

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

CRIMINAL WRIT PETITION NO. 781/2021
Sou. Abhilasha Vijay Patil ...versus... Vijay Vaman Patil
AND
CRIMINAL REVISION APPLICATION NO. 12/2022
Vijay Vaman Patil ...vrs... Sou. Abhilasha Vijay Patil

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

Court's or Judge's orders

Mr. A.S.Shukla, Advocate for the petitioner in Cri WP No. 781/2021 and for Respondent
in Cri. Revision No. 12/2022
Mr. Vivek Awchat, Advocate for Respondent in Cri WP No. 781/2021 and for Applicant
in Cri. Revision No. 12/2022.

CORAM : AVINASH G. GHAROTE, J.

DATE : 15/03/2022

1] Heard Mr. Shukla, learned counsel for the petitioner and Mr. Awchat, learned counsel for the respondent.

2] The present petition challenges the interim order dated 5.11.2020 passed by the learned Family Court in proceedings under Section 125 of Cr.P.C, whereby interim maintenance of Rs.15,000/- has been granted jointly to the petitioner/wife and the male child from the date of application till the decision of the main petition on merits and seeks an upward revision of the maintenance.

3] The revision filed by the respondent/husband also challenges the same order and seeks a downward

revision of the quantum of maintenance. The parties therefore are referred to as per their status in the petition.

4] Mr. Shukla, learned counsel for the petitioner/wife submits that it is an admitted position that the Respondent/husband is working with Tetra Pak at Dubai on contract basis as a Senior Project Commissioning Responsible and was drawing a salary of 44175 AED as on 26.2.2019, for which reliance has been placed upon the account statement of the respondent with Abu Dabi Commercial Bank (ADCB). According to him, even if the conversion rate of Rs.20 per dirham is taken into consideration, the same comes to Rs. 8,83,500/- per month. He further relies upon the certificate dated 11.3.2019, issued by Tetra Pack Export FZE which states that the annual salary of the respondent/husband who is employed with Tetra Pak Export FZE since 1.10.2013 was AED 310,124 including all the fixed allowances, which considering the present exchange rate of Rs.20 per AED would come to approximately Rs. 5,00,000/- per month. He therefore submits that the impugned order dated 5.11.2020 which fixes the interim maintenance at Rs. 15,000/- per month to the petitioner as well as the male child is woefully inadequate and needs to be appropriately enhanced. He further submits that apart from the salary, the respondent has substantial assets which is disclosed from the affidavit in that regard of the respondent,

dated 3.10.2021. It is therefore submitted that there is a requirement for an upward revision of the quantum of interim maintenance.

5] Mr. Awchat learned counsel for respondent/husband strenuously and vehemently opposes the petition and contends that the proposition advanced by learned counsel for petitioner/wife is incorrect. He submits that the documents are yet to be proved and therefore no reliance can be placed upon them. Inviting my attention to the statement of assets and liabilities filed on behalf of the respondent, it is submitted that the monthly income of the respondent is only AED 13300 as per the work contract. That apart, it is submitted that it is the petitioner/wife who has deserted the respondent/husband and the respondent is still willing to continue with the cohabitation and the marital ties. He further submits that the conduct of the respondent in making payment of Rs.1,00,000/- on the very date of his appearance in Petition No. E-510/2019 would demonstrate his bonafides (page 59). Further documents filed along with the revision from pages 89 to 91 would indicate that the respondent/husband has inspite of the separation also taken care of the expenses for the delivery of the petitioner/wife, transferred substantial amount to her from time to time, ordered infant milk powder for the child and therefore, his conduct ought to have been taken into consideration by the

learned Family Court while passing the impugned order. Further inviting my attention to para 28 of the impugned order, he submits that even the amount of Rs. 1,00,000/- paid by the respondent in pursuance to the order dated 19.10.2019 for the purpose of pregnancy and delivery of the wife and the son has been directed not to be included in the amount of maintenance, which ought not to have been done. He therefore submits that considering that the respondent/ husband is earning Rs. 94,000/- and odd, the amount of interim maintenance needs to be reduced.

