

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.705 OF 2023

ARUNKUMAR GYANOBARAO SHINDE
VERSUS
SMITA W/O. ARUNKUMAR SHINDE AND OTHERS

Mr. S. S. Kulkarni, Advocate for the petitioner

Mr. B. N. Gadegaonkar, Advocate for respondent Nos. 1 to 3.

CORAM : R. M. JOSHI, J.

DATE : 12th OCTOBER, 2023

P.C. :-

1. This petition takes exception to order dated 15/02/2023 passed below Exhibits 5 and 26 in Petition No. E-43/2021 and A-61/2021 by Family Court, Nanded directing petitioner to pay Rs.8000/- per month to wife and Rs. 6000/- per month each to their children towards interim maintenance, under provisions of Section 125 of Cr.P.C.

2. There is no dispute about the fact that the petitioner and respondent No.1 are legally wedded husband and wife and respondent Nos. 2 and 3 are begotten out of said wedlock. There is further no dispute about the fact the petitioner and respondent No.1 are staying separately. At present respondent No.1 is having custody of the children.

3. At the outset, learned counsel for the petitioner states that the petitioner does not wish to challenge the order of interim maintenance

granted in favour of the children. He, however, has serious objection for grant of maintenance to the wife who lives adulterous life. According to him for this reason in view of Section 125 (4) of Cr.PC. wife is not entitled to receive maintenance. It is his further contention that a specific plea is raised before the learned Family Court in this regard, however, while passing impugned order of directing grant of maintenance to the wife, the said aspect has not been considered by Court.

4. Learned counsel for the respondents have opposed the petition by submitting that once the marital relationship is accepted there is no question of denial of maintenance to the wife. He, however, was not able to show from impugned order that any findings are recorded by Family Court on issue raised by petitioner regarding alleged adultery committed by wife.

5. Perusal of the impugned order shows that the petitioner-husband has raised specific plea before the Family Court that the respondent No.1-wife left the matrimonial home in January, 2018 and she is living adulterous life with another person. Once such plea is raised, even at the stage of grant of interim maintenance it is incumbent on the part of the Family Court to record finding in this regard.

6. Section 125(4) of Cr.P.C. deals with the said situation which reads

thus;

"(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent. "

7. The said provision clearly indicates that wife is not entitled to receive any allowance nor even interim maintenance and expenses of proceeding from her husband if she is living in adultery. Thus, when specific plea has been raised by the husband as the wife is living in adultery, no order of interim maintenance could have been granted by the Family Court without recording prima facie finding on the said issue. Entitlement of respondent No.1 to receive interim maintenance solely depends upon the finding recorded by accepting or rejecting objection raised by petitioner. It cannot be permitted to the Court to ignore the said issue which goes to root of the matter, to pass any order. In above situation, order passed by the Family Court granting maintenance to the respondent No.1-wife cannot sustain. Hence, impugned order dated 15/02/2023 is quashed and set aside to the extent of direction to the petitioner to pay Rs.8000/- per month to the respondent No.1-wife. Learned Family Court is directed to decide the claim of the wife afresh within a period of two months having regard to prima facie proved facts and the provisions of Section 125(4) of Cr.P.C.

8. Learned counsel for both sides informed this Court that the next date of hearing before the Family Court is 30th October, 2023. Learned Family Court is directed to decide the application for interim maintenance of wife within the period of two months from the said date.

9. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)

ssp