

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

WRIT PETITION NO.2034 OF 2020

Sangita w/o Ankit @ Anuj Dube,
Age: 26 years, Occupation : Housewife,
Residing at c/o Shri. Ramraj Sharma, N-5,
House No.P-10, 1/2, Gulmohar Colony,
CIDCO, Aurangabad – 431 003.

...Petitioner

Versus

Ankit @ Anuj s/o Shrikrushna Dube,
Age: 30 years, Occupation : Education,
Residing at Plot No.95, Near Gajanan High
School, Ayodhya Nagar, Nagpur.

...Respondent

...

Advocate for Petitioner : Mr. Kshitij H. Surve
Advocate for Respondent : Mr. Shakil U. Shaikh

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21st JUNE, 2023

PER COURT :

1. By this petition filed under Article 227 of the Constitution of India, petitioner impugns the order dated 28/01/2019, passed by learned Judge, Family Court, Aurangabad, below Exhibit-6 in Petition No. A-200/2018, thereby awarding maintenance of meager amount of Rs.1,000/- per month to the petitioner, along with costs of Rs.2,000/- till disposal of main petition.

2. Petitioner wife filed petition for divorce under Section 13

(1)(ia) of the Hindu Marriage Act, 1955. In the said proceedings, she claimed interim maintenance at the rate of Rs.10,000/- per month, under Section 24 of the Hindu Marriage Act. The application was opposed by the respondent husband by filing detail say. In the say, respondent husband claimed that he is taking education and he does not earn anything. He has no source of income. The Family Court has awarded maintenance at the rate of Rs.1,000/- per month. Petitioner is aggrieved by the award of meager amount of maintenance.

3. Heard learned advocate for petitioner and learned advocate for respondent. Perused the memo of writ petition, annexures thereto, the impugned order and affidavit-in-reply filed on behalf of respondent.

4. Learned advocate for petitioner, by relying upon the decision in ***Criminal Appeal No.1693/2022 [Anju Garg and Another Vs. Deepak Kumar Garg]*** and ***Criminal Revision No.381/1967 [Chander Parkash Bodh Raj Vs. Smt. Shila Rani Chander Prakash]***, submits that since respondent husband is able-bodied person, Family Court ought to have allowed interim maintenance at the rate of Rs.10,000/- per month as was claimed by the petitioner. Further submission is that in view of the view in ***Rajnish Vs. Neha and Another, [(2021) 2 SCC 324]***, of course which was decided

subsequently, it would be necessary to direct the parties to file their affidavit of income, assets and liabilities. He, therefore, prays that impugned order be quashed and set aside and the matter be remitted back to the Family Court for consideration afresh on merits, in the light of decision in ***Rajnesh (supra)***.

5. Learned advocate for respondent, on the other hand, supported the impugned order by relying on ***Shri Deepak L. Bhandare Vs. Durga Deepak Bhandare and Another, [2014 All.M.R. (Cri) 525]***. He submits that petitioner herself has admitted in the divorce petition that husband is not earning anything. He submits that because of the transfer of proceedings at the instance of wife, respondent has to incur more expenditure. Hence, he is not in a position to pay more amount of maintenance to the wife. He submits that Family Court has rightly appreciated the facts on record and was justified in awarding interim maintenance at the rate of Rs.1,000/- per month.

6. Admittedly, the husband is able-bodied person and taking into consideration the standard of living of the parties and escalating prices of essential commodities necessary for survival, the amount of interim maintenance awarded by the Family Court is meager. The Family Court has failed to consider settled legal position that even if husband is a professional beggar, he is not

absolved of his responsibility of maintaining wife. While quantifying interim maintenance, the Family Court has ignored relevant factors like standard of living of the parties, rate of inflation and possibility of husband working with his father in catering business.

7. Learned advocate for respondent has relied upon decision in ***Shri Deepak L. Bhandare*** (supra) which is distinguishable on facts. In that case, interim maintenance of Rs.5,000/- was granted by the trial Court taking into consideration the income tax returns of the husband which showed that income of husband was Rs.25,000/- to 30,000/- per month. In that case, learned Single Judge of this Court reduced the quantum of interim maintenance granted to respondent No.1 wife from Rs.5,000/- to Rs.3,000/- per month. However, interim maintenance granted to respondent No.2 therein for sum of Rs.7,000/- was maintained. This decision is of no help to the respondent.

8. In ***Chander Parkash Bodh Raj*** (supra), the Delhi High Court held:-

"7. But this apart, as submitted by Shri Bhandari, an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation

of maintaining his wife and child. In the present case, as the husband has not frankly disclosed to the Court, as he ought, his allowances which he admittedly gets, the presumption would be easily permissible against him. "

9. In **Anju Garg** (supra), the Hon'ble Apex Court held:-

"13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child. Having regard to the evidence of the appellant-wife before the Family Court, and having regard to the other evidence on record, the Court has no hesitation in holding that though the respondent had sufficient source of income and was able-bodied, had failed and neglected to maintain the appellants. Considering the totality of facts and circumstances, we deem it proper to grant maintenance allowance of Rs.10,000/- per month to the appellant-wife, over and above the maintenance allowance of Rs.6,000/- granted by the Family Court to the appellant no.2-son."

10. The above ratio supports the case of the petitioner. In the present case, Family Court has failed to take into consideration the relevant factors. The procedure prescribed in **Rajnesh** (supra) is required to be followed.

11. This Court is of the opinion that Family Court has committed error in awarding grossly inadequate amount of Rs.2,000/- towards costs of the proceedings.

12. For the aforestated reasons, writ petition is allowed. The impugned order dated 28/01/2019, passed below Exhibit-6 in

Petition No. A-200/2018, is quashed and set aside. Application Exhibit-6 is remitted back to the learned Judge, Family Court, Aurangabad, for consideration on merits, keeping in mind the observations of the Hon'ble Apex Court quoted supra and the observations in ***Rajnesh*** (supra).

(NITIN B. SURYAWANSHI, J.)