

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

CRIMINAL WRIT PETITION NO.764 OF 2022

Manoj s/o Pratapbhai Kothari
Aged about 48 years, Occ: Business,
R/o 18, Gujrati Colony, Dhamtari, Tah. &
Dist. Dhamatari. **... PETITIONER**

---VERSUS---

Sau. Raksha w/o Manoj Kothari
Aged about 43 years, Occ: Nil,
Presently R/o C/o Shri Jagdishbhai
Kothari, 205, Ashirwad Palace, Dhantoli,
Nagpur -440012. **...RESPONDENT**

Shri I.G. Damle, Advocate for petitioner.
Shri S.W. Sambre, APP for respondent.

CORAM : G.A. SANAP, J.
DATED : DECEMBER 14, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally at the admission stage with the consent of learned advocates for the parties.

2. In this petition, the challenge is to the order dated 13.09.2022 passed by the learned Judge of the Family Court, Nagpur, whereby the application made by the respondent at Exhibit-6 in Petition No.E-401 of 2019 was partly allowed and the

petitioner was directed to pay ₹40,000/- per month to the respondent as interim maintenance from 31.08.2019 i.e. from the date of the filing of the application.

3. The petitioner is the husband of the respondent. They have two major children. The wife has been residing separately. According to the wife, the conduct of the husband has made her to reside separately at the house of her parents. The wife has filed a substantive application under Section 125 of the Code of Criminal Procedure (Cr.P.C.) for maintenance. Pending the said application, she applied for interim maintenance. In the application made for interim maintenance, the wife narrated the relevant facts to justify the order of interim maintenance. According to the wife, she is not able to maintain herself. According to her, the husband is financially well off, and therefore he is duty-bound to pay maintenance to her. In the said application, the wife claimed interim maintenance at the rate of ₹70,000/- per month.

4. The husband opposed the application. According to the husband, he is doing service. His monthly salary is ₹20,000/-. According to him, with this meager salary, he would not be able to pay the interim maintenance to the applicant/wife.

5. I have heard the learned advocate for the petitioner and learned Additional Public Prosecutor for the respondent/State. Perused the record and proceedings.

6. The learned advocates for the parties submit that the application filed before the Family Court under Section 125 of the Cr.P.C. is fixed for final hearing. The parties would be required to lead their evidence before the Family Court. The moot question that needs to be addressed in this petition is as to whether the interim maintenance quantified by the learned Judge of the Family Court is just, proper and reasonable. It is to be noted that the learned Judge has taken into consideration the numerous factors while arriving at the quantum of the interim maintenance. The important factor taken into consideration is the financial capacity and position of the husband. It has come on record that the husband is repaying the loan amount by EMI of ₹3,76,000/-. It is to be noted that the source of income to repay the loan with such a huge EMI was not placed before the Family Court. In this petition, an attempt is made to explain the same. In my view, such a feeble attempt at this stage cannot be appreciated. The husband knowing fully well his financial position as well as the source of income was expected to place this fact before the learned Judge of the Family Court. He has failed to

do it. No plausible explanation has been placed on record in this regard.

7. The learned Judge of the Family Court while quantifying interim maintenance has taken into consideration the strata of the society from which they hail. It is seen on perusal of the record that the parties hail from the high strata of the society. It is therefore not out of place to mention that the wife has the right to live life on par with the husband. She has the right to live with dignity and the standard to which she has been accustomed to live in the company of her husband. It is further pertinent to note that considering the status and position of the parties, interim maintenance at the rate of ₹40,000/- per month would satisfy the bare minimum requirements of the wife.

8. In the facts and circumstances, I do not see any substance in the petition. The well-reasoned order after appreciation of the material on record does not warrant interference. The petition, therefore, deserves to be dismissed. Accordingly, the petition stands dismissed. Rule stands discharged.

JUDGE

Wagh