

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

CRIMINAL WRIT PETITION NO.1271 OF 2021

Prakash Lalchand Talreja.

... **Petitioner**

Versus

Mrs. Yogita Prakash Talreja.

... **Respondent**

...
Mr. S. N. Lale Yelwatkar, Advocate for Petitioner.
Mr. Vikas G. Kodale, Advocate for Respondent.

...

CORAM : **SHRIKANT D. KULKARNI, J.**

RESERVED ON : 12th August, 2022.

PRONOUNCED ON : 19th August, 2022.

ORDER:

. The petitioner/husband has challenged the order of interim maintenance passed by the Family Court Judge, Ahmednagar in Petition E No.63 of 2019.

2 The respondent/wife has filed an application under

Section 125 of the Code of Criminal Procedure against the petitioner before the Family Court at Ahmednagar and prayed for interim maintenance for herself and for her son. The learned Judge after appreciating the facts of the case, documents on record and considering the argument advanced on behalf of both the sides, was pleased to grant interim maintenance of Rs.4,500/- per month to the respondent/wife and Rs.3,000/- per month to the son from the date of application.

3 Heard Mr. S. N. Lale Yelwatkar, learned counsel for petitioner and Mr. Vikas G. Kodale, learned counsel for respondent.

4 Mr. Yelwatkar, learned counsel for petitioner vehemently submitted that the learned Judge of Family Court has committed an error in granting interim maintenance to the respondent by overlooking the ingredients of Section 125 of the Code of Criminal Procedure. He submitted that the petitioner is running a beauty parlour. She is earning handsome income per month by her beauty parlour business. She is income tax payer. This aspect is not considered by the learned Judge. He submitted that the respondent is living in adultery. She has left the matrimonial house on her own wish without any sufficient cause. The learned Judge of the Family

Court has not considered all these aspects and awarded interim maintenance to the respondent. The order is bad in law and liable to be quashed and set aside.

5 Mr. Yelwatkar, learned counsel for petitioner has placed his reliance on the following stock of citations in support of his submissions:

- i) ***Sanjay Sudhakar Bhosale Vs. Khristina Sanjay Bhosale, 2008 SCC OnLine Bom 1732 ;***
- ii) ***Padmja Sharma Vs. Ratan Lal Sharma, (2000) 4 Supreme Court Cases 266 ;***
- iii) ***Bhagyashri W/o. Jagdish Jaiswal Vs. Jagdish S/o Sajjanlal Jaiswal and another***, decided by this Court at Aurangabad Bench on 26th February, 2022 in Writ Petition No.2527 of 2021 ;
- iv) ***Sanjivani Ramchandra Kondalkar Vs. Ramchandra Bhimrao Kondalkar and another***, decided by this Court at Principal Seat on 18th December, 2019 in Criminal Writ Petition No.2547 of 2016 ;
- v) ***Sukhwinder Kaur and another Vs. Pargat Singh***, decided by Punjab and Haryana High Court on 10th September, 2018 in CRM-M-19422-2017 ; and

vi) ***Rajnish Vs. Neha and another, (2021) 2 Supreme Court Cases 324.***

6 Per contra, Mr. Kodale, learned counsel for respondent supported the impugned order of interim maintenance passed by the learned Judge of the Family Court. He submitted that the learned Judge has considered the income of both the sides and their status and present scenario and accordingly, awarded the interim maintenance. It is reasonable amount of interim maintenance fixed by the learned Judge. The petitioner is making allegations of adultery against the wife without any iota of evidence. The respondent/wife was subjected to harassment and cruelty at the hands of petitioner/husband and constrained to leave the matrimonial house. Now she is residing with her parents. She is not income tax payer. Whatever she is earning is for her survival by beauty parlour business, which is not at all sufficient to maintain her and her son. He submitted that the impugned order is proper, correct and legal and no interference is called for.

