

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

CRIMINAL WRIT PETITION NO. 233 OF 2023

PETITIONER : Abhishekh Sahadeo Mendhe, Age about 39 years, Occ: C.A., R/o. Gauri Complex 2nd Floor, A Wing 4th Floor, Flat No.4040, Near Indian Oil Petrol Pump, Besa Square, Nagpur-37.

//VERSUS//

RESPONDENTS : 1. Sou. Shweta w/o. Abhishek Mendhe, Age about 31 years, Occ: Household,
2. Ku. Sarakshi d/o. Abhishekh Mendhe, Age about 1.5 years, Occ: Nil, (Minor through Respondent No.1).
Both R/o. Somwari Qtr. No.5/1, Near E.S.I.S. Hospital Nagpur-9.

Ms. Ashwini S. Athalye, Advocate for the Petitioner.
Mr. Y.B. Mandpe, Advocate for the Respondents.

CORAM : G. A. SANAP, J.
DATED : 3rd MAY, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally by consent of the learned advocates for the parties at the admission stage. Perused the record and proceedings.

02] In this criminal writ petition, the petitioner-husband has challenged the order dated 23rd September, 2022, passed below Exh.6 by the learned Principal Judge of the Family Court, Nagpur, whereby the learned Principal Judge partly allowed the application made by the respondents and quantified the interim maintenance at the rate of Rs.20,000/- per month to the respondent No.1 -wife and Rs.10,000/- per month to the respondent No.2-daughter.

03] The petitioner and respondent No.1 got married on 10th May, 2019. According to the respondent No.1 after some time of her marriage, she found that the petitioner was having illicit relations with his maternal aunt (mausi). The petitioner and his aunt harassed and tortured her physically and mentally. Their intention was to compel her to leave the matrimonial house. They succeeded in their plan and compelled the respondent No.1 to leave the matrimonial house on 25th January, 2020. The respondent No.1, with her daughter, since then has been residing with her parents. The respondent No.1 has no source of income. She is unable to maintain herself. According to the respondent No.1, the petitioner despite having sufficient means, has failed and neglected to maintain them. She, therefore, filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (for short

“Cr.PC”).

04] The respondent No.1 applied for interim maintenance. It is stated that the petitioner is serving in Nangia Firm M.G. Motors, Wadi, Nagpur as Chief Finance Officer. His monthly salary is around Rs.1,00,000/- per month. The respondent No.1 claimed interim maintenance at the rate of Rs.35,000/- per month for her and Rs.15,000/- per month for daughter Sarakshi.

05] The petitioner filed his reply and opposed the said application for interim maintenance. According to the petitioner, the respondent No.1 has made various baseless allegations against him and his relatives. She has assassinated his character and that of his maternal aunt. It is stated that respondent No.1 was not mentally or physically tortured or ill-treated as alleged. According to him, the respondent No.1 at the time of marriage was working in Dhandhanika Infotech Pvt. Ltd., Nagpur. She has also been conducting coaching classes of BCA. She was earning Rs.1,00,000/- to Rs.1,50,000/- per month. It is further contended that his father died in 2009 and after the death of his father, his maternal aunt has taken care of his mother.

06] The petitioner as well as the respondent No.1 filed their affidavits and the statement of assets and liabilities. In the statement of assets and liabilities, the petitioner has disclosed that his salary is Rs.77,000/- per month. The learned Judge of the Family Court took the available material on record into consideration and based on the same, quantified the interim maintenance. The petitioner-husband being aggrieved by this order is before this Court.

07] I have heard Ms. Ashwini S. Athalye, learned advocate for the petitioner and Mr. Y.B. Mandpe, learned advocate for the respondents. Perused the record and proceedings.

08] Learned advocate for the petitioner-husband submitted that the home take salary of the petitioner on the date of the order was Rs.77,000/- per month. Learned advocate pointed out that by drawing unwarranted inference, the learned Judge has held that his salary was not less than Rs.1,00,000/- per month. Learned advocate further submitted that the petitioner has lost his job and as on date he is jobless. He has no source of income. Learned advocate submitted that on the basis of the available material on record, the interim maintenance quantified by the learned Judge has to be held

to be excessive and exorbitant. It is beyond the financial capacity of the petitioner-husband.

