



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

CRIMINAL WRIT PETITION NO.594 OF 2024

Aelish Azad s/o Abdul Kalam Azad,
Aged 29 years, Occ- Unemployed,
R/o Flat No. 101, First floor,
Raghava Apartment, Nelson
Square, Vijay Nagar, Nagpur

... PETITIONER

// V E R S U S //

1 **Suhana Azad w/o Aelish Azad,**
Aged 29 years, Occ- Unemployed,

2. **Master Aaren Azad s/o Aelish Azad,**
Aged 4 years, through Mother
Suhana Azad w/o Aelish Azad,
Both R/o. C/o. Mirza Zafar Baig,
Shubham Nagar, Plot No. 76-77,
New Yerkheda Road, Kamptee,
Dist- Nagpur

... RESPONDENTS

Mrs R. S. Sirpurkar, Advocate for the petitioner
Mr. A. K. Neware, Advocate for respondents

CORAM : G. A. SANAP, J.
DATE : 17/12/2024

ORAL JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard

finally with the consent of learned Advocates for the parties.

2 In this writ petition, challenge is to the order dated 04.06.2024 passed by the learned Judge of the Family Court, Nagpur (Court No. 4) (herein after referred to as 'the learned Judge'), whereby the learned Judge partly allowed the application at Exh. 6 made by the respondents for interim maintenance and directed the petitioner to pay the interim maintenance @ of Rs.35,000/- (Rupees Thirty Five Thousand only) per month to respondent No.1-wife and @ of Rs.15,000/- (Rupees Fifteen Thousand only) per month to respondent No.2, who is the minor son of the petitioner and respondent No.1.

3 The facts are as follows :-

Respondent No.1 filed an application under Section 125 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for maintenance. In the said application,

she claimed the maintenance @ of Rs.50,000/- (Rupees Fifty Thousand only) per month for herself and Rs.25,000/- (Rupees Twenty Five Thousand only) per month for the son. During the pendency of this application, she made an application seeking direction to the petitioner to pay the interim maintenance to her as well as to her son. There is no dispute with regard to the relationship between the parties. Respondent No.1, on account of marital discord, has been compelled to take shelter at the house of her parents. Her minor son is with her. It is the case of respondent No.1 that she has no source of income. The petitioner has failed and neglected to make a provision for their maintenance. The petitioner, according to respondent No.1, is doing business. His parents are also financially well-off. According to the respondents, the petitioner earns Rs.4,00,000/- (Rupees Four Lacs only) per month from the business of his company.

4 The petitioner filed the written statement in the main petition for maintenance and opposed the same. The petitioner denied the material facts pleaded in the application, including his income. According to the petitioner, he has no income to provide the excessive and exorbitant maintenance claimed by the respondents. He has suffered heavy financial losses in his business. He could not repay the bank loan. His father has sold the property. The business of the company has now come to standstill. It is further contended by the petitioner that respondent No.1 is not entitled to get maintenance *inasmuch* as she has been living in adultery.

5 The parties have filed their respective statement of assets and liabilities. The parties have also produced the documentary evidence before the family Court to justify their rival contentions. The learned judge, on appreciation of the material, while deciding the application for interim

maintenance, observed that the respondents have no source of income. The learned judge further observed that the petitioner has suppressed his actual income. The learned judge, on the basis of the evidence, observed that his monthly salary could not be less than Rs.2,00,000/- (Rupees Two lacs only). On the basis of these findings, the learned judge directed the petitioner to pay the interim maintenance as stated above. The petitioner, being aggrieved by this order, has come before this Court by way of this writ petition.

6 I have heard the learned Advocate Mrs R. S. Sirpurkar for the petitioner and the learned Advocate Mr A. K. Neware for the respondents. Perused the record and proceedings.

7 The learned Advocate for the petitioner submitted that the learned judge has failed to consider the material placed

on record in proper perspective and has come to a wrong conclusion. There is no iota of evidence to establish that the monthly income of the petitioner is around Rs.2,00,000/-. The learned Advocate submitted that the finding is based on *surmises* and *conjectures*. The learned judge has failed to consider the income tax returns of the petitioner filed for three financial years. The learned Advocate submitted that the father of the petitioner sold the property to repay the bank loan. The learned Advocate submitted that the only because of the fact that the loan was borrowed by the petitioner, on the basis of some documents, it cannot be presumed that he is doing the business and is financially well-off. The learned Advocate submitted that the quantum of the interim maintenance is excessive and exorbitant. As far as the son is concerned, the learned Advocate submitted that the petitioner may not seriously contest/object that part of the order. However, it is submitted that the interim maintenance awarded to the wife is

excessive and exorbitant.

8 The learned Advocate for the respondents submitted that in the written statement, initially filed and amended subsequently, the petitioner has taken a self-contradictory stand. In the initial written statement, filed by him, he has admitted that he was doing business, however on account of the cantankerous behavior of respondent No.1 and the COVID-19 pandemic, he suffered heavy monetary losses in his business. It is pointed out that in his written statement he has admitted that to tide over the financial crisis he obtained the financial assistance from the financial institutions. The learned Advocate submitted that in this written statement he has commented about the expenditure he was forced to make by the petitioner on foreign tours and for the purchase of other articles. The learned Advocate submitted that the learned judge of the family Court, on the basis of the material on record, has

quantified the just, proper and reasonable interim maintenance. The learned Advocate submitted that the petitioner is well qualified. He is B.E., M.B.A. from the university of Bedfordshire of United Kingdom. His parents are not dependent on him. It is submitted that as on date in the Government record the company is in the name of the petitioner and his family members. He is shown in the Government record as the managing director of the said company and his parents are shown as directors of the said company. The learned Advocate submitted that the main application is ripe for recording the evidence. It is submitted that considering the status and position of the parties, the petitioner is required to make a provision for their maintenance. In short, the learned Advocate submitted that all the relevant factors required to be considered while quantifying the maintenance have been taken into consideration by the learned judge.

