

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 253 OF 2022

Durgesh S/o. Ramesh Kadi,
Age: 34 years, Occu.: Service,
R/o: P-4/0-7, Gulmohar Colony,
N-5, Cidco, Aurangabad.

... PETITIONER

VERSUS

1. Archana D/o. Digambar Vyavhare,
Sau. Archana W/o. Durgesh Kadi,
Age: 30 years, Occu.: Service,
2. Ku. Mrudula D/o. Durgesh Kadi,
Age: 4 years, Minor,
3. Ku. Manjiri D/o. Durgesh Kadi,
Age: 4 years, Minor,

Respondent Nos.2 & 3 under the
guardianship of Mother,
Sau. Archana W/o. Durgesh Kadi,

All respondents R/o: C/o. Digambar
Narayanrao Vyavhare, Jadhavwadi,
Plot No.41, Galli No. 5, Aurangabad.

... RESPONDENTS

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Mr. Mayur Salunke, h/f Mr. V. D. Salunke, Advocate for Petitioner.

Mrs. Sabahat T. Kazi, Advocate for Respondent Nos.1 to 3. (Appointed)

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CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 26th July, 2022.

PRONOUNCED ON : 03rd August, 2022.

JUDGMENT:

. Rule. Rule made returnable forthwith. Heard finally with consent of both the sides for final disposal at admission stage.

2 The petitioner has challenged the order of interim maintenance passed by the Judicial Magistrate First Class in P.W.D.V.A. No.172 of 2018 and confirmed by the learned Additional Sessions Judge, Aurangabad in Criminal (P.W.D.V.A.) Appeal No.31 of 2020.

3 Heard Mr. Mayur Salunke, holding for Mr. V. D. Salunke, learned counsel for petitioner and Mrs. Sabahat T. Kazi, learned counsel for respondent Nos.1 to 3 (appointed through Legal Aid Panel).

4 Mr. Salunke, learned counsel for petitioner vehemently submitted that respondent No.1 is highly educated lady, who has completed M.Sc. computer. She was working with GHATI Hospital at Aurangabad and drawing salary of Rs.9,000/- per month. She had left that job and now she is working with High Court Legal Services Sub-

Committee at Aurangabad and drawing salary of Rs.20,000/- per month. She has suppressed the fact of her earning source. The learned counsel for petitioner invited my attention to the pleadings of respondent No.1 in P.W.D.V.A. No.172 of 2018. He submitted that respondent No.1/wife has suppressed material facts from the Court while applying for interim maintenance. As such, the order of interim maintenance is liable to be quashed and set aside. Mr. Salunke, learned counsel for petitioner invited my attention to the copy of affidavit of Assets and Liabilities of respondent No.1/wife and submitted that respondent No.1 is serving as clerk on contract basis with the High Court Legal Services Sub-Committee at Aurangabad. She has suppressed such fact in her pleadings.

5 Mr. Salunke, learned counsel for petitioner further submitted that the petitioner has recently joined Akar Auto Industries Limited, MIDC, Waluj. He is drawing salary of Rs.17,206/- per month. He has to maintain himself as well as his old aged parents. This fact is not considered by the Judicial Magistrate First Class while determining the interim maintenance allowance. He submitted that the interim maintenance allowance determined by the Judicial Magistrate First Class at Rs.10,000/- per month is unreasonable. Respondent No.1/wife is not entitled to get any amount of interim

maintenance since she is drawing salary of Rs.20,000/- per month. He submitted that at the most interim maintenance can be awarded to the extent of twin daughters of the petitioner by considering their educational expenses and fees.

6 Per contra, Mrs. Sabahat Kazi, learned counsel for respondents supported the impugned order of maintenance passed by the Judicial Magistrate First Class. She submitted that it is not a question of suppression of source of income of respondent No.1. She has filed her affidavit of Assets and Liabilities before the Judicial Magistrate First Class. It shows that she was fair enough. Mrs. Kazi, learned counsel for respondents further submitted that the interim maintenance allowance cannot be denied to a wife only because she is earning something for her survival and to look after her minor twin daughters. It is to be seen whether amount of interim maintenance fixed by the learned Judicial Magistrate First Class in a Protection of Women from Domestic Violence Act proceedings is unreasonable having regard to the income of both the sides. She submitted that the petitioner is an engineer and drawing handsome salary. His parents are getting pension and as such, they are not dependent on the income of the petitioner.

