

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

Criminal Writ Petition No. 875/2015

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Rajnish s/o Rajendrapal Naidu,
Aged about 44, Occ: Business,
R/o 301, Pritam Buxy,
Pride Apartment, Adjacent to
NVCC, Temple Road, Civil Lines,
Nagpur - 440 001. ..

PETITIONER

.. **Versus** ..

1. Mrs. Neha w/o Rajnish Naidu
(Joshi), Aged about 31 years,
Occ: Interior Designer,
R/o 201, Prashant Sahanivas,
Prashant Nagar, Ajani,
Nagpur 440 015.
2. Yunay s/o Rajnish Naidu,
through natural guardian mother
the Petitioner No.1. ..

RESPONDENTS

Mr. Gopal B. Sawal, Advocate for Petitioner.
Dr. Renuka S. Sirpurkar, Advocate for Respondents

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CORAM : MANISH PITALE, J.
DATE OF RESERVING JUDGMENT : AUGUST 06, 2018.
DATE OF PRONOUNCING JUDGMENT : AUGUST 14, 2018

JUDGMENT

1. By this writ petition, the petitioner (husband) has

challenged order dated 24/08/2015 passed by the Family Court, Nagpur, granting interim maintenance to the respondents (wife and child), during the pendency of application filed by the respondents for grant of maintenance under section 125 of the Cr.P.C. The Family Court has directed that the petitioner shall pay interim maintenance of Rs. 15,000/- per month from 01/09/2013 to the respondent No. 1 wife and Rs. 5000/- per month to respondent No. 2 child from 01/09/2013 to 31/08/2015 and thereafter to pay to the child Rs. 10,000/- per month from 01/09/2015 till further orders.

2. While issuing notice in this writ petition, on 23/11/2015, this court had granted stay to the effect and operation of the said order of the Family Court, subject to the petitioner depositing interim maintenance for the respondents at Rs. 10,000/- per month. The said amount has been paid regularly by the petitioner to the respondents and there is no dispute about the same.

3. Mr Gopal Sawal, learned counsel appearing on behalf of the petitioner submitted that the impugned order passed by the Family Court was unsustainable because it was based on conjectures and surmises. It was submitted that the petitioner

had placed on record his income tax returns for the assessment years 2013 - 14, 2014 - 15 and 2015 - 16, to demonstrate that his income was meager and that he was not in a position to pay interim maintenance as directed by the Family Court. It was submitted that the respondents had tried to show that the petitioner was a well to do businessman, when in reality, the business belonged to family of the petitioner and that he himself was doing a job for his survival and that he was not being handsomely paid for the same. It was further submitted that the respondent No. 1 was a well-qualified architect and that she was deliberately sitting at home to show as if she had no source of income. It was submitted that in these circumstances, the impugned order deserved to be set-aside.

4. On the other hand, Dr. Renuka Sirpurkar, learned counsel appearing on behalf of the respondents submitted that the Family Court had correctly taken into consideration the material placed on record to come to the conclusion that the petitioner could easily afford to give the quantum of maintenance as directed in the impugned order. It was submitted that the income tax returns on which the petitioner was placing reliance pertained to the years when the dispute between the parties had already started and the returns were

deliberately prepared in such a manner so as to show as if the income of the petitioner was meager. It was pointed out that the petitioner belonged to a very well-to-do business family, of which he was an active member and that situation of penury was being artificially created by the petitioner, so as to deprive the respondents of their rightful claim towards interim maintenance. It was submitted that a detail and elaborate exercise was not expected to be carried out by the Court while deciding the quantum of interim maintenance, as by its very nature it was temporary and when the Family Court in the present case had taken into account all relevant factors, no interference was warranted in the impugned order.