9 I have bestowed thoughtful consideration to the submissions. I have gone through the record and proceedings. In my view, the observation made by the learned judge of the family Court that the petitioner has not come before the Court with clean hands appears to be justified. The petitioner is B.E. and M.B.A. from London. It is his case that his father has sold the company and therefore, he is without any employment. The learned judge, keeping in mind his qualification, has disbelieved this contention. It is to be noted that the Court has to consider while determining the amount of maintenance the status of the parties, the reasonable needs of the claimant, the income of the claimant and the lifestyle accustomed to by the claimant while staying with the husband. The provision under Section 125 of the Cr.P.C. is a part of social beneficial legislation. No evidence has been placed on record by the petitioner to establish that respondent No.1 has a source of income. It is also not his case that he has made any provision

for the maintenance of his wife and son. It is also not his case that he has made any provision for food, clothing, shelter, education, medical attendance and treatment etc. of the respondents. It is the duty of the petitioner to make a provision for the maintenance of the respondents.

10 The learned judge has appreciated the self contradictory pleadings of the petitioner in his written statement. When he amended his written statement for the first time, he incorporated the averments with regard to the losses in the business on account of COVID-19 as well as on account of the cantankerous behavior of respondent No.1. He has also admitted that on account of the loss he could not pay monthly EMI. This fact would show that he had borrowed the loan. It has come on record that the loan amount of Rs.47,00,000/- (Rupees Forty Seven Lacs only) has been repaid by the company. Similarly, the account shows that near about

amount of Rs.70,00,000/- (Rupees Seventy Lacs only) is payable by the father of the petitioner. It is to be noted that such a loan cannot be sanctioned unless and until the documents of income etc. are produced. It therefore goes without saying that such a huge amount cannot be borrowed unless and until the person has a source of income and capacity to repay the same. It is therefore apparent that all the facts with regard to the loan and repayment of the loan and the source of income to repay the loan have not been categorically stated. The learned judge, on the basis of the material on record, has concluded that a qualified person like the petitioner would be earning Rs.2,00,000/- or more per month. In my view, this finding at this stage does not warrant interference. The respondents have no source of income. The petitioner is well qualified. His contention that he is jobless cannot be believed. His income tax return, if considered at this stage in *juxtaposition* with the loan amount borrowed by him and

repaid by him, is sufficient to find favour with the observations made by the learned judge on this point.

11 It is to be noted that while determining the amount of maintenance, the Court has to consider the status of the parties, the reasonable needs of the claimant, the independent income and property of the claimant and the number of persons the non-applicant is required to maintain. The respondent No. 1 is well qualified. The petitioner and respondents are from the elite class of the society. The respondents are expected to lead the lifestyle similar to one accustomed to by them while residing with the petitioner at the matrimonial home. The parents of the petitioner are not dependent on him. Keeping in mind the present price index, the learned judge was fully justified in awarding the interim maintenance as stated above.

12 The learned Advocate for the petitioner submitted

that respondent No.1 is living in adultery. The learned Advocate submitted that the screenshots of the text messages are placed on record to fortify this contention. In the submission of the learned Advocate for the petitioner, the wife, who is living in adultery is not entitled to get the maintenance.

13 The learned Advocate for respondent No.1 submitted that the credibility and authenticity of those text messages are under challenge. The petitioner would be required to prove this fact beyond doubt. The learned Advocate further submitted that on the basis of the mere allegations, the defence of adultery *put forth* by the petitioner cannot be accepted.

14 The petitioner has indeed stated in his written statement that respondent No.1 is living in adultery. Respondent No.1 has categorically denied this fact. It is her

contention that in order to avoid the payment of interim maintenance, false allegations have been made against her. In my view, as far as this point is concerned, the same cannot be gone into at this stage. The petitioner would be required to prove this fact by leading cogent evidence. On the basis of the available material, *prima facie* opinion cannot be expressed in favour of the petitioner on this point. Therefore, the learned Judge was right in rejecting the contention of the petitioner on this point.

15 It is further pertinent to note that so far the petitioner has not paid the amount of interim maintenance to the respondents. Similarly, the application filed by the respondents for maintenance has reached the stage of evidence. The matter can therefore be disposed of within a short time. The parties would be required to adduce the evidence to prove their rival contentions. The learned Judge of the family Court

has made it clear that if the respondents are getting maintenance in any other proceedings with effect from 04.01.2022 onward, then it shall be merged in the interim maintenance awarded in this proceeding. In the backdrop of the material on record, I do not see any reason to interfere with the order passed by the learned judge of the family Court. The interim maintenance quantified by the learned judge is just, proper and reasonable. In view of this, I conclude that there is no substance in the petition. The writ petition is accordingly **dismissed.**

16 Rule stand discharged.

(G. A. SANAP, J.)

Namrata