

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

CRIMINAL WRIT PETITION NO. 214 OF 2022

Bhupender Singh Lote, s/o Late
 Mahinder Singh Lote, R/o Apartment
 No.302 (B-Wing), Majestic Heights, Plot
 Nos. 102 & 103, Angulimal Nagar,
 Nagpur – 440 017. Mobile
 No.9970516638

... **PETITIONER**

VERSUS

1. Vinit Kaur w/o Bhupender Singh
 Lote, aged about 39 years,
 Occupation : Housewife, Mobile
 No.8329840113

2. Ms. Hargun Kaur Lote, d/o
 Bhupender Singh Lote, aged
 about 11 years, Occupaton –
 Student, through maturall
 guardian mother R.No.1.

3. Master Parnit Singh Lote, s/o
 Bhupender Singh Lote, aged
 about 5 years, Occupation :
 Student, through natural

guardian mother R.No.1.

R/o Quarter No. 228, Chokse
Colony, Kamptee Road, Nagpur –
440 014

... **RESPONDENTS**

Mrs. Neelam A. Biala, Advocate for the petitioner.
Shri Y.B. Mandpe, Advocate for the respondents.

CORAM : **VINAY JOSHI, J.**
DATED. : **30.06.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of both the parties.

3. This petition is for challenging the interim order dated 20.09.2021 passed by the Family Court whereby interim maintenance has been granted to the son and daughter. The petitioner-husband challenges the impugned order by contending that though the respondent-wife is highly qualified and having good source of income, the Trial Court has awarded maintenance at excessive rate. It is contended that though the petitioner-husband

was regularly paying maintenance and bearing additional expenses of children still the maintenance has been awarded from the date of application i.e. from 07.08.2019. Moreover, it is the contention that the Trial Court while directing the petitioner-husband to pay an educational expenses has loosely directed to pay allied expenses without specifying the nature of such expenses.

4. On the other hand, learned Counsel for the respondent-wife and children has supported the impugned order. It is contended that during pandemic period, the wife has lost her job and therefore, she is not in a position to maintain her children. Precisely, it is submitted that it is a matter of evidence to establish whether the wife is potential to bear the expenses of children. Having regard to the status of the petitioner, the wife is entitled to live in the same condition.

5. Admittedly, the marriage took place on 08.10.2006 whilst the couple has been separated on 09.05.2019. The wife has applied to the Family Court for grant of maintenance for herself and her children in terms of Section 125 of the Code of Criminal Procedure. The main petition is pending in which the evidence is yet to be recorded. While passing interim order, the Trial Court has considered

the material on *prima facie* basis, on which declined to grant maintenance to the wife. The said partial rejection has not been questioned by the wife, in this Court.

6. It reveals from the record that the husband is having permanent job from which he is earning Rs.80,000/- per month. Though it is urged that the wife is presently earning, at this stage there are no documents to show that currently the wife is having source of income. Though the learned Counsel for the petitioner has submitted that the wife is running a Firm, however, the Trial Court has already rejected to grant interim maintenance to the wife. Undoubtedly, the petitioner being a father shoulders the responsibility of bearing expenses of children at-least during interim period.

7. Having regard to the salaried income of father, the amount of interim maintenance is appropriate, which requires no interference. Likewise, the husband (father) has to pay an educational expenses but, in order to bring clarity, interference is called to clarify the term 'allied' expenses.

8. Learned Counsel for the petitioner has submitted that the husband has time to time paid huge amount towards expenses of

children. It is contended that in view of the prior payment, the interim maintenance shall be granted from the date of order. Normally, the maintenance is awarded from the date of application with the intention that the right accrues from the filing of an application and the wife should be in a position to meet the *pendente lite* expenses. However, the amount which has been already paid by the husband for maintenance after the date of application shall have to be considered while calculating arrears.

9. In view of that, impugned order is modified only to the extent of deleting the word 'allied' expenses and further clarification that the petitioner-husband shall pay interim maintenance as ordered by the Family Court alongwith educational fees and conveyance charges for the children.

10. The amount which is paid by the petitioner-husband through recognized mode after 07.08.2019 shall be considered at the time of calculating arrears. The petition shall stand disposed of accordingly.

(VINAY JOSHI, J.)