

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4461 OF 2024

Kushal Kaluram Kamble .. Petitioners

Versus

Komal Kushal Kamble & Anr. .. Respondents

**ALONGWITH
WRIT PETITION NO. 4490 OF 2024**

Komal Kushal Kamble & Anr. .. Petitioners

Versus

Kushal Kaluram Kamble & Anr. .. Respondents

Mr. Zeeshan Siddiqui a/w. Mr. Mohsin Khan, Advocates for Petitioner in WP/4461/2024 and for Respondent No. 1 in WP/4490/2024.

Mr. Mohit Khanna i/b. Mr. Pravin B. Patel, Advocates for the Respondents and for Petitioners in WP/4490/2024.

Mr. Avinash D. Kamkhedkar, APP for State.

CORAM: FIRDOSH P. POONIWALLA, J.

DATE : 29th NOVEMBER 2024

JUDGMENT :

1. The impugned Judgment dated 7th June 2024 has been passed by the Family Court-2, Pune where the wife and the son have been granted maintenance of Rs.10,000/- per month from the date of the order and

maintenance of Rs.6,000/- per month from the date of the Application till the date of the order.

2. In Writ Petition No. 4490 of 2024, it is the submission of the learned Counsel appearing on behalf of the Petitioner that, as the Family Court has granted maintenance of Rs.10,000/- per month each for wife and the child, from the date of the order, the Family Court ought to have granted maintenance of Rs.10,000/- per month each to the wife and child from the date of Application till the date of order as well. It is on this ground that the Judgment is impugned in Criminal Writ Petition No. 4490 of 2024. The learned Counsel appearing on behalf of the wife in that petition has drawn my attention to the Judgement of the Hon'ble Supreme Court in **Rajnesh Vs. Neha and Another**, (2021) 2 SCC 324 and has submitted that, by that Judgement, the Court has held that maintenance ought to be granted from the date of filing of the Application. He submitted that, in these circumstances, the Family Court ought to have granted maintenance of Rs.10,000/- per month from the date of the Application itself.

3. On the other hand, in Criminal Writ Petition No. 4461 of 2024, the husband has challenged the maintenance granted by the Family Court. It is the contention of the learned Counsel appearing on behalf of the husband that the Court failed to consider that the wife has a qualification of S.Y.B.A. and therefore she was able to maintain herself. He also submitted that in her

own affidavit the wife has mentioned that the husband was earning Rs.20,000/- per month. The learned Counsel appearing on behalf of the husband also drew my attention to the judgement, in **Rajnish vs. Neha** (supra) and submitted that, in that Judgement, the Court has clearly held that maintenance must not be granted as a punishment and the wife's qualification must be taken into account while granting maintenance. In rejoinder, learned Counsel appearing on behalf of the wife has submitted that all the contentions, that have now been raised by the learned Counsel appearing on behalf of the husband, had been raised earlier while passing the order dated 6th April 2021 of interim maintenance. He submitted that the said order has not been challenged and, therefore, it is now not open for the husband to raise the said grievances.

4. I have heard the learned Counsel for the parties and perused the documents on record. It can be seen that the Family Court has come to the conclusion that it was clear from the evidence on record that the economic position of the husband was sound. The Family Court has further held that, though in his affidavit of assets and liabilities, the husband has submitted that he is presently not working in Kuwait and did not have a job, whereas the wife had a job and was earning sufficient amount, however, no evidence has been given about the income of the wife. Further, the Family Court has held that the husband had an opportunity to disclose his income, which was

within his knowledge, and he had failed to do so, and therefore an adverse inference could be drawn against the husband and it could be inferred that he would be able to provide maintenance to the Applicant. In my view these findings of the Family Court are correct. There is no perversity in these findings and therefore they does not warrant any interference by this Court in its Writ jurisdiction.

5. Coming to the contention of the wife, it should be noted that the Family Court has granted maintenance of Rs.10,000/- each for the wife and the child from the date of the order. However, from the date of the Application till the date of the order, maintenance of Rs.6,000/- per month only is granted to each of them. There is no reasoning given by the Family Court as to why, when from the date of the order, maintenance would be Rs.10,000/- per month, the same maintenance should not be granted from the date of the Application. This is more so in light of the Judgement of the Hon'ble Supreme Court in **Rajnesh vs. Neha** (supra) Paragraph Nos.111 and 113 of the said Judgment are relevant in this context and are set out hereunder :

“111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary

that maintenance is awarded from the date on which the application for maintenance is file before the court concerned.

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113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.”

6. On a reading of these findings, it is seen that the Hon’ble Supreme Court has held that the rational of granting maintenance from the date of the Application finds it’s root in the object of enacting maintenance legislation so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. It is further held that financial constraints of a dependent spouse hamper their capacity to be effectively represented before the Court. The Court has further held that, in order to prevent a dependent from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned. Further, the Hon’ble Supreme Court has issued directions that maintenance be awarded from the date on which the application was made before the court concerned. The Hon’ble Supreme Court held that, the right to claim maintenance must date back to the date of

filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.

7. In my view, considering these findings of the Hon'ble Supreme Court, there is merit in the submission of the wife that maintenance from the date of the Application till the date of order should also be Rs.10,000/- per month each for the wife and the child. In these circumstances, and for the aforesaid reasons, the following order is passed.

ORDER

- (i) The Impugned order dated 7th July 2024 is modified to the extent that maintenance to be paid to the wife and the child from the date of Application, i.e. from 27th July 2016, till the date of the order, will also be Rs.10,000/- per month each to the wife and the child.
- (ii) The husband is directed to pay to the wife and the child of the arrears of maintenance within a period of 8 weeks from the date of uploading of this Judgement.
- (iii) Criminal Writ Petitions are accordingly disposed of in the aforesaid terms.
- (iv) There shall be no order as to costs.

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by KISHOR
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[FIRDOSH P. POONIWALLA, J.]