



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 147 OF 2025

Suraj s/o Radheshyam Shrivastav,
Aged about 50 Years, Occ. Nil,
R/o Behind Shevanta Lawns, Vathoda
Layout, Kharbi Road, Umred Road,
Nagpur

PETITIONER

Versus

Smt. Meera w/o Suraj Shrivastav,
Age about 44 Years, Occ., ,
R/o C/o. Namdeorao Kalbande, Near
Milind Bouddha Vihar, Rambagh,
Nagpur

RESPONDENT

Ms. G.J. Lande, Advocate for the Petitioner.
Ms. P.M. Masodkar, Advocate for the Respondent.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 31st JULY, 2025.

ORAL JUDGMENT :-

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally
by the consent of learned Counsel appearing for the respective
parties.

3. By this Writ Petition, the Petitioner has challenged the order dated 27.04.2021 passed below Interim Application No. 160/2019 in Petition No. E-105/19 by the Family Court No.4, Nagpur granting maintenance to the present Respondent at the rate of Rs. 3,000/- per month from the date of application till decision of main petition.

4. The brief facts of the present Petition are as follows:-

4(i). The Petitioner and the Respondent are the husband and wife. Their marriage was performed on 25.04.2006 at the Sub Registrar's Office, Nagpur. As per the contention of the Respondent she was physically and mentally abused by the present Petitioner and she was also abused in a filthy language by demanding the illegal demand. He was also addicted by bad habits like drinking liquor and under the influence of the liquor he used to beat her, he also suspected her character, and therefore, she constrained to leave the matrimonial house, and therefore, she filed the Petition No.E-105/2019 for grant of maintenance.

4(ii). It is contended that, the present Petitioner is a driver

in a private firm and drawing salary approximately Rs. 15,000/- to 18,000/-. After the present Respondent was driven out of the house he has not made any provision for her maintenance, and therefore, she constrained to file the application and prayed for grant of interim maintenance till the disposal of the main petition.

4(iii). The said petition is strongly opposed by the present Petitioner by filing written statement. He has admitted the relationship in the written statement, however, it was contended that the Respondent has performed the marriage as first marriage was in existence, and therefore, she is not entitled for the maintenance. It is further contended that, the present Respondent is also running a tea stall, and therefore, she is earning more than Rs.20,000/- per month, and therefore, she is not entitled for any maintenance.

5. After hearing both the sides and on perusal of the contents of the Application and written statement, the Family Court pleased to consider the petitioner for grant of maintenance and granted maintenance at the rate of Rs.3,000/- per month from the date of the Application i.e. from

06.03.2019.

6. Being aggrieved and dissatisfied with the same, the present Petition is filed challenging the order passed by the Family Court.

7. Heard learned Counsel for the Petitioner, who submitted that the marriage of the present Respondent with the Petitioner itself is null and void as she has suppressed the fact that her first marriage is still in existence. She invited my attention towards the application filed before the Registrar and submitted that in the said application she has submitted that she is unmarried. It is further contended that, the present Petitioner has preferred the divorce Petition before the Family Court, which is still pending. It is further submitted that, as the Respondent is earning by running a tea stall, and therefore, she is not entitled for any amount towards maintenance and with this submission it was prayed that the order passed by the Family Court deserves to be quashed and set aside.

8. *Per contra*, the learned Counsel for the Respondent

invited my attention towards the written statement and submitted that the marriage itself is admitted as well as the relationship between the present Petitioner and the Respondent is admitted by the present Petitioner while filing the reply before the Family Court. She also invited my attention towards the fact that even during the cross-examination of the present Respondent it was brought on record that though she was earlier married with one Chhatrapati Dhoke in the year 1991 but she took her divorce from her first husband. In the cross-examination, a question was put to the present Respondent as to her earlier marriage, which was admitted but she has also contended that her marriage is already dissolved and thereafter she performed the marriage with the present Petitioner, therefore the marriage between the present Petitioner and the Respondent is a legal marriage. Moreover, the present Petitioner is working as a driver and drawing amount of Rs. 15,000/- to 18,000/- approximately, therefore he is having sufficient means to pay the maintenance and no reason is there to interfere with the order passed by the Family Court.

9. In support of her contention she placed reliance on

Shamima Farooqui Vs. Shahid Khan, reported in (2015) 5 SCC 705, whereas the learned Counsel for the Petitioner placed reliance on *Swapnanjali Sandeep Patil Vs. Sandeep Ananda Patil, decided on 06.03.2019*.

10. On perusal of the Petition it reveals that the order of interim maintenance was challenged by the Petitioner. The contention of the Respondent in the application was that she is a legally wedded wife of the present Petitioner and as the present Petitioner has subjected her for ill-treatment and not made a provision for her maintenance as she was driven from the house and she has no source of income, and therefore, she is entitled for grant of maintenance.

