

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

CRIMINAL WRIT PETITION NO. 173 OF 2022

Shri Tejrao s/o Ganeshrao Hingawe,
 aged about – 57 years, Occ. - Service,
 Resident of – Sai Nagar, Arvi, District –
 Wardha

... PETITIONER

VERSUS

1. Sau. Chandabai w/o Tejrao Hingawe,
 aged about 54 years, occ. - Not
 known, R/o C/o Jitendra Gharge,
 plot no. 10, Sukhsagar housing
 society, Near Saimandir Dhaba,
 Nagpur.

... RESPONDENT

Mrs. Smita V. Taksande, Advocate for the petitioner.
 Shri Bhojraj Dhandale, Advocate for the respondent.

CORAM : VINAY JOSHI, J.
DATED. : 08.09.2022.

ORAL JUDGMENT :

RULE. Rule made returnable forthwith. Heard finally by
 consent of both learned Counsel appearing for the parties.

2. The petitioner – husband has impugned herein the order

dated 23.07.2021 by which the Family Court, Nagpur has granted interim maintenance to the wife at the rate of Rs.10,000/- per month. The order has been challenged on the ground that the Family Court failed to consider the meagre source of income of the petitioner, which resulted into illegality. It is submitted that the petitioner is a pensioner having no source of income, still the Family Court granted interim maintenance at excessive rate.

3. *Per contra*, the respondent-wife resisted the petition by contending that the petitioner has received huge amount towards retiral benefits and he is in very much position to pay the maintenance at the rate which has been awarded by the Family Court.

4. The spouses are fighting litigation at advanced stage. The wife has filed the application under Section 125 of the Code of Criminal Procedure for grant of maintenance on account of alleged neglectant and refusal. Yet, the evidence is to be recorded and in the meantime, the impugned order has been passed. The record indicates that, earlier, interim maintenance application was decided by the Family Court vide order dated 12.12.2019 awarding interim maintenance at the rate of Rs.10,000/- per month. The petitioner husband has questioned the said order in Writ Petition No.130 of 2020 wherein this Court taking into account that the said order was *ex-parte*, has directed to decide interim

application afresh on merits. In the wake of such position, after hearing both sides, the impugned order came to be passed.

5. The parties have made allegations and counter allegations on the point of neglectant and refusal. Since the interim order is for scrutiny and as yet the parties are to lead evidence, the said aspect need not be considered at this stage. Restricting the submissions on the point of quantum, I have considered the rival submissions and gone through the impugned order. Admittedly, the petitioner was retired as a Forest Guard and receiving pension at the rate of Rs.17,150/- per month. The petitioner has filed affidavit stating that he has received retiral benefits to the tune of Rs.21,39,129/-. It reveals that in the Trial Court, the petitioner has filed several copies of agreements to indicate that he was indebted for the marriage of his daughter. The Trial Court has declined to consider those agreements on the ground that those have been executed post receipt of summons, meaning thereby they were created to avoid the responsibility of maintenance. It is brought to the notice that the petitioner has sold his ancestral agricultural land in the month of March, 2020 for Rs.11 lakhs. The petitioner has explained that out of the amount which received towards retiral benefits, he has purchased land for his son for Rs.11 lakhs, satisfied hand loan of Rs.5 lakhs and paid maintenance arrears in the proceedings. Though

the petitioner claims that he is shouldering responsibility of his son, however the petitioner's son being 27 years of age and already land has been purchased, the said submission is wholly untenable. It is contended that, the petitioner is also shouldering responsibility of his old aged mother. Moreover, it is the petitioner's case that he has incurred loan from Bank of which he is paying installments. It is a matter of evidence as to when the petitioner raised loan, for what purpose the amount was utilized . These factual aspects are to be dealt at the time of trial.

6. However, at this juncture, it reveals that the petitioner has got retiral benefits out of which certain amount is with him. Apart from that, he is receiving pension at the rate of Rs.17,150/- per month. Even keeping aside the aspect of amount which he received from retiral benefits, the pension has to be considered.

7. Having regard to the petitioner's current income and needs of the parties, the amount of interim maintenance is modified to the extent of Rs.7500/- per month. The Petition stands disposed of in above terms.

(VINAY JOSHI, J.)