

**ORDER BELOW EXH.05 IN CRI. M.A.NO. 209/2019**

Applicant has sought interim reliefs u/s. 12, 18(d)(e)(f), 19, 20(1)(b)(d), 22 and 23 against the respondents.

02. In brief the case of applicant is that she is wife of respondent no. 1 and their marriage has been performed on 25/10/2014 at Kerala. From the date of marriage the applicant as well as respondents are in domestic relations. The hotel accommodation, food, transportation expenses were borne by the applicant's father. The respondent no. 1 had utter disregard for his own child and wife's welfare, as he was only concerned about his career and financial status. The actions of respondent nos. 1 to 3 were designed to repeatedly harass the applicant in order to deliberately sabotage the applicant's sense of self work and self esteem by spreading false rumors and accusations against her. The respondent no. 1 started to constantly fight, even on trivial issues through out the applicant's pregnancy and started threatening her with divorce. She decided to continue working in spite of her poor health in order to escape the constant harassment at home and to ensure some financial safety for herself and for her unborn child, in case her husband acted on his threat to abandon or divorce the applicant during her most vulnerable period. The respondents from the said marriage committed domestic violence with the applicant by way of physical abuse, verbal abuse, emotional abuse, economic abuse, mental abuse to the applicant as discussed in the application and neglecting her as well as her son by way of not providing basic necessities of life. She has annexed necessary documents in respect of the act of domestic violence committed by the respondents. She had been constantly traumatized over a period of time at the hands of the respondents. She further states that, she prima facie disclosed the act of domestic violence

committed by respondents. The respondent no. 1 is being paid a heavy salary and also has a two BHK house in Pune. He has also a huge bungalow approximately 3000 Sq. Ft. in Kerala. He has purchased 6 acres of agricultural land in Kerala before marriage and post marriage purchased two more acres of land. The respondents are cultivating on this land cash crops like rubber plantation, pepper, cardamom, cocoa etc. Thus, earning a huge profit and still the respondent no. 1 has been neglecting to maintain the applicant and their son Faustin. He had rented his newly purchased flat in River Residency and earned the complete rent for the flat. Despite having so many properties and a flat in a Pune, the respondent no. 1 has shamelessly, left the applicant and their son when he was merely 10 months old in Pune and has continued to harass her for more money.

03. Applicant further states in brief that the constant harassment and ill-treatment at the hands of the respondents have made it highly impossible for the applicant to continue staying with respondent no. 1. It is the bounden duty of the respondent no. 1 to financially support to the applicant and their son to provide the same life style that he himself and other respondents are leading. It is very difficult to her to manage all financial burden alone. She requires interim maintenance of Rs.42,000/- per month to support herself and her son and maintain them in similar standard as to what standard the respondent no. 1 is lavishly living until disposal of final application. The respondents may kindly be restrained from indulging in any further act of commission or omission that may cause any kind of domestic violence to the applicant; they may kindly be restrained from entering into the flat and or society premises wherein the applicant is currently staying, or may reside in future; they may kindly be restrained permanently from entering and or disturbing peaceful

possession of the applicant, alternately to provide her own decent accommodation to the similar standard as that of the respondent no. 1 until the present matter is finally decided; the applicants may kindly be allowed to temporarily retain the said flat at Pune or alternately to sell and divide the sale proceeds equally between the applicant no. 1 and respondent no. 1 before the main application is finally decided; the respondent nos. 1 to 3 may kindly be restrained from alienating, encumbering, creating any third party interest or disposing any of respondent no. 1's movable and immovable properties till the final disposal of the present application; the respondent nos. 1 to 3 may kindly be restrained from uploading any pictures, videos and or any other messages in any type of social media such as to tarnish her image/name within relatives, friends or any other social circle and an interim relief by directing the respondent no. 1 to obtain independent medical insurance/cashless policy for the applicants covering OPD medical expenses besides hospitalization expenses be granted. Contending all these grounds applicant has prayed for grant of this application.

