Choudhari, learned counsel for the petitioner is on adulterous life of the respondent/wife and thereby dis-entitlement to get interim maintenance in view of section 125(4) of Cr.PC. As such, it is necessary to have a look on section 125 (4) of Cr.PC which reads as under :-

**125. Order for maintenance of wives, children and parents -**

(1).....

(2) .....

(3).....

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refused to live with her husband, or if, they are living separately by mutual consent.

11. So far as the citation relied upon by the learned counsel for the respondent in case of ***Veerbhadrapa Vs. Vedavathi (Smt.)*** is of Karnataka High Court and not binding on this Court. Even after considering the same, it provides for procedure for recovery of interim maintenance. It is held by the Karnataka High Court that the opportunity to

show cause notice cannot be sought by the husband before directions of the compliance of the order. The learned Magistrate is competent to issue warrant of attachment of property and also resort to sentencing imprisonment for recovery. It is not any way helpful while deciding this petition.

12. So far as the another citation relied upon by the learned counsel for respondent in case of ***Shalu Ojha Vs. Prashant Ojha*** is concerned, it is under Protection of Women from Domestic Violence Act, 2005 coupled with section 482 of Cr.PC and Article 227 of the Constitution of India. Even para No. 23 relied upon by the learned counsel for the respondent, simply gives clarification that while deciding the application under section 12(1) of the D.V. Act, the concerned Court/Magistrate may consider the order of maintenance passed under section 125 of the Cr.PC, 1973. Again, it is not any way helpful having regard to the facts of the case in hand.

13. The petitioner has placed on record the copies of affidavits of parents of the respondent as well as brother of respondent/wife. They have stated on affidavit about adulterous life of respondent with one Mr Dinkar Changdev Dange, who is serving in Sai Baba Sansthan Trust, Shirdi. On perusing those affidavits, it is found that they are in tune and supporting to the defence taken by the petitioner. While invoking writ jurisdiction under Article 226 and 227 of the Constitution of India, this Court cannot decide the facts which are in dispute. It is for the concerned trial court to decide the disputed questions of facts after recording the

evidence of respective parties. As such, it would be just and proper to set aside the impugned order of interim maintenance with directions to the learned Magistrate to decide the application for interim maintenance filed by respondent/wife by giving an opportunity to the petitioner to produce the evidence of his witnesses regarding adulterous life of his wife/respondent in view of provisions of section 125 (4) of Cr.PC. If that exercise is made, it would meet the ends of justice. The parties are at liberty to lead their evidence in support of their stand and accordingly, the matter can be decided afresh.

### **ORDER**

- (i) The Criminal Writ Petition stands allowed.
- (ii) The order of interim maintenance passed by the learned Additional Chief Judicial Magistrate, Kopargaon in Misc. Criminal Application No. 49/2021 below Exh. 6 dated 20<sup>th</sup> December, 2021 is hereby quashed and set aside.
- (iii) The application for interim maintenance vide Exh.6 is restored to the file of learned Additional Chief Judicial Magistrate, Kopargaon.
- (iv) The learned Additional Chief Judicial Magistrate, Kopargaon is hereby requested to allow the petitioner to produce his witnesses in support of his defence of adulterous life of his wife/respondent in the light of affidavits produced on record in this petition. The wife/respondent shall have an opportunity to cross-examine those witnesses.
- (v) The learned Additional Chief Judicial Magistrate, Kopargaon may decide the application for interim maintenance afresh after considering the evidence of both the sides.

- (vi) That exercise should be completed within a period of three months from the date of receipt of writ of this Court.
- (vii) Rule is made absolute in above terms.
- (viii) With the above directions, the Criminal Writ Petition stands disposed of.
- (ix) Inform to the concerned Court accordingly.

**[ SHRIKANT D. KULKARNI, J. ]**

mta