

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

CRIMINAL WRIT PETITION (WP) NO.705 OF 2022

Anil S/o Chotelal Chauhan

Aged about: 49 Yrs., Occ.: Nil,
R/o. Chauhan Niwas, near
K John Public School, Plot No. 122,
New Vasundhara Society, Besa,
Nagpur, 34

.... **PETITIONER**

// VERSUS //

1.Mrs Bharati Chauhan,,

Aged about : 40 Yrs., Occ.: not known,

2.Master Prathan S/o Anil Chauhan

Aged about : 16 Yrs., Occ.: Student,
Through Natural Guardian Mother,
Both R/o, C/o Shri Chandan Ujjainwar,
Plot No. 14, behind Ranu Schook,
Koradi Road, Mankapur, Nagpur

.... **RESPONDENTS**

Shri P.R. Puri, Advocate for the petitioner
Shri M.A.Deo, Advocate for the respondents

CORAM : G. A. SANAP, J.
DATED : 25th JANUARY, 2023

ORAL JUDGMENT :

1) Heard.

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

3) In this petition, challenge is to the order dated 25/08/2022 passed below Exh.6 in petition No. E-120/2017 by the learned Judge of the Family Court, Nagpur, whereby, the learned Judge was pleased to partly allow the application made for interim maintenance and quantified the interim maintenance at the rate of Rs.2500/- per month for respondent no.1/wife and Rs.2000/- per month for respondent no.2/son.

4) Learned Advocate for the petitioner/husband submitted that there is no problem to comply the order of interim maintenance *qua* the son. Learned Advocate however, submits that the wife is not entitled to get interim maintenance in as much as the decree of divorce has been passed on the ground of desertion. Learned Advocate took me through the order passed by the learned Judge and submitted that the learned Judge has committed a mistake in

applying the provisions of law to the facts and awarded maintenance to the wife.

5) Learned Advocate for the respondents argued the matter without filing reply. Learned Advocate took me through the impugned order and pointed out that the objection raised on the point of entitlement of the wife to get interim maintenance has been considered and appropriately dealt with. The learned Advocate, further submitted that the learned Judge has stated in detail in the order the questions of facts required to be addressed at the stage of final hearing.

6) On going through the impugned order, it is seen that all the objections and particularly the objection on the point of entitlement of the wife to get maintenance being a divorcee has been dealt with. In order to deal with the objection, the learned Judge has relied upon the decision of the Hon'ble Apex Court in the case of

Rohtash Singh Vs. Ramendri and others, reported at ***2000 Cri.L.J. 1498***.

7) The learned Judge while dealing with the objection put forth, relying on the provisions of Section 125 Sub Section 4 of the Code of Criminal Procedure, has observed that the same may not be applicable to a woman who is a divorcee. It is to be noted that the important questions of fact have arisen on the basis of the rival pleadings of the parties. The questions would be required to be properly addressed on merits on the basis of the evidence led by the parties.

8) On going through the order of interim maintenance in favour of wife, at this stage, I am convinced that it does not warrant interference. The learned Judge while quantifying the interim maintenance vis-a-vis wife has taken into consideration the source of income of the husband. It is also seen that on the basis of the facts, the learned Judge has done some guess work. It is seen that the wife

claimed interim maintenance at the rate of Rs. 7000/- per month, whereas the learned Judge was pleased to quantify the same at the rate of 2500/-. In my view, this would reflect upon application of judicious mind to the facts and the material placed on record. Therefore, in my view, on merits no interference is warranted in the order. The petition thus deserve to be dismissed.

9) It is true that the decree of divorce has been granted by the Family Court on the ground of desertion. The appeal filed against the said decree has been dismissed by the Division Bench of this Court.

10) In my view keeping this fact in mind, it would be appropriate to make a request to the Family Court to dispose of the petition expeditiously. Accordingly, the learned Judge of the Family Court is requested to dispose of the petition filed by the wife and son for maintenance, within a period of three months from today.

11) It is made clear that while deciding the main petition the learned Judge shall decide the same on merits without getting influenced by the observations made in this order.

12) The writ petition stands dismissed. Rule accordingly.

(G. A. SANAP, J.)

Jayashree..