

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

CRIMINAL WRIT PETITION NO.879 OF 2022

Gurmeet @ Goldy S/o. Kalesingh Marwah,
Aged : 41 Yrs., Occ.: Private,
R/o. Railtoli, Lajpatrai Ward,
Gondia, Tah. & Distt. Gondia

.... **PETITIONER**

// VERSUS //

1. Kanchan W/o. Gurmeet Marwah,
Aged about 40 Yrs., Occ. Dental Hygienist,

2. Shahaj Gurmeet Marwah (Minor),
Aged about 13 Yrs., Occ. Nil,

Through her natural guardian mother
Kanchan Gurmeet Marwah
Both R/o. C/o. Prakash Raiborde,
Plot No. 33, behind Police Line Takli,
Swagat Nagar, Nagpur

.... **RESPONDENTS**

Ms Akansha Wanjari, Advocate for the petitioner
None for the respondents.

CORAM : G. A. SANAP, J.
DATED : 13th MARCH, 2023

ORAL JUDGMENT :

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally
with the consent of learned Advocate for the petitioner.

3. Respondent Nos. 1 and 2, though served, have failed to appear before this Court and contest this petition. In this petition, the petitioner has challenged the order dated 23.05.2013 passed by the Family Court No.2, Nagpur, whereby the application made by the respondents for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') was partly allowed. The learned Judge directed the petitioner to pay monthly maintenance @ of Rs.2000/- to the respondent No.1 and Rs.1,000/- to the respondent No.2.

4. The parties in this petition would be referred by their nomenclature in the proceeding before the Family Court. The respondent Nos. 1 and 2 are the applicant Nos. 1 and 2 respectively. The petitioner is the non-applicant. On the date of filing of the application, the applicant No.2 was 17 months old. It is the case of the applicants that marriage between the applicant No.1 and non-applicant was love marriage. The mother of the non-applicant did not like the same. Somehow or the other, the applicant No.1 and non-applicant convinced the mother of the

non-applicant to accept the applicant No.1, as a wife of the non-applicant. The marriage was then performed. It is the case of the applicant No.1 that since the mother of the non-applicant did not like her, she started ill-treating her. She was subjected to mental and physical cruelty. In the year 2008, the applicant had conceived. However, there was mental and physical cruelty to her as well as she was not provided proper food and as such, there was miscarriage of applicant No.1. According to applicant No.1, the non-applicant also joined his mother in ill-treating her. In the year 2008, there was settlement of dispute between the applicant No.1 and non-applicant. She went back to her matrimonial house. However, the non-applicant and his mother continued to ill-treat her. She was conceived second time. However, she was not provided proper food and medicine. She had developed weakness. The non-applicant and his mother on number of occasions beat her. In one incident, she had sustained burn injuries. In the year 2009, again she was driven out of the house. She gave birth to applicant No.2 on 13.08.2010. After birth of the daughter, she requested the non-applicant to take her back to his house. The

non-applicant neither took her back nor made the arrangements for maintenance and medical treatment of applicant Nos.1 and 2. The applicant No.1 is residing at her parent's house with the applicant No.2. It is stated that she was subjected to mental and physical cruelty by the non-applicant and his mother. She has no source of income. The applicants are unable to maintain themselves. The non-applicant has sufficient means. His mother is Headmistress in a school. The non-applicant is engaged in the business of sell and purchase of vehicles. Non-applicant is also getting income from two Maruti Vans and Four Trucks. The applicants, therefore, prayed for monthly maintenance of Rs.15,000/- for them.

5. The non-applicant appeared in the proceeding before the Family Court. However, he failed to file the written statement. The non-applicant did not participate in the said proceeding. The applicant No.1 examined herself as witness. Learned Judge of the Family Court on the basis of the available material on record found the applicant Nos. 1 and 2 entitled to get the maintenance and quantified the same, as above.

6. I have heard learned Advocate Ms A. S. Wanjari for the non-applicant. Perused the record and proceeding.

7. It is to be noted that this petition suffers from unreasonable and unexplained delay. In my view, on this ground alone the petition deserves to be dismissed. The Family Court vide order dated 23.05.2013 was pleased to allow the application under Section 125 of the Cr.P.C made by the applicant Nos.1 and 2. The non-applicant has filed this petition in the year 2022. It is stated that he was not aware of this order. He came to know about this order when the notice was issued to him after 11 years, in an execution proceeding filed by the applicants before the Family Court. In my view, the ground stated cannot be said to be just and proper to explain the inordinate and enormous delay caused in filing the petition. The non-applicant was duly served in the proceeding before the Family Court. He appeared before the Family Court. However, he did not file the written statement/reply. The matter proceeded without his written statement. It is to be noted without filing the written statement he had a right of audience in

the proceeding. It is seen that he has not exercised said right of audience. He could have cross examined the applicant No.1. The record reveals that he did not participate in the proceeding after appearing before the Family Court once or twice. His contention that he came to know about the order after 11 years is not justifiable. On this count, I am of the view that this petition deserves to be dismissed.

8. As far as the merits are concerned, it is seen on perusal of the record that the learned Judge of the Family Court on the basis of the evidence adduced by the applicants recorded the finding that the non-applicant had failed and neglected to maintain the applicants. The learned Judge also held that the applicants were not able to maintain themselves. Learned Judge, therefore, quantified the maintenance for applicant Nos.1 and 2, as above. While quantifying the maintenance the learned Judge has taken into consideration the source of the income of the non-applicant. It is stated that the mother of the non-applicant is Headmistress. There is no denial of this fact in the petition. It is not the case of

the non-applicant, in this petition, that he is not able-bodied. Even if it is assumed for the sake of argument that he has no source of income, he being able-bodied cannot deny his liability to maintain the applicants. Besides, the applicant No.1 has stated in her evidence that the non-applicant is doing a business of sell and purchase of vehicles. She has stated that the non-applicant is getting income from two Maruti Vans and four Trucks. As far as this occupation of the non-applicant is concerned, there is hardly any challenge. The applicants have stated that they have no source of income. They are dependent on the non-applicant. Learned Judge of the Family Court believed this evidence and decided the case in favour of the applicants.

9. With the able assistance of the learned Advocate for the non-applicant/petitioner, I have gone through the record. On going through the record I am of the view that the order passed by the learned Judge of the Family Court does not warrant interference. The amount of maintenance quantified by the learned Judge of the Family Court for applicant Nos. 1 and 2 is moderate

and reasonable. The non-applicant, being husband of the applicant No.1 and father of the applicant No.2, cannot shirk his responsibility to maintain them. The nature of the mental and physical cruelty narrated by the applicant No.1 clearly indicates that the approach of the non-applicant and his mother towards the applicant No.1 was not at all acceptable. The applicants have been residing at the house of the parents of the applicant No.1. In the facts and circumstances, I do not find any substance in this petition on merits, as well.

10. The petition is accordingly **dismissed**.

11. Rule stands discharged.

(G. A. SANAP, J.)

Namrata