04. After service of notices, the respondents have appeared through their Counsel and have filed their say vide Exh. 22. They in brief submitted that, the petition and the application filed by the applicant is false and hence, denied in its entirety. All allegations made by the applicant in an application are false and hence, denied by the respondents. Respondent no. 1 despite of being and working in Pune, the applicant never cohabited with the respondents thus ending the promising beginnings of a happy marriage into a grotesque disappointment. The reason why he left for Kerala was partly due to belligerent attitude of the applicant towards the parents of respondent no. 1, non co-habitation on part of the applicant and partly because of

medical condition of his mother who is a permanent resident of Kerala and needed personal care post operation. As regards to jointly purchased flat the same was purchased jointly at instance and insistence of the applicant. It was not at the behest of the respondent no. 1 as is alleged. He is ready and willing to care for the child and pay monthly maintenance for his child. However, applicant herself is earning well having sufficient means and live in ultimate comforts and does not need any maintenance much less interim maintenance from the respondent. She is put in strict proof to prove cruelty or alleged domestic violence. She too is responsible to share the maintenance of the child and her income and share needs to be quantified by the Court.

05. The respondents in their say vide Exh. 22 further submitted in brief that, they never harassed the applicant for money as alleged and therefore, she is not entitled to get the maintenance. She has refused to co-habit with the respondents and used to stay with her parents. She had deep resentment and hatred against the respondent nos. 2 and 3 who are the parents of respondent no. 1. She insisted that they should never ever come to stay with the respondent no. 1 and this has become real bane of the matrimonial discord between the applicant and the respondent no. 1. As marriage between them became a fiction, though supported with legality, recognizing this fact the respondent no. 1 applied for divorce and same was granted to him by the Court. She did not care to attend the proceedings and divorce was granted ex-parte. Therefore, as on date the applicant is not legally wedded wife of the respondent no. 1 and there is no domestic relationship existing between them. It is a matter on record that the applicant has filed application in Kerala Court for setting aside ex-parte decree of divorce which is pending for hearing and decision but,

the domestic relationship between them is non existent. The respondent no. 1 is bound to maintain his child even the applicant is responsible to maintain the child and cannot simply claim all the money for maintenance from respondent no. 1 exclusively. The applicant has not come with clean hands and has not revealed her own income. Hence, the petition as well as the application may kindly be rejected with costs. Contending all these grounds, the respondents have prayed for the rejection of the application.

06. Upon hearing the Ld. Counsels for applicant and respondents as well as on perusal of record, following points for determination arose for my consideration. I have recorded my findings to them along with the supporting reasons as mentioned as under :

<b>No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
01.	Do the applicants prove that they are entitled to the interim monetary relief?	Partly yes to the extent of applicant no. 2 Faustin only.
01A	If yes, at what rate ?	@ Rs.20,000/- per month.
02.	Does the applicant no. 1 prove that she is entitled to get the interim reliefs prayed by her in the Para no. 91 (ii), (iii), (v) to (x) in the petition vide Exh. 05?	No.
03.	What order ?	Application is partly allowed.

### REASONS

#### AS TO POINT NOS. 01 AND 1A :

07. So far as this points are concerned, they are taken together for discussion in the interest of the justice. Heard both sides at length. I have gone through the documents submitted by both sides

in order to dispose of the present application on merit. So also, I have gone through the written argument submitted by the applicant which is at Exh. 46 and the written argument vide Exh. 49 submitted by the respondents. The applicant has placed reliance on following case laws. I have gone through it and heard both sides on it.

08. In the Shailja and Ors. Vs. Khobbanna, MANU/SC/0537/2017 Hon'ble Supreme Court held that "*...Whether the Appellant no. 1 is capable of earning whether she is actually earning are two different requirements....*"

09. In the Manish Jain Vs. Akansha Jain, MANU/SC/0355/2017 Hon'ble Supreme Court held that "*...Sec. 24 of Hindu Marriage Act empowers the Court in any proceeding under the Act, if it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceedings, it may, in the application of any one of them order the other party to pay the Petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the Respondent....*"

10. In the Kulbhushan Kumar Vs. Raj Kumar and Ors., MANU/SC/0349/1970 Hon'ble Supreme Court held that "*...A) it was argued before us that inasmuch as the Board allowed as quantum of maintenance 1/8th of the net income of the estate we should adopt the same rate. In our view the Board laid down no principle related to the proportion of the free income allowable by way of maintenance from the estate. Here we have the case of a wife who was neglected by her husband not in affluent circumstances but certainly with means to support a wife on a reasonable scale of comfort..*"

