



Cri. M.A. No. 64 of 2020
Sau. Humanaushin vs- Humayu
MHYA050053302020

ORDER BELOW EXH. 38
(08.01.2024)

This is an application filed by the applicant no. 01, Sau. Humanaushin Humayu Asgar Ansari, for interim maintenance of Rs. 30,000/- per month to herself and Rs. 20,000/- per month to applicant no. 02, Hamdan Ansari S/o Humayu Ansari, from the non-applicant (for short, “the N.A.”)

02. The advocate for the N.A. filed his say at Exh. 42 and strongly resisted the application.

03. I heard advocate Shri. S.R. Shaikh for applicants and advocate Shri. A.K. Bhangde for the N.A.

04. The advocate for applicants argued that the N.A. is a government contractor and earns Rs. 50,00,000/- (Rs. Fifty Lakh only) per year. Till today the N.A. has not paid any amount of maintenance. Though the applicant is educated but she is unemployed and has no source of income. Both applicants depend on the N.A. Applicant no. 01 is a *Pardanashin*. The say filed by the advocate for the N.A. can be accepted at the time of final argument. The process in mediation is confidential.

05. The applicant filed document along with list at Exh. 32 to

show that the N.A. doing construction business and earned Rs. 10,62,587 in the month of March 2013 only. The applicant filed near about 51 documents along with list of documents at Exh. 13. Along with list at Exh. 13, the applicant filed certain photographs of foreign trip and copy of FIIR for the offence punishable under section 498-A of IPC. [RCC no. 290/2021 (State vs. Humayu) pending in Court no. 02, Pusa]. The amount of maintenance should be given as per the standard of living of N.A.

06. He further argued that the advocate for N.A. has not cross examined on the point of quantum though he cross examined the applicant at length. The N.A. is capable to pay interim maintenance amount of Rs. 30,000/- per month to applicant no. 01 and Rs. 20,000/- per month to applicant no. 02. He further invited my attention on affidavit of asset and liability (Exh. 41) of N.A. and argued that on page no. 10 in column no. 09 of affidavit the N.A. has stated that he has filed bank statements of all accounts for the last three years but he intentionally not filed bank statements only to hide his income. The N.A. has not filed any document to show the earning source of the applicant.

07. Moreover, he argued that the citations filed by the N.A. are not applicable in the present case as none of the citation is on the point of interim of maintenance. The citations are in relation to the matters in which the evidence of both sides completed. Hence the citations filed by the advocate for the N.A. are not applicable in the case in hand. He lastly pointed out the N.A. has not paid any amount to the applicants to

show love and affection towards them, hence, prayed to allow the application.

08. On the other hand, the advocate for N.A. argued that his almost argument done by the advocate for applicants. He further argued that his case comes under the category of section 125(4) as the applicant no. 01 without sufficient reason refuses to live with her husband. The N.A. filed detailed say (Exh. 42) to the application. The applicant has not given list of witnesses at Exh. 01. No prima facie case made out under section 125 of Cr.P.C.

09. He further argued that though the applicant filed work order list along with list Exh. 32 but it was of the year 2013. The bank account of the N.A. is now not operating. The judgment of Civil Court is binding in this proceeding. Now the case is at final stage and the applicants will get final amount. The applicant filed this interim application after two years of the main application. Though the applicant filed certain photographs on record but the applicant has to prove how that photos are of the house of the N.A. The applicant has not given any explanation as to how the amount came in her account.

10. Moreover, he argued that the N.A. is educated till 12th only and the applicant no. 01 is well educated. In support of his contention, he relied on following case laws-

- i. **Ramkrushna Somaji Nadekar Vs. Smt. Manjusha w/o Ramkrushna Nadekar [2012 ALL MR (Cri.) 3615]**

- ii. 1995 CRI. L.J. 1187
- iii. Smt. Geeta Kumari vs Shiva Charan [1975 CRI. L.J. 137]
- iv. Dattatray s/o Champatgir Giri Applicant vs. State of Maharashtra and another [1993 CRI. L.J. 2181]
- v. Santosh and others vs. Ramswaroop [II (2017) DCM 650 (DB) (Raj)]

11. On relying on the ratio of above case laws and argument advanced by the advocate for N.A. prayed to reject the application.

12. Considering the contention of the parties following points arise for my determination and I have recorded my findings thereon with brief reasons as follows.

