

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

CRIMINAL WRIT PETITION NO. 874/2021

Mr. Vinod S/o Raghodev Kamale,
 aged about 30 years, Occ. Private,
 R/o. Saoner, Dist. Nagpur.

... **PETITIONER**

VERSUS

Mrs. Dhanashree w/o Vinod
 Kamale, aged about 25 years,
 Occ. Household, R/o. Chichoda,
 Tah. Katol, Post, Khangaon,
 Dist. Nagpur.

... **RESPONDENT**

Mr. Vipul B. Bhise, Advocate for petitioner.
 Mr. R. S. Parsodkar, Advocate for respondent.

<u>CORAM</u>	: <u>VINAY JOSHI, J.</u>
<u>RESERVED ON</u>	: <u>13/07/2022</u>
<u>DATE OF JUDGMENT</u>	: <u>19/08/2022.</u>

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. The petitioner (husband) has challenged the order of interim maintenance passed by the Trial Court, confirmed in appeal. The impugned interim order dated 04.01.2020 was passed by the Magistrate during pendency of application filed by respondent (wife) under Section 12 of the Protection of Women from Domestic Violence Act ('D.V. Act'). The order has been challenged on the ground that both Courts below failed to consider the income of the petitioner while fixing the interim maintenance. It is argued that the petitioner is working as Commission Agent earning Rs. 10,000/- to 12,000/- per month, however both the Courts below misread the material and granted interim maintenance at excessive rate of Rs. 20,000/- per month.

4. The facts in brief are that, the respondent (wife) got married with petitioner (husband) on 08.12.2013. She was subjected to several acts of harassment which falls within the term 'Domestic Violence' as defined under Section 3 of the D. V. Act. The petitioner allegedly neglected and refused to maintain her. She claimed multiple reliefs under the D. V. Act including monetary relief as provided under Section 20 of the D. V. Act. The Trial Court prima facie found that the respondent is an aggrieved person as a result of domestic violence and thus, awarded interim maintenance @ Rs. 20,000/- per month. The

appeal against said interim order is dismissed.

5. Both learned counsels have restricted their submission to the extent of quantum of maintenance, hence I need not go to the other factual aspects. It is the respondent's claim in the application under the D. V. Act that the petitioner husband was earlier serving as a Lecturer in the Engineering College drawing salary to the tune of Rs. 50,000/- per month. However, for better prospect, he left salaried job and started to indulge into property dealing under the name and caption of OSHIN Realtors India Private Ltd. Company, from which he earns Rs. 3,00,000/- to 4,00,000/- per month. Besides that petitioner owns 30 acres of ancestral agricultural land having sufficient yield. On the other hand, respondent wife does not have source of income and thus, for her essential needs and to meet medical expenses, she claimed interim maintenance. The petitioner has denied the alleged income by stating that by resigning job of lectureship, he started to work as Commission Agent in the company from which he hardly earns Rs.10,000/- to 12,000/- per month. He denied to have agricultural land in his name, but stated that there is few land standing in the name of joint family from which he does not get income.

6. At the outset, it is to be born in mind that this petition has come against interim order. The parties have yet to lead evidence in

support of rival claims. Naturally, on the basis of prima facie material, the interim maintenance has to be fixed. The petitioner has not denied that he was serving as a Lecturer in the Engineering College. Pertinent to note that petitioner has not specifically denied that he was earning Rs. 50,000/- per month towards salary. The Trial Court expressed that since petitioner has voluntarily left a salaried job having good income, that by itself indicates that he gets lucrative income from his property dealing business. The petitioner has produced copies of two Income Tax Returns, however, as per respondent's case, the petitioner has suppressed his business income to parry payment of taxes. Logically, the petitioner must have been earning much more as he has left a lucrative salaried job from Engineering College. Though the petitioner states that he is Commission Agent, the letter issued by the Director of company indicates that he also holds a post of Sales Adviser. The petitioner has suppressed his real business income, therefore, on prima facie basis adverse inference can be drawn. Besides that, the respondent has produced several revenue extracts to show that the petitioner's family is having sizable agricultural land which is under cultivation. Certainly, the petitioner must have been earning from his landed property too.

7. The respondent alleged that the petitioner is financially sound as he is maintaining two four wheelers and staying in specious bungalow, for that purpose, she has produced photographs. As against this, petitioner has filed affidavit stating that he owns only one four wheeler i.e. WagonR car and one two wheeler motorcycle. One can easily perceive from the fact that the petitioner is capable of maintaining four wheeler which could give a fair idea about his sound financial position.

8. Learned counsel for the petitioner by placing reliance on the decision of the Supreme Court in case of ***Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy, (Civil Appeal No. 5369/2017 [arising out of SLP (C) No. 34653/2016]*** would submit that the rate of maintenance shall be to the extent to 25% of the husband's net salary. Herein, the petitioner husband is suppressing his business income. Undeniably, the amount of maintenance must be befitting the status of the parties and the capacity of the spouse to pay maintenance. The petitioner has also also relied on the decisions of the Supreme Court in cases of ***Bhushan Kumar Meen Vs. Mansi Meen Alias Harpreet Kaur, (2010) 15 SCC 372*** and ***Amit Kumar Sindhi Vs. Monika and another, 2021 SCC OnLine Del 1324***. However, at this preliminary stage, these decisions would not help the petitioner in fixing interim maintenance.

9. Taking over all view of the matter, it reveals that the petitioner husband is having a good source of income. He has not brought on record his real business income. It is a matter of evidence to establish the exact financial position. The petitioner also owns a house and having share in agricultural land. Per-contra, there is nothing to indicate that respondent is having any source of income. The record indicates that respondent is also suffering from ailment which requires medical treatment.

10. Considering the needs of deserted lady, the quantum of interim maintenance fixed by the Trial Court and confirmed by the Appellate Court cannot be said to be too excessive on the canvas of petitioner's nature of work and source of income. In absence of sheer illegality and perversity, writ jurisdiction cannot be invoked at this interim stage. It is hereby made clear that the Trial Court shall not get influenced by interim order while granting final monetary relief if any, after recording evidence. In the circumstances, petition carries no merit and accordingly dismissed.

11. Rule stands discharged accordingly.

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signed by
JITENDRA
BHARAT
GOHANE
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Gohane

(VINAY JOSHI, J.)