



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

CRIMINAL WRIT PETITION NO.368 OF 2024

SHRI. MUJAHID IQBAL S/O MOHD ISMAIL
VS
AFRAH D/O MUJHID IQBAL

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. S.S. Sitani, Advocate for the petitioner/s
Mr. Sanket Bhalerao, Advocate for the respondent

CORAM : ANIL S. KILOR, J.

DATE : 20th FEBRUARY, 2025

1. The application moved by the respondent for interim maintenance came to be partly allowed by the learned 8th Jt.Civil Judge (Sr.Dn.) and A.C.J.M., (SpI. Court of P.W.D.V. Act) Nagpur and thereby, the petitioner is directed to pay Rs.15,000/- per month to the respondent, as interim maintenance from the date of application i.e. from 05.08.2017 till the final disposal of the main application.

2. This order is the subject matter of appeal i.e. Criminal Appeal No.127 of 2022 which is pending, on the grounds mentioned in the appeal. One of the grounds is that the respondent is earning and there is an evidence that she is regularly depositing amount in the bank account of her mother.

3. The petitioner, therefore, moved an application in the appeal for stay to the impugned order, which came to be rejected vide order below Exh.4 dated 26.03.2024,

which is the subject matter of challenge in this writ petition.

4. I have heard both the counsel for the respective parties.

5. Admittedly, the appeal is pending. As such, adjudication of appeal on merit will be done by the learned Appellate Court.

6. At this stage, as the learned counsel for the petitioner, by filing pursis, expressed desire to pay the amount of interim maintenance, without prejudice to his rights involved in the appeal, from the date of the order dated 27.04.2022 within 10 months. According to him, after the entitlement of the respondent is decided in appeal about grant of maintenance from the date of application i.e. from 05.08.2017, he would take appropriate steps as per law.

7. Presently, the issue is whether the stay was rightly rejected by the learned Appellate Court.

8. However, since the petitioner has expressed his desire to pay the interim maintenance without prejudice to his rights involved in the appeal, from the date of the order dated 27.04.2022, I am of the opinion that as the learned Appellate Court has not yet decided the appeal on merits, any finding on merits by this Court, in the present matter, will cause prejudice to either of the party.

9. In the circumstances, by accepting the undertaking given by the petitioner, the writ petition can be disposed of.

Accordingly, I pass the following order:

- (i) The writ petition is **partly allowed**.
- (ii) The order below Exh.4 dated 26.03.2024 passed by 5th District and Sessions Judge, Nagpur in Misc. Criminal Appeal No.127 of 2022, is quashed and set aside to the extent for the period from 05.08.2017 till 26.04.2022.
- (iii) The order below Exh.1 -A dated 27.04.2022 passed by the learned 8th Jt.Civil Judge (Sr.Dn.) and A.C.J.M., (Spl. Court of P.W.D.V. Act) Nagpur is hereby modified and it is directed that the petitioner shall pay Rs.15,000/- as interim maintenance to the respondent from 27.04.2022.
- (iv) It is further directed that the petitioner shall clear arrears of interim maintenance from 27.04.2022 till this date, by paying substantive amount every month and in any case pay full arrears in 10 months as per the undertaking. Henceforth, the petitioner shall pay the interim maintenance to the respondent, regularly every month.

Accordingly, the writ petition is disposed of.

(ANIL S. KILOR, J.)