11. *Per contra*, it is the contention of the present Petitioner that the marriage itself is not a legal marriage, and therefore, she is not entitled for maintenance. On perusal of the reply filed on the interim application shows that the present Petitioner has admitted in a written statement that the relationship is admitted and they are husband and wife, as far as the contention that the marriage itself is null and void is not contended in the said reply. The certified copy of the evidence of

the present Respondent which is placed on record by the learned Counsel for the Petitioner shows that she was cross-examined on this aspect and it came in the evidence that she has already obtained divorce from the previous husband and thereafter she performed marriage with the present Petitioner. Thus, as far as the contention of the present Petitioner that there was no relationship as husband and wife and the marriage itself is null and void, is not substantiated by any material. As far as the grant of interim maintenance is concerned, admittedly the Family Court on the basis of the guess work granted the amount of maintenance.

12. Learned Counsel for the Respondent rightly relied upon the decision of ***Shamima Farooqui*** (supra), wherein it is held as under:

“Section 125 of Cr.PC. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat.

This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.”

13. Learned Counsel for the Petitioner also relies on decision of ***Swapnanjali Sandeep Patil*** (supra). On going through the facts of the cited case it reveals that, it was the inter caste marriage and the fact as to the earlier marriage and the marriage is in existence is not disclosed therein. Thus, the facts of the present case and the facts of the cited case are not identical, and therefore, it is not applicable to the present Petitioner.

14. Now, coming to the aspect of grant of maintenance to the present Respondent. On perusal of the evidence on record which is adduced in the nature of the application and the reply filed. Admittedly, the present Petitioner has admitted the relationship by filing the reply, and therefore, the contention of the present Petitioner is that the marriage itself is null and void cannot be entertained in the light of the fact that he has not contended the same in his reply filed before the Family Court.

15. The aspect of grant of maintenance was considered by the Hon'ble Apex Court in the case of ***Kiran Jyot Maini Vs. Anish Pramod Patel, (2024) 7 SCR 942***, wherein the Hon'ble Apex Court has considered the facts as follows:

“The status of the parties is a significant factor, encompassing their social standing, lifestyle, and financial background. The reasonable needs of the wife and dependent children must be assessed, including costs for food, clothing, shelter, education, and medical expenses. The applicant’s educational and professional qualifications, as well as their employment history, play a crucial role in evaluating their potential for self sufficiency. If the applicant has any independent source of income or owns property, this will also be taken into account to determine if it is sufficient to maintain the same standard of living experienced during the marriage. Additionally, the court considers whether the applicant had to sacrifice employment opportunities for family responsibilities, such as child-rearing or caring for elderly family members, which may have impacted their career prospects.”

16. In another judgment in the case of ***Rajnish vs. Neha (2021) 2 SCC 324***, wherein the Hon'ble Apex Court has elaborated the broad criteria which is mentioned as below:

- “i. Status of the parties, social and financial*
- ii. Reasonable needs of the wife and dependent children.*
- iii. Qualifications and employment status of the parties.*

iv. Independent income or assets owned by the parties.

v. Maintain standard of living as in the matrimonial home.

vi. Any employment sacrifices made for family responsibilities.

vii. Reasonable litigation costs for a non-working wife.

viii. Financial capacity of husband, his income, maintenance obligations, and liabilities.”

17. In the light of the above factors narrated by the Hon’ble Apex Court, if the facts of the present case are taken into consideration, admittedly the contention of the Petitioner that the marriage itself is null and void and is not sustainable as he has already admitted in his reply as to the relationship between them as husband and wife. At the interim stage, *prima facie* case has to be looked into and the statement of the present Petitioner before the Court and the contention of the present Respondent while filing the application requires to be looked into, as the relationship itself is admitted by the present Petitioner, now his contention cannot be considered that there is no matrimonial relationship between them.

18. The learned Family Court has considered that the present Petitioner is earning and drawing an income of

Rs. 15,000/- to 18,000/- per month as he is working as a driver and on that basis granted maintenance at the rate of Rs. 3,000/- per month. As far as the contention of the present Petitioner that she is also earning by running a tea stall is concerned, admittedly there is no material to support or substantiate the said contention. Even accepting that if the wife is earning something for leading her life or for a survival, that itself is not sufficient to deprive her from granting maintenance, merely because wife is earning for her livelihood some amount is not sufficient to deny her any further maintenance. As already observed that the Family Court has considered the income of the present Petitioner and thereafter granted the amount of maintenance. Admittedly, the prices of the essential commodity are now days touching to the sky, in the said circumstances the maintenance amount granted by the Family Court cannot be said to be exhaustive, exorbitant and harsh one, and therefore, no interference is called for.

19. It is submitted by the learned Counsel for the Respondent that, though the order passed by the Family Court, the Petitioner has not paid a single penny pending towards the maintenance and total arrears are more than Rs. 2 Lakhs.

20. Considering all these aspects, the Writ Petition being devoid of merits is liable to be dismissed. Accordingly, Writ Petition is **dismissed**.

21. The Petitioner is directed to pay the entire arrears within six weeks from the date of this order.

22. The Respondent is at liberty to recover the amount by filing in execution petition.

23. Rule is discharged.

24. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte