

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

CRIMINAL WRIT PETITION .282/2022.

Shri Jaideep Ratnadeep Wahane,
Aged about 37years, Occupation
Service at Railway Department
as Senior Goods Guard, resident
of Quarter House No.121, Near
Sonba Kirana Store, Back of Badwaik
Building, Rambagh, Nagpur 440003. ... **PETITIONER.**

VERSUS

Sau. Smita Jaideep Wahane,
Aged about 35 years, Occupation
Housewife, resident of Plot No.57,
Dahipura, Untkhana,
Nagpur ... **RESPONDENT.**

Mr.G.N. Khanzode, Advocate for the Petitioner.
Mr.N.L. Khare, Advocate for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : OCTOBER 07, 2022.

ORAL JUDGMENT :

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

2. Challenge in this petition is to the interim order of maintenance dated 21.02.2022 passed by the Family Court below Exh.6 in Petition No.E-164/2-21, by which the interim maintenance @ Rs.20,000/- per month has been awarded.

3. The couple got married on 20.02.2014. As matrimonial difference arose, the petitioner/husband has filed proceedings for divorce. The matter was settled by way of a compromise, due to which both started to reside together from 09.02.2017 onwards. Again the differences arose which resulted into respondent/wife filing an application for grant of maintenance in terms of Section 125 of the Code of Criminal Procedure. It is the case of respondent/wife that after settlement in divorce proceeding, she again resumed

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cohabitation, however, there was harassment which compelled her to leave husband's house on 20.03.2020. Since she was subjected to monetary demand, physical assault, she has filed a report with the police. It is her case that thereafter, she returned to her husband's house to cohabit, however, the petitioner/husband left her alone and started to live elsewhere. According to the respondent/wife, she has no source of income and her husband has not provided anything towards her survival. On the other hand, the husband is serving in Railway Department from which he is getting huge salary ranging Rs.1 lakh and above.

4. The application for maintenance was resisted by the husband denying all the allegations regarding neglect, refusal, harassment etc. The learned Counsel for the petitioner would submit that the husband was keen to reside with the respondent / wife, however, she at her own left the matrimonial house and went to reside with her parents. He would submit that presently the wife is residing in the railway quarter allotted to the petitioner, whilst the petitioner was compelled to stay elsewhere on rental basis. It is

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submitted that the respondent/wife has not made out a case for grant of maintenance.

5. On the point of quantum, it is submitted that the petitioner is serving as Senior Goods Guard in the Railway Department. Having regard to the nature of duties, his salary fluctuates depending upon the mileage which is called as "Kilometer allowance". It is submitted that his average take home salary is ranging from Rs.75000/- to Rs.80000/- per month. It is the contention of the petitioner that he is shouldering responsibility of his age old mother and younger brother. Moreover, he has obligations to pay loan installment, therefore, the interim amount is excessive.

6. The learned Counsel for the respondent has strongly assailed the petition on the point of factual aspect of neglect, refusal, as well as quantum. It is stated that the average salary of the petitioner is more than Rs.1 lakh. The petitioner is of quarrelsome nature and by every mode has harassed the respondent/wife, which

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compelled her to lodge report twice with the police. It is submitted that the petitioner/husband at his own left the matrimonial house i.e. railway quarter and started to reside somewhere else to avoid responsibility.

7. Basically the challenge is to the interim order of maintenance passed in a proceeding under Section 125 of the Code of Criminal Procedure. Parties are yet to lead evidence. Bare perusal of the application shows that the respondent/ wife has quoted several instances about harassment, neglect and refusal. The husband though denied the allegations, it is a matter of trial and therefore, at this stage it cannot be prejudged. Pertinent to note that the respondent/wife is residing in the railway quarter. Prima facie there does not appear to be any reason for the husband to leave the company of the wife that too from the railway quarter which was allotted to him. The respondent/wife has made out a prima facie case for neglect and refusal for claiming maintenance.

8. Coming to the point of quantum, the husband is

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admittedly serving as a Guard with the Railway Department. Several salary slips have been produced on record. The learned Counsel for the petitioner submitted that the amount which the petitioner receives towards kilometer allowances cannot be considered. As a matter of fact, close examination of several salary slips indicates that the kilometer allowance is a regular feature, therefore, it is not possible to keep the same out of consideration. It reveals that the petitioner's salary is fluctuating depending upon his duties, perhaps may be on account of traveling mileage. Perusal of several salary slip shows that the petitioners' average monthly take home salary is near about Rs.80,000/- to Rs,90,000/-. The learned Family Court while fixing the interim rate of maintenance has considered petitioners' monthly income. However, it is brought to the notice, rather admitted by other side, that the respondent lady is residing in the railway quarter allotted to the petitioner husband. Moreover, it is not denied by the respondent that the petitioner is bearing water and electric charges of her residence. This aspect was not considered by the Family Court. The petitioner may have responsibility of his mother, however, he is getting sumptuous salary.

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Taking into account that the petitioner has made arrangement for wife's residence and bearing water and electric charges, the amount is to be fixed. Having regard to the petitioners monthly take home salary, and amenities provided to the wife, interim maintenance at the rate of Rs.15,000/- per month would be just and reasonable to maintain the right balance.

9. In view of above discussion, Writ Petition is partly allowed. The impugned order dated 21.01.2022 passed by the Family Court below Exh.6 in Petition No.E-164/2021 is modified to the extent of modifying interim maintenance at the rate of Rs.15,000/- per month.

10. It is made clear that this Court has not expressed on the merits of the matter, the Family Court shall not get influenced with the observations while deciding the case finally.

11. Rule is made absolute in aforesaid terms with no order as to cost.

Judgment

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JUDGE