6] By an order dated 9.3.2022 Criminal Application (APL) No. 1148/2019 which challenged the order of the learned Family Court dated 19.10.2019 directing the respondent to make arrangement of an amount of Rs. 1,00,000/- and deposit the same in the account of the petitioner/wife, has been disposed of by directing that the appropriation of this amount shall be considered while deciding these proceedings.

7] By an order dated 9.3.2022, considering the rival claims made by the petitioner and respondent as to the earnings of the respondent/husband, he was directed to place on record his contract with Tetra Pak Export FZE. Today Mr. Awchat, learned counsel for the respondent has filed a pursis on record enclosing an Employment Certificate issued by the employer of the respondent on 10.3.2022,

however, no copy of the contract is forthcoming. When enquired about the same, learned counsel for the respondent gave a strange reply that the original contract duly signed has been returned back to the employer and the respondent has nothing in his hand which could be termed as contract, which is a statement made on instructions as per the learned counsel for the respondent. This, in my considered opinion, is a story which is unbelievable, as a person who is working in a foreign country on contract basis cannot claim non-availability of a contract with his employer. This clearly leads me to draw an adverse inference that the contract is intentionally not being produced on record on account of an apprehension that it may disclose the correct monthly salary/income of the respondent, which may be to his detriment. Considering this position, I have no other option left than to fall back upon the statement of account of the respondent, which has been placed on record by the wife in the revision proceedings (page 107) which indicates that the monthly salary of the respondent was AED 44175 on 26.2.2019 and since the employment certificate dated 10.3.2022, certifies that the employment of the respondent is continued with the same company, the only presumption which can be drawn is that there is an upward revision in the salary of the respondent. Even the certificate dated 11.3.2019 issued by the employer of the respondent indicates that the annual salary of the respondent as on 11.3.2019 was AED 310,124.

It is not disputed by learned counsel for the respondent that the conversion factor of dirhams into rupees is around Rs.20 per dirham, considering which even if the amount as mentioned in the certificate dated 11.3.2019 is taken into consideration, the monthly salary of the respondent would not be less than Rs. 5,00,000/- per month. This being the position, in my considered opinion, the impugned order which grants a monthly maintenance of Rs. 15,000/- per month to the petitioner and the male child, would be woefully inadequate, as considering the law applicable in this regard, the petitioner and the child are expected to maintain a standard of life commensurate to what they were accustomed to, during the course of marriage and considering the earnings of the respondent, as indicated above, even taking the lower figure of Rs. 5,00,000/- per month as his monthly salary, the interim maintenance would necessarily require an upward revision. Though the record indicates that the respondent has made some expenses on account of medical bills and other expenses for the petitioner and the child, as is indicated from the documents page 89 to 91 of the revision, that is but his filial duty towards them.

8] As indicated above, taking the minimum into consideration and the salary of the respondent to be Rs.5,00,000/- per month, even as per the certificate dated 11.3.2019, I consider that Rs. 1,00,000/- per month would be

an appropriate figure as interim maintenance to the petitioner/wife and the male child. The impugned order therefore is modified as indicated above. The petition is accordingly allowed.

9] It is however made clear that this grant of maintenance of Rs. 1,00,000/- per month shall be from the date of this order and shall not relate back to the date of the application, considering that it is an interim order and the main application is still pending. The amount of Rs. 1,00,000/-, which has been directed to be paid by the order dated 19.10.2019, shall be adjusted in the amount of monthly maintenance.

10] Criminal Application (APPR) No. 55/2022 in Criminal Revision No. 12/2022 is by the petitioner/wife which seeks withdrawal of the amount of Rs. 61,500/- deposited in this Court by the respondent/husband. The same is allowed. The amount be paid over to the petitioner/wife.

11] The petition is accordingly allowed in the above terms and the revision is dismissed.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:15.03.2022 17:57