



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

917 CRIMINAL WRIT PETITION NO. 539 OF 2023

Sandeep S/o Eknath Dhamapurkar,
Age: 44 years, Occ: Service,
R/o: Building No.3, 3rd Floor,
Pratikshanagar, Old Mhada Building,
Near Mala Garden, above Bhavrao Patil School,
Sion (E), Mumbai- 400022.

**.....Petitioner
(Original. Res.)**

Versus

Jyoti W/o Sandeep Dhamapurkar,
Age: 42 years, Occ: Householdm
R/o: R No. B-39, Shethiya Apartment Thakurwadi,
Dombivali (W), Kalyan- 421202,
A/P C/o: Tushar Babu Pradhan,
Rameshwar Colony, Mehrun Jalgaon,
Tq. Dist.-Jalgaon

.....Respondent

...

Mr. Rahul Malhari Gaikwad, Advocate for Petitioner
Mr. Akram Inamdar h/f Mr. S. S. Kazi, Advocate for Respondent

CORAM : Y. G. KHOBRAGADE, J.

DATE : 03.01.2025

Oral Judgment :-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, it is heard finally at the stage of admission.

2. By the present Petition, the Petitioner takes exception to the order dated 31.01.2023 passed below Exh. 14 in Petition No. E-35 of 2021 by the learned Family Court, Jalgaon, thereby directed the present Petitioner to pay interim maintenance of Rs. 10,000 per month to the Respondent/wife from the date of the application till disposal of the Petition.

3. The Petitioner is the original non-applicant and the Respondent is the original applicant in Criminal Misc. Application No. E-35 of 2021. Facts giving rise to the present petition are that, the marriage between the Petitioner and the Respondent was solemnized on 05.05.2019 at Nalasopara (W) Mumbai as per the Hindu Customs and Rituals. After marriage, the Respondent cohabited with the present Petitioner. It is the contention of the Respondent/original applicant that, the present Petitioner harassed her on one or other grounds as described in the Criminal Misc. Application No. E-35 of 2021. On 27.01.2021, the Respondent issued a legal notice to the Petitioner and called upon him for restitution of conjugal rights. On 03.05.2021, the present Petitioner brought the Respondent at her brother's house, where the Petitioner allegedly assaulted her with fist and blows and driven out of her matrimonial house. Since then she

was residing at her brother's house at Jalgaon. Thereafter, the Respondent filed a proceeding under Section 125 of the Criminal Procedure Code before the Family Court Jalgaon and prayed for maintenance at the rate of Rs. 20,000 per month. The Respondent also filed Exh. 14 application for grant of interim maintenance of Rs. 20,000. On 31.01.2023, the learned Family Court passed the impugned order and directed the Petitioner to pay interim maintenance of Rs. 10,000 per month to the Petitioner from the date of application till disposal of the Petition.

4. The learned counsel appearing for the Petitioner canvassed that though the Petitioner is getting salary of Rs.72,000 per month, however, the Petitioner has to pay Rs. 50,000 towards EMI of Home loan, so also, the Petitioner has to maintain his old aged father, hence, remaining amount of Rs. 22,000 is not sufficient to the Petitioner to survive in a city like Mumbai. Therefore, interim maintenance granted in favour of the Respondent to the tune of Rs. 10,000 is exorbitant and not justifiable.

5. Per contra, the learned counsel for the Respondent wife supported the findings recorded by the Trial Court and submits that the amount of Rs. 10,000 towards interim maintenance is very

meager amount considering high prices of daily needs and as such the Petitioner is getting salary of more than Rs. 72,000/- under the 7th Pay Commission. Therefore, considering monthly salary of the Petitioner, the learned trial court granted interim maintenance of Rs. 10,000/-, which is just reasonable, hence, prayed for dismissal of the Petition.

6. In the case in hand, the only question arose for determination is that, what would be appropriate quantum of amount of interim maintenance? In the case of *Kalyan Dey Chowdhury V Rita Dey Chowdhury Nee nandy (2017) 14 SCC 200*, the Hon'ble Supreme Court considered the case of *Kulbhushan Kumar V. Raj Kumari (1970) 3 SCC 129*, wherein it has been held that, the wife is entitled for 25% of husband's salary as maintenance.

7. In the case in hand, the Petitioner/husband has not denied about existence of matrimonial relations with the Respondent/wife. The Petitioner is undisputedly working as a Professor in Gurunanak Higher Secondary Junior College and getting net salary of Rs. 72,000. However, the Petitioner claimed that, he is paying Rs. 50,000 EMI towards the home loan and only Rs. 22,000 salary remained at his disposal. Therefore, the said amount is not sufficient for him to survive in the Mumbai City.

8. Needless to say that, the payment of EMI towards the home loan or any legal liabilities cannot be considered while determining issue of quantum of maintenance to the wife. As per the law laid down in the case of ***Kalyan Dey*** cited (supra), granting of Rs. 10,000/- towards interim maintenance does not exceed 25% of salary of the Petitioner, which does not appear illegal, bad in law. Therefore, no interference is called at the hands of this Court to disturb findings of the learned trial court. Therefore, the present Criminal Writ Petition is dismissed. Accordingly, Rule is discharged. The earlier interim order granted by this Court shall stand merged in the final order.

[Y. G. KHOBRAGADE, J.]

HRJadhav