11. In the Kalyan Dey Chowdhury Vs. Rita Dey Chodhury Nee Nandy, MANU/SC/0457/2017 Hon'ble Supreme Court held that *"...Maintenance is always dependent on the factual situation of the case and the Court would be justified in moulding the claim for maintenance passed on various factors. Since in February, 2016, the net salary of the husband was Rs. 95,000/- per month, the High Court was justified in enhancing the maintenance amount..."*

12. In the Anup Avinash Varadpande Vs. Anusha Anup Varadpande, MANU/MH/0042/2010 Hon'ble Bombay High Court held that *"...If a wife is constrained to earn in a service taken up by her to make ends meet or to survive with dignity pending the actual receipt of maintenance from her husband after following the usually laborious legal process, in our judicial system wrongful with the consummate delays, she cannot be penalised for the legitimate means of earning her modest and honest livelihood..."*

13. In the Noor Alam Khan Vs. Hasina Bano Noor Alam and Ors., MANU/MH/3233/2018 Hon'ble Bombay High Court held that *"...A) Deductions that are made from the gross salary towards long term savings, which a person would get back at the end of his service and such as deductions towards General Provident Fund, General Group Insurance Scheme, L.I.C. Premium, State Life Insurance Loan can be deemed to be asset that he is creating himself. Therefore, such deductions cannot be deducted or excluded from his salary while computing his means to pay maintenance. As long as matrimonial ties subsist between the parties, the wife is entitled to live in the matrimonial house or in a separate building. The wife should not be relegated to a lower standard of living than that the husband enjoys. She should be given maintenance according to status of her husband. The obligation of the husband is on the higher pedestal when the*

*question of maintenance of wife and children arises. When the woman leaves the matrimonial house, the situation is quite different. She is deprived of many comforts. Sometimes her faith in life reduces. Sometimes she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance. Grant of maintenance to wife has been perceived as a measure of social justice...”*

14. In the **Kripa Narayn Vs. Mamta Pathak**, Hon’ble Bombay High Court held that “...*It is settled law and even the duty of the husband to give his wife the same standard of living which enjoys whether living jointly or separately....*”

15. In the **Mukesh Kumar Vs. Rekha Rani and Ors, MANU/PH/0277/2018**, Hon’ble Punjab and Hariyana High Court held that “...*In a nutshell, a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary....*”

16. In the **Gaurav Mantrao Vs. Lilly Khullar, MANU/PH/1497/2016**, Hon’ble Punjab and Hariyana High Court held that “...*The plea that the Respondent-wife is an educated lady and can earn by getting employment is no reason to decline the maintenance pendent lite as at present, she is not having the sufficient income to maintain herself..*”

17. With due respect to the ratios laid down in rulings cited supra, I have gone through the entire pleadings of the parties. It is not in dispute that Faustin is the son of applicant as well as respondent no. 1 and applicant is staying separately along with her son at her parents' house. According to applicant, the respondent no. 1's salary is Rs.85,000/- through his job and also he earns a handsome profit through his other businesses which he has deliberately not mentioned in his income affidavit. According to applicant, respondent no. 1 earns approximately Rs. 1,50,000/- per month. However, the said facts are denied by him. According to the applicant, her monthly salary is Rs. 83,900/- approximately and monthly expenses borne by her is Rs.71,000/- which includes the EMI for jointly owned property after marriage, her self maintenance as well as their son Faustin's medical and educational expenses. According to the respondents, respondent no. 1 has no income other than that is shown in his affidavit and he is earning approximately around Rs. 83,000/- to Rs. 85,000/- per month. I have gone through the affidavits of applicant and respondent no. 1 submitted by them as per the ratio led down in **Rajesh Vs. Neha and Ors, MANU/SC/0833/2020.** It seems that the respondent no. 1 is mentally and physically sound as well as an able bodied person. Thus, it is clear that, he is able to earn. For the purpose of this application, this shows his capability to make a living.

