

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

CRIMINAL WRIT PETITION NO.612 OF 2022

Praveen S/o. Abasaheb Bhujbal

.VS.

Rashmi W/o. Praveen Bhujbal and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr V. D. Muley, Advocate for the petitioner

Mr N. O. Dhoot Advocate for the respondents

CORAM : G.A. SANAP, J.

DATE : DECEMBER 12, 2022.

Heard.

2. The challenge in this petition is to the order dated 16.07.2022, passed below Exh. 5, in Criminal Application No. E/16 of 2018, whereby the learned Judge of the Family Court was pleased to allow the interim maintenance @ of Rs.10,000/- (Rs.Ten Thousand only) per month to the applicant-wife and Rs.20,000/- (Rs.Twenty Thousand only) per month to son-Dhruv, who is the special child. The application, made by the wife and his son, for seeking maintenance from the petitioner, under Section 125 of the Code of Criminal Procedure, is pending before the Family Court, Amravati. The wife made an application for interim

maintenance during the pendency of the main application. Learned Judge of the Family Court, on the basis of the fact and circumstances and evidence placed on record, quantified the interim maintenance, as above.

3. It is the case of the petitioner that the interim maintenance quantified by the learned Judge is excessive and exorbitant. The petitioner lost his job on 05.03.2021. He has no source of income. Learned Judge of the Family Court has not taken all the facts into consideration. It is stated that when he was doing job he had fairly conceded to pay Rs.17,500/- (Rs. Seventeen Thousand Five Hundred Only) to the child, during the pendency of the divorce petition filed by him against the wife. According to the petitioner, the order quantifying the interim maintenance needs to be modified, inasmuch as the quantum of interim maintenance is excessive and exorbitant and beyond his financial capacity, as on today.

4. I have heard Mr V. D. Muley the learned Advocate for the petitioner and Mr N. O. Dhoot, learned Advocate for the respondents. Perused the record and proceedings.

5. Learned Advocate for the petitioner made submissions consistent with the facts stated in the petition. Learned Advocate submitted that the petitioner lost his job on 05.03.2021 and therefore, he has no source of income.

Learned Advocate submitted that this fact has not been taken into consideration by the learned Judge of the Family Court, while quantifying the interim maintenance. Learned Advocate submitted that the learned Judge of the Family Court has wrongly drawn an adverse inference against the petitioner with regard to the concealment of his real income.

6. Learned Advocate for the respondents submitted that the wife, though qualified, is not able to do any job because she has to devote her time in attending the child, who is special child and suffering from Hyotonia. The child requires special treatment as well as therapies. It is submitted that the petitioner being father has avoided his responsibility to take care of the child and wife. Learned Advocate pointed out the available evidence on record and submitted that while quantifying the interim maintenance, the learned Judge of the Family Court has taken the same into consideration.

7. In order to appreciate the rival submissions, I have gone through the record and proceedings. It is to be noted at the outset that the petition filed by the wife for restitution of conjugal rights and the petition filed by husband for divorce came to be dismissed. After termination of both these proceedings, the respondents have filed the application under Section 125 of the Code of Criminal Procedure on 17.02.2018. During the pendency of this application, the

respondents made an application for awarding them interim maintenance. Learned Judge granted reasonable opportunity of hearing to both the parties. Learned Judge of the Family Court, on the basis of the material placed on record and particularly, the financial capacity and position of the husband, quantified the interim maintenance, as stated above. Learned Advocate for the petitioner, on the basis of the order passed in Writ Petition No. 7242 of 2016, dated 19.09.2017, submitted that this stopgap arrangement was made as a result of the compromise arrived at between the parties. It is pointed out that by order dated 19.09.2017, the husband was directed to pay Rs.17,500/- per month, as a maintenance during the pendency of the divorce petition. In my view, on the basis of this stopgap arrangement, the present issue cannot be considered and decided. That order was passed in 2017. The order impugned in this petition was passed on 16.07.2022. The petition filed by the husband as well as the wife came to be dismissed. The wife, as can be seen, on the basis of the record, has no independent source of income. The child, who is suffering from serious ailment, is in her custody. She has devoted herself to the child. She has been residing at the house of her father. It is, therefore, apparent that she is at the mercy of her parents for her and her special child's stay.

8. Learned Judge has taken into consideration the income tax returns of the petitioner for the assessment year

2019-20 and for the year 2021-22. The income of the applicant for the assessment year 2019-20 was Rs.20,25,813/- (Rs. Twenty Lacs Twenty Five Thousand Eight Hundred and Thirteen only.) and his income as seen from the Form 16 for the assessment year 2021-22 was Rs.11,38,834/- (Rs. Eleven Lacs Thirty Eight Thousand Eight Hundred and Thirty Four Only). Besides, the order passed by the learned Judge of the Family Court would show that he owns an agricultural land. Learned Judge has categorically observed that the petitioner had made an attempt to conceal his real income from all sources before the Court.

9. It is to be noted that the petitioner cannot avoid his responsibility to maintain the wife and the child. The substantive application for maintenance is pending for adjudication before the Family Court. Considering the position and status of the parties, the amount at interim stage as well as at the stage of the final decision of the application must be befitting to the position and status of the parties. In this case, the learned trial Judge has taken the entire material into consideration and quantified the interim maintenance. On going through the record and proceedings, I am of the view that the interim maintenance quantified by the learned Judge of the Family Court is just, proper and reasonable. In my view, by applying any standard, in the teeth of facts and material on record, the same cannot be said to be excessive,

exorbitant or unreasonable. Therefore, I am of the view that there is no merit in this petition. The petition stands **dismissed**.

10. At the request of the learned Advocates for the petitioner as well as the respondents, the learned Judge of the trial court is directed to dispose of the application for maintenance expeditiously. The parties shall cooperate the learned Judge.

(G. A. SANAP, J.)

Namrata