

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

CRIMINAL WRIT PETITION NO. 427/2022

Amol S/o Ashok Jaiswal,
 aged about 46 years, Occ. Service,
 R/o. Opposite Thote Hospital, Ratanlal
 Plot, Akola, Tah. & Dist. Akola, Police
 Station Civil Lines, Akola.

... **PETITIONER**

VERSUS

Smt. Rajlakshmi Wd/o. Ashok
 Jaiswal, aged 68 years,
 Occ. Household, R/o. Sanglud
 Khurd, Tah. & Dist. Akola.

... **RESPONDENT**

Mr. P. S. Girdekar, Advocate for petitioner.
 Mr. R. M. Tiwari, Advocate for respondent.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **22.09.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. The petitioner-son raises a challenge to the order of interim maintenance dated 12.04.2021 passed by the Family Court in the proceeding filed by respondent-mother under Section 125 of the Code of Criminal Procedure ('Code'). The petitioner-son challenged the order on the ground that the rate of interim maintenance fixed by the Trial Court is too excessive and exorbitant. It is argued that the respondent-mother is living with her another son Ashwin and thus, she is not in need of monetary aid for her survival. Besides that the respondent-mother is having sufficient source of income and therefore, she cannot be termed as unable to maintain herself. It is submitted that the respondent-mother owns agricultural land and a tractor from which she is deriving income.

4. The other side supported the interim order by contending that the agricultural land is joint family property, for which a suit for partition is pending. It is submitted that though respondent-mother is registered owner of a tractor, however it is being used by all family members. According to respondent-mother, her other two sons are looking after her, but the petitioner is not extending financial aid and thus, the interim maintenance order is appropriate.

5. It is informed that the respondent-mother has completed her evidence in the Family Court and now the matter is kept today for

recording evidence of petitioner-son. Having regard to said facts as well as this being interim stage, I am not inclined to consider the disputed factual aspect about the respondent's entitlement for maintenance. In view of advanced stage of proceeding in the Trial Court, I deem it appropriate to restrict myself to the extent of quantum. The petitioner is serving as Lab-Assistant from which he is earning salary to the tune of Rs. 39,636/- as per salary certificate. The petitioner-son has produced document of bank receipt to show that he is paying housing loan installment of Rs. 8,600/- per month. Besides that the petitioner would submit that he is shouldering the responsibility of his wife and two school going children.

6. Already, the evidence is under way. On fact, it is to be decided as to whether the respondent-mother is deriving landed income as well as from tractor. Moreover, the petitioner's responsibility as well as the effect of loan installment needs a factual scrutiny. Undeniably, at present mother is living with her one of the son and the agricultural land stands in her name. On the other hand, besides salaried income of petitioner, it is pointed that out that three agricultural land stands in the name of petitioner-son of which revenue extracts are produced.

7. In above facts, it is apparent that the amount as has been fixed towards interim maintenance cannot be considered as exorbitant. The above observations are of preliminary nature, the Trial Court shall independently assess amount of maintenance. Hence, petition stands dismissed. The Trial Court is directed to dispose of the main petition expeditiously.

(VINAY JOSHI, J.)

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