Sr. No.	Point	Findings
01	Whether the applicants are entitled to interim maintenance as prayed? If yes, what is the quantum?	Partly yes.
02	What order?	Application is partly allowed.

REASONS

AS TO POINT NO. 01-

13. On perusal of record, it appears that and it is also admitted fact that the marriage of applicant no. 01 and the N.A. was solemnized as per Muslim rituals on 30.03.2017. They have a small child namely

Hamdad i.e. applicant no. 02.

14. The basic grounds taken by the advocate for N.A. to oppose the application are, firstly – that the applicant no. 01 without any sufficient reason refuses to live with her husband, secondly- that after the decree of restitution of conjugal rights by Civil Court applicant no. 01 failed to cohabit with the N.A. and thirdly- the statement made by the applicant no. 01 before *Mahila* Cell, Pusad.

15. As to the ground no. 01, on perusal of record and oral submissions it appears that applicant no. 01 lodged report for the offence punishable under section 498-A of I.P.C. against the N.A. and others. The Hon'ble High Court quash the proceeding against accused persons except the N.A. Apart from this applicant no. 01 gave birth to a male child i.e. applicant no. 02. Even she is residing with her parental house. This fact itself suggests that the applicant no. 01 is not residing in her parental house without any sufficient reason.

16. As to ground no. 02 and 03, on perusal of record it further appears that the N.A. filed certified copy of decree of order of restitution of conjugal rights along with list Exh. 23 at Sr. No. 14. It is surprising that the N.A. in his reply (Exh.42) narrated the statement of the applicant no. 01 given to *Mahila* cell, Pusad. In fact, the proceeding before *Mahila* cell is confidential and it was nothing but an attempt to reconstitute the conjugal relations between the parties. Therefore, it is not expected to wholly rely on that statement and to reproduce it in the reply.

17. It is also surprising that the N.A. only highlight the portion of statement before *Mahila* cell, Pusad favorable to him. He tried to bring on record only the half-truth. Even on mere reading of statement given by applicant no. 01 before *Mahila* cell, Pusad one can understand as to why applicant no. 01 refused to reside with the N.A.? It is more surprising that the N.A., in his reply, make bold statement that, “During proceedings, the non-applicant will examine the responsible officer of *Mahila* Cell to prove the contents of all notes of *Mahila* Cell.” As the N.A. himself made this statement in his reply, I required to respond this statement. The Court never permitted him to examine any officer of *Mahila* Cell, Pusad.

18. Apart from this, as per section 31 of the Indian Evidence Act, admissions not conclusive proof, but may estop. Therefore, the admissions, even in judicial proceedings, are not conclusive proof and the N.A. tried to rely on the statement made before *Mahila* cell, Pusad. The statement before *Mahila* cell and the statement before mediator in mediation process are not admissions and hence not relevant. Therefore, though the N.A. filed certified copy of decree of restitution of conjugal rights but it is not helpful to him.

19. Regarding case laws cited by the N.A., admittedly in all above five case laws evidence was completed. In the case in hand only the applicant no. 01 gave her evidence as AW-01 at Exh. 11. Apart from this by reproducing the contents of statement of applicant no. 01 before *Mahila* Cell, Pusad, the N.A. himself gave the answer as to why the

applicant no. 01 refused to reside with him even after the decree of Civil Court? Apart from this the considerations to decide interim maintenance application and ratio laid down in case laws by Hon'ble Courts are different. Hence the case laws cited by the N.A. are not helpful to him.

20. One point also raised by the advocate for the N.A. that the applicant has not given list of witnesses in the main application (Exh. 01). It needs to consider that applicants filed an application under section 125 of Cr.P.C. to get maintenance from the N.A. It is not private complaint. Therefore, I do not found force in the point raised by the advocate for the N.A.

21. One another point also raised by the advocate for the N.A. that the applicant has not filed asset and liability affidavit as laid down by the Hon'ble Supreme Court. On perusal of record, it appears that on 11.10.2023 applicant no. 01 filed asset and liability affidavit at Exh. 37. There is difference between illegality and irregularity. Illegality can not be cured but irregularity can be cured. Admitted the applicant has not filed asset and liability affidavit along with main application. It is irregularity and not the illegality. This irregularity is cured as the applicant filed her asset and liability affidavit at Exh. 37. The provision under section 125 of Cr.P.C. is beneficial provision. It never be the intension of Hon'ble Supreme Court to deprive the rights of applicants under section 125 of Cr.P.C on such technical grounds. In fact, Hon'ble Supreme Court is the guardian of weaker section of the society. Therefore, this point also cannot be consider.

