

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

CRIMINAL WRIT PETITION NO.805 OF 2022

Shri Rizwan ~~Abbas~~ Ahmad Abbas,

Aged : 46 Yrs., Occ.: Business,

R/o. Pipla (D.B.) in front of

Bawankar Saw Mill, Saoner Road,

Secret Hat School, Nagpur

.... **PETITIONER**

// VERSUS //

1. Saida Parveen W/o. Rizwan Ahmad Abbas,

Aged about 36 Yrs., Occ. Doctor,

2. Asad Ahmad S/o. Rizwan Ahmad Abbas,

Aged about 5 Yrs. minor, through mother

Respondent No.1

Both R/o. c/o. Shadab Khan, Railway

Quarter No. 176/1, Mount Road,

Civil Lines, Nagpur

.... **RESPONDENTS**

Shri C. F. Bhagwani, Advocate for the petitioner

Shri S. Zia Qazi, Advocate for the respondents

CORAM : G. A. SANAP, J.

DATED : 9th MARCH, 2023

ORAL JUDGMENT :

1. Heard.

2. RULE. Rule made returnable forthwith. Heard finally

with the consent of learned Advocates for the parties.

3. In this writ petition, filed under Article 226 read with Article 227 of the Constitution of India, the petitioner has challenged the order dated 02.06.2022 passed by the learned Judge of the Family Court No.4, Nagpur, whereby the learned Judge partly allowed the application made by the respondents for interim maintenance and quantified the interim maintenance @ of Rs.3,000/- per month for respondent No.1 and Rs.2000/- per month for respondent No.2, from the date of the application i.e. 12.06.2019.

4. The respondents have filed application under Section 125 of the Code of Criminal Procedure (For short 'the Cr.P.C.') for maintenance. In the said application, it is the case of the respondent No.1 that during the subsistence of first marriage of the petitioner, the petitioner married with her on 16.01.2016. After birth of respondent No.2, on 15.10.2016, the first wife of the petitioner started residing in the same house. The ill-treatment and torture at the behest of the petitioner and his first wife started to the respondent No.1. The petitioner and his wife on account of the ill-

treatment and torture compelled her to leave the house of the petitioner. The respondent No.1 with her child has been residing with her parents. It is stated that she has no source of income. The petitioner is working as a Teacher and getting salary of Rs.75,000/- to Rs.90,000/- per month. On these averments, the respondents prayed for interim maintenance during the pendency of the main application.

5. The petitioner filed reply and opposed this application. According to the petitioner, the respondent No.1 is a qualified doctor. She has sufficient income from her profession. She is not dependent on his income. It is further stated that in a Domestic Violence Act proceedings on the application of the respondent No.1 monthly maintenance has been granted @ of Rs.3,000/- per month. In short, the petitioner contended that the respondents are not entitled to get maintenance from him.

6. The learned Judge of the Family Court, on the basis of the facts, circumstances and the evidence, found substance in the

contentions of the respondents and therefore, partly allowed the application made for interim maintenance and quantified the interim maintenance for the respondent Nos. 1 and 2, as above. The petitioner being aggrieved by the said order is before this Court.

7. I have heard Mr. C. F. Bhagwani, learned Advocate for the petitioner and Mr S. Zia Qazi, learned Advocate for the respondents.

8. Learned Advocate for the petitioner submitted that the learned Judge of the Family Court has not taken the undisputed facts and the material placed on record into consideration and as such, has come to a wrong conclusion. Learned Advocate further submitted that in the absence of any concrete evidence with regard to the income of the petitioner, the interim maintenance has been awarded. It is submitted that it is excessive and exorbitant. Learned Advocate further submitted that while quantifying the interim maintenance the learned Judge of the Family Court has not

properly appreciated the important aspect with regard to the maintenance awarded to the respondent No.1 @ of Rs.3,000/- per month in a Domestic Violence Act proceeding. Learned Advocate further submitted that as per the order passed by the Division Bench of this Court in Family Court Appeal No. 22 of 2019, has directed the petitioner to pay *Mehr* (dower) in kind i.e. in the form of two storied building worth Rs.50 lacs or in the alternative to pay the amount of Rs.50 lacs to the respondent No.1. Learned Advocate submitted that in view of this order, the basic grievance of the respondent No.1 that she has not been able to maintain herself is not at all acceptable.