7 I have considered the submissions of both the sides, perused the impugned order and documents and the papers filed by

the petitioner. The object of maintenance law needs to be seen.

In ***Captain Ramesh Chander Kaushal v Mrs. Veena Kaushal & Ors, (1978) 4 SCC 70***, the Honourable Supreme Court has highlighted the object of maintenance laws as under:

“9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts.”

8 At the outset, let me place on record that the petitioner is not disputing the order of interim maintenance passed in favour of his son and only disputing the order of interim maintenance passed in favour of his wife/respondent.

9 Now coming to various grounds raised on behalf of the

petitioner/husband while challenging the order of interim maintenance granted to the respondent/wife. Much was argued by the learned counsel for petitioner about the income of respondent/wife by running a beauty parlour. On going through the copy of income tax return of the respondent, which is placed on record by the petitioner, it would be clear that her total income for the assessment year 2017-18 is Rs.1,03,020/-, which is even not taxable income. The recent income tax returns of the respondent/wife are not placed on record in order to clear the position. Simply copies of profit and loss account of the respondent/wife are placed on record, which are not any way helpful to support the contentions raised by the petitioner. The learned Judge of the Family Court has considered this aspect while passing the order of interim maintenance. If the wife is earning something by way of running beauty parlour business for her survival, can it be said to be in her way to claim maintenance. The answer is certainly not. That position is made clear by the Apex Court in the case of ***Sunita Kachwaha Vs. Anil Kachwaha, (2014) 16 SCC 715***. In the said case, 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. As pointed out earlier, it is very much clear that the respondent/wife is not an income tax payer. She is not earning handsome income though contended by the petitioner/husband.

10 Now coming to the ground of adultery raised on behalf of the petitioner. Mere allegations of adultery levelled against the respondent/wife are not anyway helpful. There must be evidence and finding to that effect recorded by the competent Court. Mere producing photocopies of photos are of no help. As such, the ground of adultery raised on behalf of the petitioner must be thrown in the dustbin.

11 Mr. Yelwatkar, learned counsel for petitioner has relied upon so many citations referred above. The recent citation of the Honourable Supreme Court in case of *Rajnish Vs. Neha and another* (supra), would be sufficient wherein certain guidelines have been given by the Honourable Supreme Court after taking survey of various decisions of the Supreme Court. In *Bhagwan Dutt Vs. Kamla Devi, (1975) 2 SCC 386*, it is held by the Honourable Supreme Court that the object of the provisions of Section 125 of the Code of Criminal Procedure being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly

determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments.

12 The learned counsel for petitioner vehemently submitted that the respondent/wife has left the matrimonial house on her own accord and as such she is not entitled to get the maintenance. I do not see any merit in the submissions. It is evident from the pleadings of the respondent/wife and the reasons recorded by the learned Family Court Judge that the respondent/wife was constrained to leave the matrimonial house on account of harassment and cruelty at the hands of husband and in-laws.

13 On going through the impugned order of interim maintenance passed by the learned Judge of the Family Court, I do not find any error on the facts and the law. The amount of interim maintenance granted to the respondent/wife at the rate of Rs.4,500/- per month cannot be said to be burdensome. It appears to be reasonable amount of interim maintenance having regard to the status of both the sides and income of the petitioner as observed by the learned Judge.

14 Section 125 of the Code of Criminal Procedure is a

measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

15 Having regard to the guidelines laid down by the Honourable Supreme Court in the case of *Rajnish Vs. Neha and another* (supra), if the impugned order of interim maintenance is studied, no interference is called for. I do not find any merit in the petition. It is an order of interim maintenance and the parties can lead evidence before the Judge of the Family Court while deciding the main application under Section 125 of the Code of Criminal Procedure in support of their contentions. In the result, the following order is passed:

ORDER

- I. The criminal writ petition stands dismissed.
- II. No order as to costs.

[SHRIKANT D. KULKARNI, J.]