



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

998 CRIMINAL APPLICATION NO. 4468 OF 2023

ZAFAR KHAN AYYUB PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicant : Mr. Somani Yogesh G.
APP for Respondent/State : Mr.N.B. Patil
Advocate for Respondent no.2 and 3 : Mr.Nagargoje Ankush Nivrutti

...
CORAM : **SHIVKUMAR DIGE, J.**

DATE : 2nd August, 2024.

P.C.:

1. By this application, the applicant is challenging the order passed below Exhibit-20 dated 6th November, 2023 by the Family Court, Jalna in Petition E-51 of 2022. By the said order, the Family Court has directed the applicant to pay Rs.4,000/- to respondent no.2 and Rs.1,000/- to respondent no.3 as interim maintenance.
2. It is contention of the learned counsel for the applicant that interim order is passed without giving opportunity of hearing to the applicant. The learned counsel further submitted that on 6th November, 2023, the advocate for the applicant was present before the Court in the morning session and he was ready for arguments. Thereafter, the matter was kept in afternoon session. In afternoon session, without hearing the applicant the impugned order is passed. The impugned order is passed behind the back of the applicant, hence requested to allow the application.

3. It is contention of the learned counsel for respondent nos.2 and 3 that the say of the applicant was on record. Opportunity of hearing was given to the applicant. After hearing both the parties and considering the say of the applicant, the Family Court has passed the well reasoned order. No interference is required in it.

4. I have heard both the learned counsel. Perused the impugned order passed by the Family Court, Jalna.

5. While passing the order, the Family Court has observed that none present for the respondent when called. He also failed to file affidavit of assets and liabilities and considering the documents on record, the Family Court has passed the order. In my view, the Family Court should have given opportunity to the applicant before passing the interim order. Considering this fact, if the matter is remanded for giving opportunity of hearing to the applicant to put his side and after hearing both the sides, the Family Court can decide the application of interim maintenance on its own merits. It would suffice and I pass the following order :-

ORDER

- (i) The application is partly allowed.
- (ii) The order passed below Exhibit-20 dated 6th November, 2023 by the Family Court, Jalna in Petition E-51 of 2022 is quashed and set aside.

- (iii) The applicant shall regularly appear before the Family Court for hearing of the petition.
- (iv) The applicant shall deposit 50% of the arrears of maintenance as per the order of Rs.4,000/- to respondent no.2 and Rs.1,000/- to respondent no.3 before the Family Court, Jalna within three months from the receipt of this order.
- (v) The Family Court shall decide the interim maintenance application on its own merits.
- (vi) The amount of 50% arrears be adjusted in the amount of interim maintenance amount granted by the Family Court.
- (vii) The application is disposed of accordingly.

[SHIVKUMAR DIGE, J.]

sga