

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

CRIMINAL WRIT PETITION NO. 316 OF 2022.

Shri Suhas s/o Vitthal Raghatate,
Aged about 42 years, Occupation – Retired,
resident of Durga Washim Centre,
Near Dipchand School, Rehaki Road,
Seloo, District Wardha.

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PETITIONER.

VERSUS

1.Smt. Asha w/o Suhas Raghatate,
Aged about 39 years, Occupation – Private,

2.Ku.Prachi d/o Suhas Raghatate,
Aged about 15 years, Occupation – Student,

3.Master Devanshu s/o Suhas Raghatate,
Aged about 6 years, Occupation – Student.

All respondent resident of c/o.Pramila
wd/o Suryabhan Nagbhidkar,
Siraspeth, Mattipura, Near Nakade
Aata Chakki, Nagpur.

Respondent No.2 and 3 being minor
through Respondent No.1.

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RESPONDENTS.

Mr. A.S. Moon, Advocate for the Petitioner.
Mrs.J.J. Kataria, Advocate for Respondents.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 26, 2002.

ORAL JUDGMENT :

Heard learned Counsel for the parties. Considering the issue involved in the matter, and by consent of the learned Counsel for the parties, Writ Petition is taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. The petitioner – husband has challenged the order dated 03.03.2020 passed by the Family Court No.2, Nagpur in Petition No.E-365/2017 granting interim maintenance to wife and children in proceeding filed under Section 125 of the Code of Criminal Procedure.

3. The challenge is on the ground that the Family Court without having regard to the actual income of the petitioner-husband has fixed the maintenance at an excessive and exorbitant rate. It is argued that the husband has filed a petition for restitution of conjugal rights, as well as seeking custody of the children, and

3

therefore, there is no neglect or refusal on his part. Moreover it is submitted that presently the petitioner has resigned from his job and thus, has no source of income.

4. The respondent no.1 wife resisted the petition by submitting that the petitioner is living with another lady and his claim for restitution is false one. It is her contention that the petitioner is having sufficient source of income i.e. from plying four wheeler on hire basis, running car washing centre, repairs shop, dairy business and agricultural land. On the other hand, the respondent wife has no source of income, as well as she has to bear educational expenses of her two school going children.

5. The learned counsel for the petitioner though submitted that the wife is serving in the hospital, however, presently he does not possess any document. The impugned order has been passed at interim stage. There are allegations and counter allegations on the point of neglect and refusal. Yet evidence is to be led and therefore, at present the propriety and justness of the rate of quantum only needs consideration.

4

6. The petitioner was admittedly serving as a driver with MSRTC. The Family Court has considered consolidated income of the petitioner on the basis of several salary slips produced on record. His income from the salary ranges to near about Rs.10000/- per month. Besides that, the Family Court has considered petitioners income from plying vehicle and agricultural land. True, revenue extracts regarding the agricultural land have not been produced, however, it is pointed out that the petitioner has admitted that he owns agricultural and, which is a joint property. Therefore, certainly he must be having some income arising from the agricultural land. It is brought to the notice of this Court that the petitioner has himself given his address as 'Durga Washing Centre', which according to the respondent belongs to the petitioner. No explanation is coming forward as to since when he is running the washing centre and how much income he derives from the said work. The respondent has produced documents to show that the petitioner owns four wheeler. Though it is submitted that the vehicle is hypothicated, however, prima facie it emerges that the petitioner is getting income from plying the vehicle on hire basis.

5

7. The petitioner has produced an order issued by MSRTC showing that he had resigned in the month of November, 2020. The said order discloses that the petitioner without furnishing any cause has voluntarily retired from his job. Reasonable inference can be drawn that the petitioner is running several business that it why he is not in need of service, therefore, the resignation. Thus, prima facie it appears that the petitioner is having multiple sources of income. On the other hand, the respondent wife is living with her two school going children and thus, the rate of interim maintenance fixed by the Family Court is just and reasonable. Needless to say that the parties may lead evidence on the point of income which shall be decided independently.

8. Writ Petition carries no merit, hence dismissed. Rule discharged. No cost.

JUDGE