

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

CRIMINAL WRIT PETITION NO. 87 OF 2022

Naushad s/o Shabdar Sheikh, aged – 51
 years, Occupation Service, R/o
 Sanjeevani Apartment, Plot No.32,
 Zingabai Takli, Nagpur – 440 030

... PETITIONER

VERSUS

Smt. Shamsunnissa wd/o Shabdar
 Sheikh aged about 72 years,
 Occupation : Household, R/o (I) C/O
 Gulam Nabi Khan, Nabab Colony,
 behind bus depot Saoner ward, No.5
 – Saoner Parsodi Post Tahsil Saoner
 District – Nagpur.

(ii) C/o Amin Patel, Near Water
 Tank Parsodi, Umred, At Post Tahsil
 Umred District Nagpur.

... RESPONDENT

Shri M.M. Awode, Advocate for the petitioner.

CORAM : VINAY JOSHI, J.
DATED. : 26.08.2022.

ORAL JUDGMENT :

Heard finally the learned Counsel for the petitioner. The
 sole-respondent though served, chooses to remain absent.

2. The petitioner – a son has challenged the interim order of maintenance dated 26.10.2021 passed by the Magistrate in terms of Section 125 of the Code of Criminal Procedure. The respondent – mother has filed the said application in which she sought for interim maintenance, which was allowed by directing the petitioner-son to pay the interim maintenance at the rate of Rs.3,000/- per month from the date of filing of the application.

3. The challenge is technical one. It is the only grievance that the Trial Court without giving a right of hearing has decided the interim application. In this regard, my attention is invited to the copy of the note-sheet stating that on 1st October 2021, the Magistrate has posted the case to 18th October 2021. The petitioner has produced a printout taken from E-Court's website to show that on 18th October 2021, a Court holiday was declared with an instructions that the matters which were on 18th October 2021, were kept on 27th November 2021. In the wake of said position, it reveals that the matter was taken on board on 21st October 2021 of which the petitioner says that notice was not served on him. The Magistrate on 26th October 2021 has passed an impugned order i.e. prior to the assigned date of 27th November 2021. Thus, it is apparent that the Magistrate has preponed the matter and without giving a right of hearing to the petitioner, has

disposed of the same by passing an impugned order.

4. The petitioner undertakes to pay interim maintenance at the rate of Rs.3,000/- from this month, till the interim application will be decided on merits. Having regard to the said fact, it is desirable that the Magistrate shall be directed to decide the interim maintenance application afresh, after hearing the both sides.

5. In view of that, the petition is allowed. The impugned order dated 26th October 2021 is hereby quashed and set aside. The learned Magistrate is directed to rehear the interim maintenance application and decide it on its own merits. In the meantime, the petitioner (son) shall go on depositing interim maintenance at the rate of Rs.3,000/- per month commencing from 1st September 2022 till the disposal of interim application. The amount deposited shall be adjusted at latter stage of proceeding.

6. The Petition stands disposed of in the above terms.

(VINAY JOSHI, J.)

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