5. Heard counsel for the parties. Before examining as to whether the impugned order passed by the Family Court is justified, it would be relevant to refer to the legal position as regards the factors required to be taken into consideration by the Court while deciding grant of interim maintenance and the quantum thereof. In the case of **Manish Jain Vs. Akanksha Jain (2017) 15 SCC 801**, the Hon'ble Supreme Court has categorically laid down that a wife cannot be deprived of interim maintenance on the ground that she was educated and that she could support herself. It was also laid down that the

financial position of the parents of the wife was also immaterial. The judgment of the High Court, which was upheld by the Hon'ble Supreme Court in the said judgment took note of the fact that the respondent (husband therein) was hiding his income by trying to show himself as a pauper and it was further noted that it had now become a matter of routine that when an application for maintenance is filed by the wife, the husband suddenly becomes poor and it is shown as if he is separated from his family members who have a good business and number of movable and immovable properties in their name.

6. The said judgment of the Hon'ble Supreme Court was referred to and relied upon by this court while allowing Criminal Writ Petition No. 2270 of 2016 (**Pinky Mahinder Kumar Jain Vs. The State and another**). It was noted by the Hon'ble Supreme Court in the case of **Neeta Rakesh Jain Vs. Rakesh Jeetmal Jain** (Civil Appeal No. 5660 of 2010) that since an order for interim maintenance by its very nature was temporary, a detail and elaborate exercise by the Court may not be necessary. It is also laid down in various judgements that some guesswork is not ruled out while estimating the income, when all the sources of income are not disclosed.

7. Applying the aforesaid broad principles to the facts of the present case, it appears that the petitioner has deliberately held back relevant information pertaining to his income and financial status and an effort has been made to put the entire responsibility on the respondents to show the extent of income of the petitioner. The material on record clearly gives an impression that the petitioner is deliberately creating a scenario of penury insofar as his financial status is concerned, only with a view to deprive the respondents of grant of interim maintenance. The learned counsel appearing for the petitioner has placed emphasis on the aforesaid income tax returns to claim that the income of the petitioner is such that he cannot pay the quantum of interim maintenance granted by the family Court. It is relevant that income tax returns pertaining to earlier years have not been placed on record by the petitioner. The Family Court, in the impugned order, has specifically noted that when the petitioner was called upon to produce his income tax returns from 2006 - 2007 onwards, he avoided to do so. This becomes relevant because documents have been placed on record by the respondents to show that the petitioner and his family have been running a business concerning immovable properties and that large sums have been earned from the said

business over a period of time and further that the petitioner is certainly an active member of such family business. The petitioner has placed on record and relied upon income tax returns pertaining only to those years when the dispute between the parties started. In these circumstances, the said income tax returns cannot be made a basis to find fault with the findings rendered by the Family Court.

8. It has been contended on behalf of the petitioner that the Family Court has reached findings based on conjectures and surmises. As noted above, while deciding the question of interim maintenance, the Court is not expected to carry out a detailed and elaborate exercise. In the present case, the Family Court has taken into consideration the record to find that the petitioner has been avoiding to place on record material that would divulge his actual financial status. In this situation, some guesswork cannot be ruled out in estimating the income and financial capacity of the petitioner-husband.

9. As the petitioner was avoiding to place on record relevant material to show his income and financial capacity, the respondents placed before the Family Court and this Court, the material that they could produce to indicate the same. The

Family Court found that photographs of the marriage ceremony and deals of crores of rupees undertaken by the family of the petitioner as also the business activities, demonstrated the lifestyle enjoyed by the petitioner when he got married to the respondent No. 1. It was correctly observed by the Family Court that if the parents of the petitioner had really gone to live in an ashram, it was strange that the business deals and proceeds from sale of immovable property continued to be in the name of the father of the petitioner. It was noted by the Family Court that the petitioner had been going to various places nationally and internationally for wildlife photography, which further indicated the kind of lifestyle enjoyed by him. It was on this basis that the Family Court passed the impugned order.