09] Learned advocate for the respondents submitted that there is no material on record to substantiate the contention of the petitioner that the respondent No.1 has source of income. Learned advocate submitted that the respondents have no source of income and as such they are unable to maintain themselves. Learned advocate submitted that the petitioner has not placed on record his salary slip, salary certificate and the income tax returns. Learned advocate pointed out that on account of the concealment of such a vital evidence, the learned Judge was constrained to draw an adverse inference against the petitioner and held that it was nothing but the concealment of the material facts. Learned advocate submitted that the parties are from higher strata of the society and also from the well to do family. Learned advocate submitted that the learned Judge of the Family Court has taken all the facts into consideration and on doing so, quantified the interim maintenance. Learned advocate submitted that considering the position of the petitioner and his salary, the monthly interim maintenance quantified by the learned Judge is just, proper and reasonable.

10] I have perused the material place on record. I have gone through the order passed by the learned Judge of the Family Court. It is to be noted that the basic contention of the petitioner that he has lost the job and as on today he is jobless, has not been supported by any evidence before the learned Judge of the Family Court. It is seen on perusal of the record that both the parties have filed their respective statement of assets and liabilities. Filing of the statement of assets and liabilities could not be said to be the full compliance of the directions of the Hon'ble Supreme Court in the case of *Rajnish Vs. Neha [2021(2) SCC 324]*. As per the directions of the Hon'ble Supreme Court, along with the statement of assets and liabilities, it is incumbent upon the parties to file relevant documents. It is seen on perusal of the statement of assets and liabilities filed by the petitioner that the Clause F(7) pertains to the information with regard to the income tax returns has been kept blank. It is not the case of the petitioner that he is not assessed for income tax. The learned Judge of the Family Court on the basis of concealment of these facts observed that it was done with an intention to suppress the material facts from the Court. The learned Judge on the basis of the position held by the petitioner in the company, observed that his salary would be more than Rs.1,00,000/- per month. It is to be noted that the conduct of the

petitioner by not placing the above documents on record, gave an opportunity to the other side to make use of the said fact. It is to be noted that in the absence of plausible explanation at the behest of the petitioner for non-production of such a vital document, in my view, the learned Judge was not wrong in making the observation that this was nothing but an attempt to suppress the relevant material from the Court.

11] As far as the wife is concerned, no material has been placed on record to establish that she is doing service. There is no evidence to show that she has source of income. The daughter is hardly 1½ years old. The respondent No.1 has taken shelter with respondent No.2 at the house of her parents. For the purpose of residence, she is dependent and at the mercy of her parents. It is the legal obligation of the husband to maintain his wife and child. The learned Judge of the Family Court while quantifying the interim maintenance, apart from the income of the petitioner, took into consideration the family background of the parties. The parties hail from higher strata of the society. They are accustomed to a standard lifestyle. The wife and daughter are expected to maintain the living standard, befitting the status and position of the petitioner. The petitioner cannot expect them to be at the mercy of

her parents for satisfying their basic needs and requirements. There is no evidence on record to show that he has lost the job. The learned Judge on the basis of the material placed on record, found the said material *prima facie* sufficient to quantify the interim maintenance. On going through the order passed by the learned Judge of the Family Court, I am of the view of that the order passed by the learned Judge does not warrant interference.

12] The provisions in the form of Section 125 of the Cr.PC is a social beneficial piece of legislation. The basic object of this provision is to provide timely assistance to the wife and the others who are suffering destitution and vagrancy. The main application is pending. I am informed by the learned advocates for the parties that it is ripe for hearing in all respect. The parties, therefore, can adduce their evidence before the learned Judge.

13] Keeping all the abovestated facts in mind, I am of the view that there is no substance in the writ petition. Accordingly, the writ petition is **dismissed**. Rule stands discharged.

(G. A. SANAP, J.)