7 Mrs. Sabahat Kazi, learned counsel for respondents submitted that though the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. She has placed reliance in the case of ***Rajnesh Vs. Neha and another, (2021) 2 Supreme Court Cases 324*** and ***Sudhir Gupta Vs. Manisha Kumari @ Manisha Gupta*** (Criminal M.C. No.1117 of 2021 and Criminal M.A. No.5684 of 2021), Delhi High Court dated 14th June, 2021. She submitted that the twin daughters are recently admitted in a school. Respondent No.1 has paid Rs.50,000/- towards their admission fees. Mrs. Kazi also invited my attention to the documents placed on record by respondent No.1. She submitted that it is an order of interim maintenance. Learned Judicial Magistrate First Class has considered all the aspects while fixing the interim maintenance and no interference is called for.

8 I have considered the argument advanced by the learned counsels for the respective parties. Section 23 of the Protection of Women From Domestic Violence Act, 2005 (hereinafter referred to as “the Act”), empowers the Magistrate to grant interim maintenance. The real dispute between the parties is centered around with point of earning source of respondent No.1. Much was argued about suppression of fact by respondent No.1 regarding her earning source

while filing an application for interim maintenance. I am not much impressed by such argument. Had she really intended to suppress her source of income, she would not have disclosed her source of income in her affidavit of Assets and Liabilities filed before the Judicial Magistrate First Class in a Domestic Violence Act proceedings. Even accepting the fact that respondent No.1/wife is now serving with the High Court Legal Services Sub-Committee at Aurangabad as clerk on contract basis and drawing salary of Rs.20,000/- per month, whether it can operate as a bar for awarding maintenance. A useful reference can be made in ***Shailja Vs. Khobbanna, (2018) 12 SCC 199***, wherein the Apex Court has held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival. In ***Sunita Kachwaha Vs. Anil Kachwaha, (2014) 16 SCC 715***, the Apex Court has held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

9 In a recent decision in ***Rajnish Vs. Neha and another*** (supra), the Apex Court has reiterated the same view by elaborating the object of the Act with Constitutional guarantee provided to the women and children. It is observed by the Apex Court in the case of ***Rajnish Vs. Neha and another*** (supra) that remedy of maintenance is a measure of social justice as envisaged under the Constitution to prevent wives and children from falling into destitution and vagrancy. Preamble and Articles 39 and 15(3) of the Constitution envisaged social justice and positive State action for empowerment of women and children.

10 Having regard to the above legal position made clear by the Honourable Supreme Court, I do not find any merit in the submissions of the learned counsel for petitioner to deny maintenance to the wife/respondent No.1 though she is earning something.

11 It is an admitted position that the petitioner and respondent No.1 have twin daughters. Recently both are admitted in a school by respondent No.1. She has spent nearly Rs.50,000/- for admission of her twin daughters. She is required to maintain herself as well as her two daughters. In this background, Rs.10,000/- towards interim maintenance per month to respondent Nos.1 to 3

cannot be said to be excessive having regard to the price index. Though petitioner is earning Rs.17,206/- per month as salary, he cannot raise his hands in the air and deny the responsibility of maintenance to his wife having regard to the above legal position.

12 In the case of ***Rajnish Vs. Neha and another*** (supra), the Apex Court has held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife. If the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. Plea that the husband does not possess any source of income *ipso-facto* does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family and discharge his legal obligations for reasons beyond his control. If the order of interim maintenance passed by the Judicial Magistrate First Class and confirmed by the learned Additional Sessions Judge in criminal revision application is studied in the background of legal position made clear by the Honourable Supreme Court in above referred stock of citations, both the orders cannot be said to be bad in law. Both the Courts below have taken into consideration the earning capacity of both the sides

and considered the fact of maintenance of twin daughters of the parties and accordingly, fixed the amount of interim maintenance having regard to the price index and their financial status.

13 I do not find any merit in the petition. Hence, the following order is passed:

ORDER

- I. The petition stands dismissed.
- II. Rule is discharged.
- III. No order as to costs.
- IV. The Secretary, High Court Legal Services Sub Committee, Aurangabad to pay professional fees of Mrs. Sabahat Kazi, Advocate (appointed) as per Rules.

[SHRIKANT D. KULKARNI, J.]