

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

CRIMINAL WRIT PETITION NO.416 OF 2022

Petitioner : **Shri Akshay s/o Popat Makhare,**
(Original Respondent) Aged 36 years, Occ : Business,
R/o H-17/2818, Maharashtra Housing Board,
Yerwada, Dist. Pune 411 006.

– Versus –

Respondent : **Smt. Sneha w/o Akshay Makhare,**
(Original Petitioner) Aged 34 years, Occ : Service,
R/o 5/A, New Subhedar Layout, Ayodhya Nagar,
Hudkeshwar Road, Nagpur – 440 024.

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Mr. Sahil S. Dewani, Advocate for the Petitioner.

Ms. S.D. Paul, Advocate for the Respondent.

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CORAM : **VINAY JOSHI, J.**
RESERVED ON : **28th SEPTEMBER, 2022**
RESERVED ON : **29th SEPTEMBER, 2022**

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally by consent of both sides.

02] The petitioner-husband raises a challenge to the order of interim maintenance, dated 09/02/2022 (Petition No.E-175/20) of the Family Court at Nagpur, by which interim maintenance at the rate of Rs.10,000/- per month has been awarded.

03] The respondent-wife has filed an application under Section 125 of the Code of Criminal Procedure for grant of maintenance on account of neglect and refusal. The said application was resisted by the petitioner-husband, however, after considering the available material, the learned Trial Court has passed the impugned interim order, which is under challenge. The learned Counsel appearing for the petitioner would submit that the allegations levelled in the application are false and fabricated. The petitioner specifically denied that he has neglected and refused to maintain the wife. *Per contra*, the respondent contended that soon after the marriage, she was subjected to incessant harassment, which required her to stay with her parents.

04] The parties got married on 09/11/1919, whilst the respondent-wife started to reside separately with her parents from 28/12/2019. The respondent-wife has pleaded in detail as to why she was compelled to leave her husband's house. She has stated about physical as well as mental harassment including the monetary demand. The petitioner has denied those contentions rather has blamed on the respondent. Precisely, there are allegations and counter allegations against each others. The interim order is the subject matter of challenge in this petition. Admittedly till date, evidence has not been led by the parties and the averments are yet to be tested on merits. In view of that, at this preliminary stage, there is no reason to doubt

the version of respondent-wife and thus I am restricting the scope of this petition to test the adequacy and justness of the quantum of interim maintenance.

05] It is the respondent's case that after desertion, she is surviving at the mercy of her parents. She stated that she has no source of income. There was total neglect and refusal on the part of the petitioner-husband. She would submit that the petitioner is serving in a private company and earning handsome salary of Rs.13.32 lakhs per annum. According to the respondent, the rate of interim maintenance is appropriately fixed by the trial Court, which calls no interference.

06] *Per contra*, the respondent's learned Counsel has assailed the impugned order by contending that the trial Court erred in considering his salaried income as he has already left said job. The respondent's learned Counsel took me through the copies of his Income Tax Returns and the affidavit filed in terms of the decision of the Supreme Court in the case of Rajesh vs. Neha & another – (2021)2 SCC 324. He would submit that at present, the petitioner is working in a startup company on salary of Rs.30,000/- per month only. According to him, the respondent-wife was having different sources of income. It is stated that she was working in short films, running classes, worked as Lab Technician as well as working with

HDFC Bank. He has pointed towards the bank account statement of the respondent to contend that there are some credits on account of salary.

07] The respondent-wife denied all alleged sources of income. She stated that she was earlier serving as a Lab Technician, however, at present, she is jobless. It is stated that though she received offer from HDFC Bank on the post of Commission Agent, however, she did not join. It is her contention that for survival, she had undertaken some small time jobs, which cannot be construed as she is able to maintain herself. Voluminous documents are produced on record. Admittedly, the petitioner-husband is at least earning salary to the tune of Rs.30,000/- per month. It has come on record that the petitioner's parents are pensioners. On the other hand, at present, besides mere contention, there is nothing on record to show the wife's income. However, it is evident from the bank's statement that she is receiving fluctuated amount perhaps may be towards salary.

08] The petitioner's learned Counsel has relied on the decision of the Punjab & Haryana High Court in the case of Smt. Ritu @ Ridhima & Anr. vs. Sandeep Singh Sangwan, decided on 15th March, 2022, to contend that since the wife has suppressed her job in the statement and affidavit, she is not entitled for the relief. Moreover, he relied on the decision of the Supreme Court in the case of *Rajesh (referred supra)* to state the parameters for grant

of maintenance. It is to be once again remembered that the interim order is under challenge and the evidence is to be led. At this juncture, *prima facie* opinion has to be formed by taking overall view of the matter. The trial Court while fixing the quantum has considered the petitioner's income from his bio-data, which according to the petitioner was quite old. Though, at present there is no material to hold that the respondent is having permanent job, however, it reveals that she was doing some work for gain. Having regard to both the situations especially the petitioner's admission about the salaried income and wife's potential, the amount of interim maintenance at the rate of Rs.7,500/- per month would be just and equitable.

09] In view of the above, the petition is partly allowed. The impugned order dated 09/02/2022 passed in Petition No.E-175/2020 is modified to the extent of awarding interim maintenance at the rate of Rs.7,500/- per month instead of Rs.10,000/- per month.

10] The petition stand disposed of in the above terms. Rule accordingly with no order as to costs.

(VINAY JOSHI, J.)

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