

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

CRIMINAL WRIT PETITION (WP) NO.689 OF 2022

Dharmendra S/o. Puranraoji Jadhav,
Aged : 43 Yrs., Occ.: Private Service,
R/o. P.T.S. Quarter No.100, Chandan
Nagar, Nagpur

.... **PETITIONER**

// VERSUS //

1. Sau Pravina W/o. Dharmendra Jadhav
(Maiden name Ku. Pravina D/o. Rajkumarji
Tagde), Aged about 28 Yrs.,
Occu.: Household

2. Master Daksha S/o. Dharmendra Jadhav,
Aged about 6 Yrs., Occ. Education,
Being Minor, through natural guardian
mother respondent No.1,
Both R/o. C/o. Sunanda Dharmapal
Gaurkar, R/o. Plot No. 224, Untkhana,
Near Medical Chowk, Nagpur

.... **RESPONDENTS**

Mr A. M. Balpande, Advocate (appnt.) for the petitioner
Mr. Vivek Awchat, Advocate (appnt.) for the respondents

CORAM : G. A. SANAP, J.
DATED : 9th JANUARY, 2023

ORAL JUDGMENT :

Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally at admission stage by consent of learned Advocates for the parties.

3. The petitioner, who is the husband of the respondent No.1, has challenged the order dated 30.03.2022, passed by the learned Principal Judge of the Family Court, Nagpur, whereby the learned Judge quantified the interim maintenance @ of Rs.3000/- per month for respondent No.1 and @ of Rs.2000/- per month for the respondent No.2.

4. The petitioner and respondent No.1 got married on 04.05.2014 at Nagpur. They are blessed with son i.e. respondent No.2. It is the case of the respondent No.1 that at the time of their marriage, the petitioner was 14 years elder than her. The petitioner suppressed this fact from her. When she came to know about this fact and questioned the petitioner, she was subjected to ill-treatment and beaten at the hands of the petitioner. Therefore, the respondent No.1 has been residing separately from the petitioner with her son/respondent No.2. In the application, made for interim maintenance, the respondent No.1 has stated that monthly salary of the petitioner is Rs.40,000/-. He is getting rent from the house. No one, other than the respondents is depend on him. The respondent No.1, therefore, claimed the interim maintenance @ of Rs.10,000/- for her and Rs.5,000/- for respondent No.2.

5. The petitioner opposed the application for interim maintenance. According to the petitioner, he is working as a 'worker' in Furniture Shop. His monthly salary is Rs.5,000/-. His father has retired from MSRTC and he is not receiving any pension. His father is dependent on him. The son/respondent No.1 is residing with him. He has admitted the son in Kendriya Vidyalay. He is bearing all his expenses.

6. Learned Judge of the Family Court on the basis of the material available on record partly allowed the application for interim maintenance and quantified the interim maintenance @ of Rs.3000/- per month for respondent No.1-wife and @ of Rs.2000/- per month for son-respondent No.2. The petitioner has questioned the correctness of this order as well as the quantum of maintenance on multiple grounds.

7. Learned Advocate for the petitioner submits that petitioner has admitted his son/respondent No.2 in Kendriya Vidyalay and bearing all his expenses. Learned Advocate, therefore, submits that the order of interim maintenance vis-a-vis the son/respondent No.2 needs to be set aside. Learned Advocate for the respondent No.1 submits that under the pretext of taking admission in Kendriya Vidyalay, the petitioner procured

the custody of the respondent No.2 and now has refused to return back the custody of son/respondent No.2 to respondent No.1. Learned Advocate for the respondent No.1, in short, admits that as on date the custody of the respondent No.2/son is with the petitioner.

8. It is to be noted that, at this stage, in this petition, no material has been placed on record to substantiate the stand of the respondent No.1 that under the pretext of giving admission the petitioner procured the custody of the respondent No.2 from respondent No.1. Learned Advocate in all fairness submits that the wife/respondent No.1 is proposing to file an application before the Family Court for getting back the custody of the son. The wife would be at liberty to apply before the Family Court for custody. However, this aspect fortifies the contention of the petitioner that he has admitted the son/respondent No.2 in Kendriya Vidyalay and as on date bearing all the expenses of son. In my view, therefore, subject to keeping right of wife intact to apply for custody this order granting interim maintenance @ of Rs.2000/- per month to the son/respondent No.2 needs to be set aside.

9. Learned Judge of the Family Court on the basis of the material available on record quantified interim maintenance for

respondent No.1 @ of Rs.3,000/- per month. The respondent No.1 has not challenged this part of the order. On going through the order passed by the learned Judge of the Family Court, I am satisfied that the learned Judge of the Family Court has taken all the facts and material available on record into consideration while quantifying the interim maintenance payable to the wife/respondent No.1. All the facts namely the income of the parties, the strata of the society from which the parties hail and the responsibility of the petitioner to maintain the wife have been taken into consideration. On consideration of the material afresh, I am of the view that as far as this part of the order is concerned no interference is warranted.

10. Learned Advocate for the respondent No.1 made a grievance that in terms of the order passed by this Court dated 04.10.2022, the petitioner has deposited the interim maintenance from that date only. Learned Advocate for the respondent No.1 submits that the petitioner is in the arrears of maintenance. It is pertinent to note that on account of stay granted by this Court on 04.10.2022, the respondent No.1 was not able to apply for execution. It is to be noted that with the disposal of this petition the stay would be automatically vacated. The respondent No.1 would, therefore, be entitled to apply for execution of

other part of the order. It is made clear that as and when such application for execution of order is made or if it is already made, the learned Judge of the Family Court shall dispose of the same according to law at the earliest to the extent of wife. Hence, following order.

ORDER

- i. The writ petition is partly allowed.
- ii. The order of interim maintenance granted in favour of the son/respondent No.2 is quashed and set aside.
- iii. The order of interim maintenance @ of Rs.3000/- granted in favour of wife stands confirmed.
- iv. The fees of Rs.7,000/- each be paid to learned appointed advocates for petitioner and respondents, as remuneration.
- v. Rule is made absolute in the above terms. No costs.

(G. A. SANAP, J.)

Namrata