



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

CRIMINAL WRIT PETITION NO.619/2023

Nikhil s/o Chandrashekhar Raut Vs. Mrs. Madhuri Nikhil Raut and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. R. Puri, Advocate for petitioner.

CORAM : ANIL L. PANSARE, J.

DATE : 29.08.2023

The petitioner husband has taken exception to the order dated 24.07.2023 passed by learned Judge, Family Court no.3, Nagpur in Petition E-471/2021. The respondent no.1 – wife and respondent no. 2 – daughter have filed application against the petitioner seeking maintenance under Section 125 of the Criminal Procedure Code, 1973 (for short the 'Code'). Learned Family Court, as an interim arrangement, has directed the petitioner to pay monthly maintenance of Rs.9,000/- to the respondent no.1 and Rs.4,000/- to the respondent no.2.

The case of the respondents before the Family Court is that the petitioner and his family members have ill treated her. They are residing separately because of the matrimonial discord. She is unable to maintain herself and had no source of income. It is further the case of the respondents that the petitioner is involved in the dealership and earning Rs.1,50,000/- per month.

There are no dependents on him. Accordingly, monthly maintenance of Rs.60,000/- has been sought.

That marriage between the parties has solemnized on 23.02.2019. Respondent no.2 is born on 28.08.2021. There occurred dispute and that triggered filing of the report and cases against each other. The Family Court, after having considered the rival submissions, has noted that there are allegations and counter allegations, which could be considered at the time of final adjudication. The Family Court then considered the statement of assets and liabilities filed by the respondents and the statement of assets filed by the petitioner. The Court was of the view that the respondents have no sufficient source of earning whereas the petitioner is earning Rs.46,230/- per month. He is working as manager with Ottomate International Pvt. Ltd. The petitioner has subsequently filed documents to show that he is working as Assistant Manager in Apar Industries Ltd. He has furnished salary slips which indicate that in January – 2023, he has drawn a gross salary of Rs.58,945/-

Learned Family Court has perused the order passed by the learned Magistrate granting Rs.3,000/- per month in the proceedings filed before it by the respondents under the provisions of the Protection of Women From Domestic Violence Act, 2005, against the petitioner. The said amount of maintenance, according

to the learned Family Court was insufficient, considering the income of the petitioner.

The petitioner, in the present proceedings, has stated that his mother and sister are also dependent on him and is required to incur expenses to the tune of Rs.18,000/- per month. Learned Family Court has taken into account, while granting interim maintenance, the income of the petitioner, high rising costs, day to day needs of the respondent no.1 and her minor daughter, food, clothing, shelter, medicine and educational needs of the minor daughter.

This finding has been challenged on the ground that it is the respondent no.1 who has deserted the petitioner and she herself is a wrong doer. Learned counsel for the petitioner has invited my attention to Section 125 of the Code. Sub Section (1) of Section 125 of the Code provides that if any person having sufficient means neglects or refuses to maintain his wife or his legitimate child, the Court, upon proof of such neglect or refusal, order such person to make monthly allowance for the maintenance of his wife or such child. The emphasis of the counsel for the petitioner is on the words “neglects or refuses to maintain”. The learned counsel submits that the petitioner has neither refused nor neglected his wife i.e. respondent no.1. Rather, respondent no.1 herself has deserted the petitioner. He submits that it is the petitioner who has approached the police station first on 27.05.2021. Respondent no.1 thereafter issued notice

dated 07.08.2021. He then submits that the petitioner has approached the court of law on 08.09.2021 by filing proceeding under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. The respondent no.1 kept quite for substantial time. The present proceeding has been filed to counter blast the proceedings initiated by the petitioner. Accordingly, he states that the petitioner cannot be blamed to have refused or neglected to maintain his wife. He submits that the learned Family Court has committed serious error in assessing the allegation made by both the sides

I do not find any merit in the aforesaid contention. Perusal of the application and reply filed before the learned Family Court indicates that there are allegations and counter allegations against each others. The Family Court has, therefore, rightly observed that these allegations and counter allegations can only be considered during trial once the evidence is recorded. The relationship is not disputed. The respondent no.1 claims that she has no means to survive. The petitioner could not place on record any cogent material to show that wife is earning. The petitioner has stated that he has to incur expenses of Rs.18,000/- to maintain two dependents viz. his mother and sister. If that be so, the other two dependents namely wife and daughter would also require such amount for their maintenance. Learned Family Court was of the view that the amount of Rs.9,000/- for respondent no.1 and Rs.4000/- for

respondent no.2 would be reasonable, considering the compelling circumstances which wife and her daughter are going through.

I do not find any perversity in the said order to invoke jurisdiction under Article 227 of the Constitution of India. There is no merit in the petition. The same is dismissed at the threshold. No order as to costs.

Copy of order be served upon the learned Judge, Family Court No.3, Nagpur.

(Anil L. Pansare, J.)