10. As the petitioner deliberately suppressed material from the Court, no fault could be found with the findings given by the family Court in the impugned order, particularly when the question of interim maintenance was under consideration. The Family Court was not supposed to hold a detailed and elaborate enquiry to arrive at findings and the petitioner will have opportunity to place on record material when the application under section 125 of the Cr.P.C. is finally decided. This Court has also perused the material placed on record. It

indicates that the petitioner has incurred huge expenditure towards foreign trips. This is evident from copies of passport made available to this Court. In fact, the Family Court recorded that despite opportunities the petitioner did not produce a copy of the passport and he only supplied the passport number. The copies of the passport produced before this court have not been disputed on behalf of the petitioner. A perusal of the same shows that the petitioner has been travelling to Kenya, Zimbabwe, Botswana and to the United Kingdom. The category of Visa issued to the petitioner by the United Kingdom clearly shows that the same was issued for business purposes. The petitioner has sought to explain the said visits by claiming that he had gone there in connection with his job with a concern in Gurgaon. The same reason is given by the petitioner to explain away the huge amounts of money withdrawn and spent from a number of bank accounts held by him, details of which were placed on record on behalf of the respondents. It was claimed by the petitioner that the said amounts were collected from clients and spent by him in his endeavour to arrange trips for interested persons to wildlife sanctuaries all over the world. The said explanation is not convincing, in view of copies of certain Facebook post placed on record by the respondents, showing the petitioner flaunting photographs of wildlife taken

in various parts of the world, using expensive camera and lens equipments. The Facebook post was not denied by the petitioner.

11. It was also pointed out on behalf of respondents that an order of shared household was passed against the petitioner in a proceeding under the provisions of the Protection of Women from Domestic Violence Act, 2005 and that the petitioner had deliberately moved into a smaller accommodation, only to deprive the respondents from enjoying effective relief under the said order. This Court is refraining from making any observations regarding the said order, because it is not subject matter of the present proceedings. Yet, such conduct of the petitioner does indicate that he is not sparing any effort to deprive the respondents of enjoying relief granted by competent courts. Although it is correct that material placed on record before the Family Court and this court by the parties would be subject matter of scrutiny and the final decision in the main application filed under section 125 of the Cr.P.C. by the respondents, which is pending, in order to decide the quantum of interim maintenance, the respondents have certainly succeeded in demonstrating that the petitioner has sufficient financial capacity to pay the

amount of maintenance directed to be paid by the Family Court in the impugned order.

12. The petitioner cannot be permitted to take advantage of the fact that the respondent No. 1 is educated. As laid down by the Hon'ble Supreme Court in the case of **Manish Jain Vs. Akanksha Jain** (supra), it is no answer to a claim of maintenance that the wife is educated and can support herself. The respondents are entitled to lifestyle similar to that of the petitioner during the pendency of the proceedings before the Family Court. The lifestyle of the petitioner is evident from the material on record as being sufficiently comfortable and the material also indicates that he can certainly afford to pay the quantum of maintenance directed by the Family Court in the impugned order. Mere reliance on aforesaid income tax returns will not come to the aid of the petitioner, when the other material on record clearly shows that he has been suppressing relevant information from the Court, only with a view to deprive the respondents of appropriate interim maintenance during the pendency of the proceedings before the Family Court.

13. In the light of the above, it is found that the Family Court did not commit any error in passing the impugned order.

Consequently, this writ petition is dismissed and the impugned order stands confirmed. Accordingly, the petitioner shall start paying interim maintenance to the respondents from September 2018 at the rate decided by the family Court in the impugned order. The petitioner shall also pay the amount towards arrears, after deducting the amounts paid by him in terms of interim order dated 23/11/2015 passed by this court, in 24 equal monthly installments, starting from September 2018. In case of any default, the respondents shall be entitled to recover entire dues at once. The other clauses of the impugned order passed by the trial court shall remain the same.

(Manish Pitale, J.)

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halwai/p.s.