



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL WRIT PETITION NO.623/2023

Pratik s/o Sahebrao Wankhade .Vs. Smt. Shakshi Pratik Wakhade

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

Court's or Judge's orders

Ms Shweta Chavhan, Advocate for petitioner.

Mr. I. G. Meshram, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.

DATE : 30.10.2023

Learned counsel for the respondent submits that the writ petition is not maintainable considering the scope of Section 19 of the Family Courts Act, 1984.

2. Learned counsel for the petitioner seeks permission to convert the petition into revision under Section 19 of the Family Courts Act, 1984.

3. Permission is granted. The amendment be carried out forthwith.

4. Heard learned counsel for the parties.

5. Grievance of the husband is that in his statement of assets and liabilities, he has quoted monthly income to be Rs.10,000/-. According to him, the wife is Dentist and earning Rs.60,000/- to Rs.70,000/- per month.

6. As against, the wife has stated that she was not allowed to pursue her career, in the sense, after graduation, she was not allowed to undergo internship,

which is mandatory to practice as a Dentist. The Family Court has observed that in absence of Sanad, the wife will not be eligible to commence the practice.

7. Thus, in a way, the Family Court was of the prima facie view, which appears to be correct, that the wife has not entered into the practice.

8. Be that as it may, the moot question is; whether the Family Court can pass order granting interim maintenance of Rs.14,000/- per month when the husband has quoted his income as Rs.10,000/- per month in his affidavit of statement of assets and liabilities.

9. Having heard both the sides and having gone through the order, I do not find from the orders passed by the Family Court that any good reason has been assigned to disbelieve the aforesaid statement of assets and liabilities. The only reason put forth by the Family Court is that the qualification of the husband does not support his statement of income. This reasoning, if accepted, would mean that every qualified person will be presumed to have handsome income. There is a difference between capability to earn and actual earning of the person. Merely because the husband is capable of earning more than what is stated by him in the affidavit, the Family Court, without assigning cogent reason, could not have passed the order granting interim maintenance beyond the earning mentioned by the husband. The

order, therefore, is unsustainable and is liable to be set aside. The matter, therefore, will have to be remanded back for consideration afresh. Hence, following order.

ORDER

- (i) The revision application is allowed.
- (ii) The impugned order dated 17.08.2023 passed by Family Court, Akola below Exh.-7 in Petition No. E-179/2022, is quashed and set aside.
- (iii) Application Exh.-7 for grant of interim maintenance is restored, to be decided afresh, in accordance with law, by the Family Court, Akola. However, during interregnum, the husband shall pay Rs.5,000/- per month from the date of order i.e. 28.11.2022, to the wife till further order is passed by the Family Court.
- (iv) The arrears of maintenance shall be deposited with the Family Court within three months from today.

The revision application is disposed of in the above terms.

(Anil L. Pansare, J.)