9. As against this, the learned Advocate appearing for the respondent Nos.1 and 2 submitted that the petitioner is under legal obligation to maintain the respondents. Learned Advocate submitted that the *Mehr* (dower) amount quantified by the Division Bench of this Court has not yet been paid. Learned Advocate further submitted that even after payment of the *Mehr* (dower) amount, the husband will be liable to pay the maintenance

to the wife under Section 125 of the Cr.P.C. Learned Advocate submitted that, therefore, the respondents are entitle to apply for maintenance under Section 125 of the Cr.P.C. Learned Advocate further submitted that the respondent No.1 is H.S.C. pass. It is submitted that she is not a doctor. Learned Advocate further submitted that there is no documentary evidence on record to come to a conclusion that the respondent No.1 possesses a medical degree and entitled to do a medical practice. Learned Advocate submitted that the interim maintenance quantified by the learned Judge of the Family Court is just, proper and reasonable.

10. I have given thoughtful consideration to the submissions advanced by the learned Advocates for the parties. I have perused the record and proceedings. Perusal of the order passed by the learned Judge of the Family Court would show that the learned Judge has meticulously considered the relevant aspects, required to be considered while deciding the application for interim maintenance. Learned Judge has taken into consideration the quantum of maintenance awarded under Domestic Violence Act

proceeding to the respondent No.1. Learned Judge after taking same into consideration has quantified the interim maintenance *vis-a-vis* respondent Nos. 1 and 2. Respondent No.2 is the son of the petitioner. It is seen that there is no serious dispute about the liability of the petitioner to pay interim maintenance or maintenance to respondent No.2. The only dispute is with regard to the right and entitlement of the respondent No.1 to get the maintenance.

11. It is stated by the petitioner that the respondent No.1 is not entitled to get the maintenance. In my view, at this stage of the matter, on the basis of *prima facie* material on record it can be seen that the respondent No.1 is legally wedded wife of the petitioner. The petitioner has come before this Court with the case that he has given *talaq* to her. In my view, this aspect will have to be gone into at the stage of the final adjudication of the case on merits. At this stage, it would be necessary to see whether there was any relationship between them as husband and wife or not. Even if it is accepted that the petitioner has given *talaq* to respondent No.1, she

will be divorced woman entitled to get maintenance under Section 125 of the Cr.P.C. As far as this aspect is concerned no further dilation is required, at this stage.

12. The next important question that needs to be addressed in this petition is as to whether the interim maintenance quantified by the learned Judge of the Family Court is just, proper and unreasonable. The petitioner cannot avoid his responsibility to maintain the respondent Nos. 1 and 2. The contention of the petitioner and the evidence placed on record with regard to the medical profession of the respondent No.1, in my view, at this stage, is not convincing. Learned Judge has taken this aspect into consideration. The petitioner is serving as a Teacher. He has not placed on record his salary certificate. In his statement of assets and liabilities, he has stated that he is earning Rs.3000/- to Rs.4,000/- per month. Learned Judge on the basis of this conduct of the petitioner has drawn the permissible inference. Learned Judge after taking into consideration the fact that the petitioner is the teacher and also the fact that the wife is already granted Rs.3,000/- per

month in the Domestic Violence Act proceeding toward the maintenance, has quantified interim maintenance. It is to be noted that once a person is found liable to maintain his wife or the divorced wife and a child, he is bound to pay the maintenance. Learned Judge considering the cost of living and the skyrocketing prices of the essential commodities found that the interim maintenance quantified would be just, reasonable and proper. In my view, by applying any standard, it cannot be said that the quantum of interim maintenance is unjust and unreasonable. Therefore, I am not inclined to interfere with the order passed by the learned Judge. The writ petition, therefore, stands **dismissed**.

13. Rule stands discharged.

14. The writ petition stands disposed of, accordingly.

(G. A. SANAP, J.)

Namrata