18. According to applicant, she has been subjected to domestic violence at the instance of all respondents and respondent no. 1 inspite of having financial capacity and capability, he is wilfully and deliberately avoiding and neglecting to pay any maintenance to her as well as her son. However, as per the say of respondents, all they have not subjected her to any kind of physical, verbal, economical or mental torture or abuse and the application itself is baseless,

meaningless and based on false as well as general allegations without any prima facie evidence. According to the respondent no. 1, as on date the applicant is not legally wedded wife of the respondent no. 1 and there is no domestic relationship existing between them as decree of divorce has been granted by Kerala Court in his favour. According to the applicant, Kerala Court has set aside the divorce Order and has given next date of 27.09.2021; the respondent no. 1 has got married with another women and from the said illegal marriage a baby girl was born to them at Chazhikattu Hospital, Thodupuzha. Thus, all the allegations and the denials as above form a part and parcel of trial and evidence and need not be gone into in details at this stage. It is also clear that, the said process will consume much time.

19. The respondents in the present matter have not prima facie denied that the respondent no. 1 being father is bound to maintain his child Faustin. The respondents have not prime facie denied that son Faustin is staying along with her mother separately. It was obligatory on part of respondent no. 1 to show that he has obeyed the lawful duties towards his son as a prudent father. However, he has failed to show it prima facie. There is nothing prima facie on record to show that the respondent no. 1 has made temporary provision of maintenance of his son. So far as interim relief of maintenance sought by applicant is concerned, it has come on record prima facie that she is earning around Rs. 83,000/- to Rs. 84,000/- per month. So also, the allegations regarding domestic violence at the hands of non-applicants are concerned, the applicant is put in strict proof of it. Therefore, so far as interim reliefs sought by the applicant in Para no. 91 (ii), (iii), (v) to (x) are concerned, it would be just and proper to take the ocular and documentary evidence and to decide the main petition on merit. Moreover, she has failed prima facie to show that the respondents are

trying to dispose of or alienate the movable/immovable property in favour of third party. As discussed earlier, applicant found to be earning woman and as she is put in strict proof of allegations of domestic violence at the hands of opponents, hence she is not entitled to get interim maintenance. However, it is not only responsibility of applicant to maintain her child, but respondent no. 1 is also bound to maintain his son. It has prima facie come on record that he has married second time and is having another child out of said marriage. Hence, at this prima facie stage, it would be proper to hold applicant no. 2 Faustin entitled for interim monetary relief only. Moreover, respondent no. 1 cannot escape his duties of making adequate monetary provision for the applicant no. 2, more precisely when he is an able bodied person and has knowingly shouldered the responsibilities of marriage. Thus, considering the physical and mental capability of respondent no. 1, the standard living of the parties, their income, their status, number of dependents, it would be proper to direct him to pay an amount of Rs. 20,000/- per month to the applicant no. 2 Faustin towards interim monetary provision till the final disposal of the main application. Also, it will be proper and pragmatic to direct the said payment from the date of the filing of the application, as the applicant no. 2 is left destitute. In view of above all discussion, I answer point No. 01 in the "**partly affirmative**" to the extent of applicant no. 2 only and point No. 01A "**accordingly**".

**AS TO POINT NO. 02 : -**

20. Again, the allegations and counter allegations and the denials as above do not warrant other interim reliefs without any evidence in that respect. Hence, in view of the said discussion, I answer point No. 02 in the "**negative**".

**AS TO POINT NO. 03 -**

21. In view of findings given on point no. 01, 1A as well as on point no. 02, it seems that the application is liable to be partly allowed. So, in answer to point No.03, I pass the following order -

**ORDER**

- 01) The application vide Exh.5 stands partly allowed.
- 02) Respondent no. 1 shall pay an amount of Rs. 20,000/- (Twenty Thousand Rupees) only per month to the applicant no. 2 Faustin towards interim monetary provision till the final disposal of the main application from the date of the filing of the present application.
- 03) Rest of the reliefs stand rejected.

Date : 03<sup>rd</sup> January, 2022.

( R.R.Kale )  
I/c. Vacant Judicial Magistrate F.C.,  
Pimpri, Pune.

**CERTIFICATE**

I affirms that the contents of this P. D. F. file Order are same word for word as per original Order.

Name of the Court	:-	Smt. R.R. Kale, J.M.F.C., Pimpri, Pune
Name of the Steno	:-	Gulagi P.S. -Grade 3
Date	:-	03.01.2022
Order signed by presiding officer	:-	03.01.2022
Order uploaded on	:-	04.01.2022.