

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

CRIMINAL WRIT PETITION NO. 583 OF 2022

Prashant Rajendra Jaiswal, Age about
 37, Occu : Business, R/o Murri Road,
 Bajpal Ward, Behind Weight Point,
 Gondia, Tq. & Dist. Gondia – 441 601

... **PETITIONER**

VERSUS

Monika Prashant Jaiswal, Age about
 27, Occp : Household, R/o C/o Smt.
 Shashi Jaiswal, Abhinav Colony,
 Yavatmal – 445001

... **RESPONDENT**

Shri Kushal Daga, Advocate a/w Shri Nishit Parate, Advocate
 for the petitioner.

Shri R.R. Vyas, Advocate for the respondent.

CORAM : VINAY JOSHI, J.

DATED : 05/09/2022.

ORAL JUDGMENT :

RULE. Rule made returnable forthwith. Heard finally by
 consent of learned Counsel appearing for the parties.

2. The petitioner - husband has challenged the order dated
 26.07.2022 passed in Criminal Appeal No.21 of 2021 by which the

Appellate Court has enhanced the rate of interim maintenance from Rs.1,000/- per month to Rs.50,000/- per month. The short challenge is to the enhancement of rate of interim maintenance. The petitioner alleges that the Appellate Court without considering the facts, has awarded interim maintenance at too excessive rate.

3. The respondent - wife has filed an application under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (the D.V. Act) to the Magistrate claiming multiple reliefs. She has also applied for grant of interim maintenance on which the learned Magistrate without deliberating the income aspect, has awarded interim maintenance at the rate of Rs.1,000/- per month. Being aggrieved, the wife has filed an appeal, in which the Appellate Court has considered the several business concerns of the husband and accordingly, fixed the quantum of interim maintenance as stated above.

4. It is the petitioner's contention that the Appellate Court has erred in holding that the petitioner runs a business namely Jaiswal Automobiles, Car Spa and Country Liquor shop. He would submit that the petitioner's mother is running a business concern namely Jaiswal Tyres, wherein the petitioner is serving on meagre salary of Rs.7,000/- per month. It is submitted that though the other businesses like

Automobile, Car Spa, Repairing, Washing are carried in the same tenement, however they are owned by the different family members. The petitioner filed an affidavit to *prima facie* satisfy that the country liquor shop is owned by his uncle in which he is neither a partner nor any concern. *Per contra*, the learned Counsel for the respondent has pointed out that the petitioner himself has projected his monthly income as Rs.1.5 lakhs, which was conveyed to the wife's mother through What's App perhaps while sending marriage proposal. The Appellate Court has mainly considered the said What's App message as a concrete proof for income, and on that basis, fixed the interim maintenance. Undeniably, the petitioner's mother is the owner of a business concerns i.e. Jaiswal Tyres. It is informed that the petitioner is the only son and therefore, even on *prima facie* basis it is not believable to rely on a salary slip issued by the mother to her son. There are variety of reasons to run businesses in the names of different family members, however, as all the businesses are under one roof, it can be said that the family is united and the petitioner is looking the business concerns.

5. The petitioner might have projected lucrative financial position at the time of marriage proposal, therefore, it cannot be considered as a sure parameter to determine the income. I am

conscious of the fact that yet the evidence has to be led on the point of income. The amount fixed by the Appellate Court is excessive. Having regard to the nature of business the quantum has to be reduced to the extent of Rs.20,000/- per month to maintain a right balance. The learned Counsel for the petitioner also made a statement that the petitioner is ready to handover a motor car bearing registration No.MH 35 AG-7551 to his wife as she is admittedly the owner of the car.

6. In that view of the matter, petition is partly allowed. The impugned order dated 26.07.2022 passed by the Appellate Court in Criminal Appeal No. 21 of 2021 is modified to the extent of reducing interim maintenance at the rate of Rs.20,000/- per month instead of Rs.50,000/- per month from the date of application, which is from 02.03.2021. So also, the cost amount is reduced to the extent of Rs.5,000/- from Rs.25,000/-. The petitioner shall handover the motor car bearing registration No. MH 35 AG-7551 to the respondent within one week from today.

7. The petition stands disposed in above terms.

(VINAY JOSHI, J.)