

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

CRIMINAL WRIT PETITION (WP) NO.736 OF 2022

Rajat S/o. Mahesh Mishra,

Aged : 34 Yrs., Occ.: Private,

R/o. Ganesh Nagar, Dr. Yede Line,

Gondia, Tah. & Distt. Gondia

.... **PETITIONER**

// VERSUS //

1. Pooja W/o. Rajat Mishra,

Aged : 29 Yrs., Occ.: Nil,

2. Master Sai @ Anant S/o. Rajat Mishra,

Aged about 2 Yrs., Occ. Nil,

Through his mother non-petitioner No.1

Both R/o. C/o. Rajendra Pande, Renuka

Mangal Karyalay, Vidarbha Housing

Society, Yavtmal

.... **RESPONDENTS**

Shri U. R. Phasate, Advocate for the petitioner

None for the respondents

CORAM : G. A. SANAP, J.

DATED : 16th JANUARY, 2023

ORAL JUDGMENT :

1) Heard.

2) **RULE.** Rule made returnable forthwith. Heard finally. The respondent Nos. 1 and 2, though served, have failed to appear before this Court.

3) In this writ petition, the petitioner has questioned the correctness of the order dated 23/04/2022 passed by the Family Court, Yavatmal, whereby the learned Judge was pleased to allow the application Exh. 6 made by the respondents, for interim maintenance and quantified the interim maintenance @ of Rs.5,000/- per month for the respondent No.1 and Rs.2000/- per month for the respondent No.2 from the date of the application i.e. 03/04/2021. The respondent Nos. 1 and 2 have filed petition bearing No. E-20 of 2021 for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (For short 'Cr.P.C.). During pendency of the said petition they applied for interim maintenance. They claimed interim maintenance @ of Rs.35,000/- per month.

4) The marriage between the petitioner and respondent No.1 took place on 09/05/2017. They are blessed with child i.e. respondent No.2. It is stated that after marriage the respondent No.1 was ill-treated and tortured. The respondent No.1 started residing separately from

06/09/2019. The respondents have taken shelter at the house of the parents of the respondent No.1. The proceeding under the Protection of Women From Domestic Violence Act, 2005 (For Short 'D. V. Act') is also filed by the wife/ respondent No.1 against the petitioner and others. It is the case of the respondent No.1 that in the said D. V. Act proceeding the petitioner has been directed to pay interim maintenance @ of Rs.3,000/- per month and Rs.2000/- per month towards the rent. In the application made for interim maintenance, the respondents stated that the amount of interim maintenance quantified in D. V. Act proceeding was not sufficient to meet their day to day needs. The respondents, therefore, prayed for interim maintenance. The learned Judge of the Family Court after granting an opportunity of hearing to the petitioner quantified interim maintenance, as above.

5) The main grievance of the petitioner is that in two proceedings simultaneously he has been directed to pay an interim maintenance. The monthly salary of the petitioner is Rs.10,000/-. The total amount of the interim maintenance comes to Rs.12,000/- per month. It is stated that the maintenance he is required to pay is more than his salary. He filed reply before the Family Court. He disclosed all

these facts in the reply. It is the grievance of the petitioner that the learned Judge of the Family Court has failed to take into consideration all these aspects. The further grievance is that the learned Judge has drawn an adverse inference with regard to his income on the basis of the irrelevant material and circumstances.

6) I have heard the learned Advocate for the petitioner. Perused the record and proceedings. The respondents, as stated above, though served, remained absent.

7) Learned Advocate for the petitioner submitted that in two proceedings the liability to pay the interim maintenance has been fastened on him. Learned Advocate submitted that all the relevant facts were pointed out by the petitioner before the learned Family Court. It is submitted that the learned Judge of the Family Court has not taken all these facts into consideration and saddled the liability on the petitioner to pay the interim maintenance, as above. In the submission of the learned Advocate for the petitioner, the interim maintenance awarded by the learned Judicial Magistrate First Class in D. V. Act proceeding was sufficient to meet and satisfy the needs of respondent No.1.

8) In order to appreciate the submissions advanced by the learned Advocate for the petitioner, I have minutely perused the impugned order passed by the learned Judge of the Family Court. I have also gone through the relevant material relied upon by the petitioner in this Petition. The learned Judge of the Family Court found that the petitioner has suppressed the material facts. The petitioner did not place on record his income tax return. He did not place on record his immovable property statement. The statement made by the petitioner in the affidavit that he needs Rs.20,000/- for his general monthly expenses was also taken into consideration by the learned Judge of the Family Court to come to a conclusion that the statement made by the petitioner that his monthly salary is Rs.10,000/- could not be accepted. It is settled position in law that in multiple matrimonial proceedings the wife is entitled to seek the maintenance/interim maintenance. It is, therefore, apparent on the face of record that the order granted in favour of the wife quantifying the interim maintenance in a D. V. Act proceeding could not be said to be a hindrance in the way of the respondents to get interim maintenance in the proceeding initiated under Section 125 of the Cr.P.C., if it is established to the satisfaction of the concerned Court that the

amount awarded in the first proceeding is not sufficient to satisfy their day to day needs.

9) It is to be noted that, when this order for interim maintenance was passed the arrears in terms of the order passed in D. V. Act proceedings were not paid. This fact has been taken into consideration while quantifying the interim maintenance in the proceeding under Section 125 of the Cr.P.C. It is necessary to note that in the application the respondents have made categorical statement that from all sources the petitioner earns more than Rs.1,00,000/- per month. It is undisputed that the petitioner in his reply has not stated that apart from the respondents any other person is his dependent. The respondent Nos. 1 and 2 have placed on record the 7/12 extract of the agricultural land of the family of the petitioner. After filing of this 7/12 extract of the agricultural land of family of the petitioner, it was expected on his part to deal with the same suitably. He did not utter a word about the same in his reply filed before the Family Court. Similarly, he was required to deal with the observations made in order on this aspect, inasmuch as the learned Judge of the Family Court was persuaded by the respondents to

draw an adverse inference against the petitioner for suppression of this fact. The petition is silent on this aspect.

10) Undisputedly, the respondents are staying at the house of the parents of the respondent No.1. They are residing in the city of Yavatmal, which is a district place. Learned Judge of the Family Court has taken into consideration the position of the parties, the strata of the society from which they hail, the lifestyle to which the wife was accustomed and the bare minimum requirements of the wife, while quantifying the interim maintenance. On going through the record and particularly the order passed by the learned Judge of the Family Court, I am of the considered opinion that the order is well reasoned order. The order has been passed after granting an opportunity of hearing to the parties. The total maintenance awarded in both the proceedings is hardly Rs.12,000/- per month. The petitioner is under moral, social and statutory obligation to maintain his wife and minor child. The petitioner is found to have sufficient means to pay interim maintenance quantified in the proceedings. The petitioner cannot avoid his responsibility. The wife has right to live befitting the position of the husband. The parties are well qualified. The respondents, therefore, must be accustomed to

particular lifestyle befitting the status of the petitioner. The object of granting interim maintenance is to prevent vagrancy and destitution during the pendency of the main proceeding. In my view, the interim maintenance quantified by the learned Judge would satisfy the bare minimum requirement of food, clothing and shelter of the respondents. The petitioner on the basis of the grounds stated in the petition cannot shirk his responsibility. On consideration of the material on record and the observations made by the learned Judge of the Family Court in the impugned order afresh, I am of the view that the order is just and proper. No case has been made out to warrant the interference.

- 11) The criminal writ petition stands **dismissed**, accordingly.
- 12) Rule stands discharged.

(G. A. SANAP, J.)

Namrata