22. Regarding quantum of interim maintenance, the applicant filed 51 documents along with list Exh. 13. During further chief examination the FIR for the offence punishable under section 498-A of I.P.C. is marked as Exh. 24. Documents no. 02 to 51 marked as Article A to Article Y1. I perused all the documents and photographs carefully. It is surprising that the advocate for N.A. cross examined applicant no. 01 at length but has not cross examined her on documents filed by her along with list Exh. 13.

23. Apart from this applicant no. 01 in her evidence affidavit stated the income source of the N.A. She specifically deposed that the N.A. is a private and government contractor. He took contract of construction and tender of road. He earns Rs. 50,00,000/- (Rs. Fifty Lakh only) per year. To show the income of the N.A., the applicant filed PWD, Work Order List along with list Exh. 32. On perusal of Work Order List it appears that the N.A. in the March 2013 only got Rs. 10,62,587/- (Rs. Ten Lakh Sixty-Two Thousand Five Hundred Eighty-Seven only).

24. Apart from this, as per section 114 of the Indian Evidence Act, Court may presume existence of certain facts. In the case in hand the advocate for the N.A. brought on record that applicant no. 01 is educated as Master of Computer Application (MCA) and the N.A. is 12th pass. If even though she married with him then it can be presumed that the financial condition of the N.A. is very sound.

25. The basic purpose of interim maintenance is to provide fixed reasonable amount to the wife pending litigation. So that she could

survive to fight the legal battle. Therefore, at this stage it is not necessary to see whether the N.A. refused to maintain the applicant or whether the N.A. has sufficient means. The object behind interim maintenance is to aid the applicant during the pendency of litigation. Hence, in my opinion, applicants are entitled for reasonable amount as interim maintenance.

26. The term reasonable is a relative term and it depends upon the facts and circumstances of each case. Ordinarily reasonableness would require ensuring the receipt of the same amenities and comforts by the wife as she was getting when residing with her husband. While deciding the application of interim maintenance Court has to take into consideration status of the parties, reasonable want of claimant, number of persons depending on the N.A. and the income of the N.A.

27. In present application the applicant filed various documents, photographs and copy of work order in the month of March, 2013. Apart from this the N.A. during cross examination of the applicant no. 01 has not even denied the documents filed by the applicant along with list Exh. 13 and the source of income. The N.A. in his affidavit of asset and liability (Exh. 41) at page no. 10, para 09, mentioned that he has furnish copies of Bank statement of all accounts for the last 3 years but has not filed copies of bank statement.

28. The N.A. is husband of applicant no. 01 and the father of applicant no. 02 therefore it is his bounden duty to maintain them. As

discussed above the N.A. is financially well sound. The amount of maintenance is decided on status of parties. On perusal of photographs at article P to article C1, it appears that the standard of living of the N.A. is very high. The advocate for the N.A. during cross examination of the applicant tried to bring on record that the applicant no. 01 doing job but she specifically denied the suggestions.

29. On 10.12.2020 the applicants filed application under section 125 of Cr.P.C. Nothing is on record to show that the N.A. has made any arrangement of maintenance to the applicants. During argument the advocate for the N.A. argued that the case is at final stage and the applicants will get final amount. Then the question may arise in the mind of any prudent man, if the applicants will get final amount, then why not interim?

AS TO POINT NO. 02-

30. After taking into consideration the material on record, I am of the candid opinion that Rs. 15,000/- per month to the applicant no. 01 and Rs. 5000/- per month to applicant no. 02 is sufficient and judicious as interim maintenance allowance. Hence the following order,

ORDER

1. Application is partly allowed.
2. Non-applicant is directed to pay Rs. 15,000/- per month to the applicant no. 01 and Rs. 5000/- per month to the applicant no. 02 as interim maintenance from the date of

main application (Exh. 1).

3. Parties to take note.

-sd-

Place: Pusad
Date: 08.01.2024

(Govind S. Varpe)
Judicial Magistrate First Class,
Court No. 05, Pusad, Dist. Yavatmal