

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

CRIMINAL WRIT PETITION NO. 271 OF 2022

Bhaskarrao s/o Wamanrao Bhuibhar
Aged about 59 years, Occupation: Service,
R/o. Lokmanya Nagar, Parbhani
Tq. and Dist. Parbhani, P.S. Nava Mondha,
Parbhani.



.. Petitioner

Versus

1. Sau. Smita Bhaskarrao Bhuibhar
Aged about 49 years, Occupation:
Agriculturist, C/o. Milindrao Kokate,
Congress Nagar, Akola.
Tq. and Dist. Akola – 444004
Post: Gandhi Nagar, Akola
(P.S. Khadan, Akola),

presently residing at : -
C/o. Dr. Harshal Bhaskarrao Bhuibhar,
Sankalp Dental Clinic, Shegaon,
Dist. Buldhana, Tq. Shegaon,
Dist. Buldhana, P.S. Shegaon, Buldhana.

2. State of Maharashtra
Through Police Station Shegaon,
Dist. Buldhana.



.. Respondents

Mr. S.Y. Deopujari, Advocate a/w Mr. N.J. Patil and Mr. S. Phadnis, Advocate
for petitioner.

Mr. V.N. Patre, Advocate for respondent No.1.

Mrs. M.S. Deshmukh, APP for respondent No.2.

CORAM : VINAY JOSHI, J.

DATED : 22.08.2022.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the rival parties.

(2) The petitioner-husband has impugned herein the order of interim maintenance dated 16.01.2021 passed by the Family Court in proceeding under Section 125 of the Code of Criminal Procedure. The Family Court on *prima facie* basis held that the wife has been neglected and refused by the husband and thus considering husbands salaried income has directed to pay interim maintenance @Rs.40,000/- per month during pendency of lis.

(3) The husband has seriously challenged the order of interim maintenance by contending that the wife has not established “neglect and refusal”. He has pointed towards a decree of restitution of conjugal rights passed in his favour. It is submitted that since the wife at her own has left the company of her husband, she is not entitled, rather she would not fit herself within the criteria as provided under Section 125 of the Code of Criminal Procedure. Secondly, it is

submitted that till date the husband has paid near about Rs.20 Lakhs towards the maintenance. The wife is presently living with her elder son, who is a Dentist. It is argued that the wife owns five acres of agricultural irrigated land from which she derives income and thus, she cannot be said to be unable to maintain herself.

(4) *Per contra*, the learned counsel appearing for respondent-wife submitted that the restitution decree is without contest and the wife has filed an application for setting aside the said order. It is submitted that although the agricultural land stands in the name of wife, however, the husband is cultivating and deriving income therefrom. By relying on the decision of the Punjab & Haryana High Court in the case of ***Seema and anr. Vs. Gourav Juneja, 2019 ALL.M.R. (Cri.) JOURNAL 306***, it is submitted that 25% of the salaried income of the husband would be just and proper rate for awarding maintenance. Likewise, reliance is also placed on the decision of this Court in the case of ***Prashant s/o Premraj Telang Vs. Anita Prashant Telang and Ors.*** (Criminal Writ Petition No.453/2021 decided on 29.07.2022), to contend that the order of maintenance shall maintain a right balance in between both the situations.

(5) Bare perusal of the application filed before the Family Court indicates that the wife alleges about neglect and refusal. One should be mindful of the fact that the petition has come up at interim stage and thus, at this stage, it cannot be said that no case is made out of neglect and refusal. As informed the decree of restitution of conjugal rights was under challenge thus, I am not inclined to enter into the factual aspect, at this stage.

(6) The only aspect is about the quantum of interim maintenance, as has been fixed by the trial Court. The learned counsel for the petitioner has submitted that the petitioner being a Lecturer do have salaried income, however, the wife is getting agricultural income. To substantiate said contention, the petitioner has produced copies of two sale-deeds and a revenue extract to show that at present wife is cultivating the land. Though wife denied, the revenue extract suggests that she is the cultivator. Moreover, there appears to be substance in the contention of the petitioner, because the land situates at Akola District where the wife resides, while the petitioner is in full time service quiet away at Parbhani. Thus, *prima facie*, it cannot be held that the husband is earning from the landed property. Moreover, the

husband has made a statement that he is not in possession of agricultural land which stands in the name of his wife.

(7) Undisputedly, the husband's take home salary is to the tune of Rs.1,37,000/- per month. There cannot be a straight jacket mathematical formula to fix the maintenance on the basis of salary. It always depends upon the facts and circumstances of the each case. The amount of maintenance must be befitting to the status of the parties, capacity of spouse and particularly the requirements of wife. Herein admittedly the wife is living with her grown up son, who is a Dentist. *Prima facie*, it appears that she owns agricultural land. However, if she is entitled to live with a standard of her husband, the amount of Rs.25,000/- per month would be just and proper to maintain right balance at an interim stage. The above conclusion is drawn on *prima facie* basis, which has no impact on the merits of case.

(8) In view of that writ petition is partly allowed. The impugned order is modified to the extent of reducing interim maintenance to the tune of Rs.25,000/- per month. The trial Court shall endeavour to decide the main application at the earliest.

(9) Rule is made absolute in the above terms. No costs.

[VINAY JOSHI, J.]

Prity