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958-wp-2668-2021

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2668 OF 2021**

Aboil alias Yugandhara w/o Tejpal Patil,
Age 28 years, Occ. Household,
R/at C/o Ravindra Eknath Patil,
Plot-12, Gat 61, 3/2, Kolhe Nagar (West),
Jalgaon, Tq. & Dist. Jalgaon. ..Petitioner

Versus

Tejpal S/o Premchand Patil,
Age 36 years, Occ: Service,
R/o G-19, 4th Floor, Maymauli,
Co-Op HSG Society, Ghoklewadi,
in front of Nana Nani Park, Near
Gavdevi Temple, Manpada Road,
Dombiwali (West), Dist. Thane-421201 ..Respondent

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Mr. S. V. Deshmukh, Advocate for the Petitioner.
Mr. A. A. Nimbalkar, Advocate for Respondent.

...

**CORAM : SANDEEP V. MARNE, J.
DATED : 23rd NOVEMBER, 2022.**

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

2. By this petition petitioner assails order dated 04.12.2019 passed by the Judge, Family Court, Jalgaon thereby rejecting petitioner's application for grant of maintenance *pendente lite* under the provisions of Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955').

3. Petitioner has instituted Petition A-334/2019 before the Family Court, Jalgaon seeking annulment of marriage with respondent. In that application, she filed application at Exhibit-7 under Section 24 of the Act, 1955 for grant of interim

maintenance. The Family Court has rejected the application essentially on two counts: that petitioner possesses higher qualifications and that on her social media status, she had made declaration to the effect that she had secured job in a company at London.

4. Appearing for petitioner Mr. Deshmukh the learned counsel would submit that mere possession of qualifications by petitioner could not have been a reason for denial of interim maintenance in the light of the position that petitioner is actually jobless. He would submit that capacity or ability to earn is different from actual earning. He would contend that petitioner has not been earning anything and despite the factum of absence of any job to petitioner being established before the Family Court, the application for interim maintenance has been erroneously rejected. In support of his contentions Mr. Deshmukh has relied upon judgment of the Supreme Court in (i) **Shailja and Another Vs. Khobbanna, 2017 DGLS (SC) 419**, (ii) Order of the Rajasthan High Court in **Smt. Megha Khandelwa and ors. Vs. Rajat Khandelwal & Ors.**, Criminal Revision No.408/2018 decided on 12.04.2018 and (iii) Order of the Supreme Court dated 10.05.2019 upholding the order passed by the Rajasthan High Court.

5. So far as the declaration made by petitioner on social media is concerned, Mr. Deshmukh would contend that no material was placed on record by the husband to prove that petitioner actually received any employment or that she has been working in a particular company. He would submit that petitioner had randomly received an E-mail offering her job and she has made declaration about the same on the social media platform. On

verification, the offer was found to be a sham. Mr. Deshmukh has further relied upon the affidavit of assets and liabilities filed by husband to contend that he has been earning monthly salary of Rs.1,33,377.51/-.

6. Per contra, Mr. Nimbalkar the learned counsel appearing for respondent opposes the petition and supports the order passed by the Family Court. Relying on the judgment of Madhya Pradesh High Court in **Mamta Jaiswal Vs. Rajesh Jaiswal**, Mr. Nimbalkar would contend that if the wife is having ability and capability to earn, but sits ideal, she cannot be awarded maintenance. He submits that petitioner possesses qualification of Masters in Engineering and is in a position to easily earn a job for herself. That, therefore, no maintenance needs to be awarded to her. Referring to the printouts taken from the account of petitioner of Facebook and Whatsapp Mr. Nimbalkar would contend that petitioner was not only offered employment in UK base company having salary of 2000 pounds, but various reactions given by her to messages congratulating her would indicate that she had indeed accepted the job offer.

7. Mr. Nimbalkar would further contend that petitioner has unjustifiably withdrawn from the company of the husband within four months of marriage and has levelled reckless allegations of impotency against respondent. He would submit that respondent has no other person to maintain, as no child is born to the couple out of the said wedlock. He would further submit that the mother of petitioner is politically connected. That even petitioner has accepted certain political engagements indicating thereby she has sufficient sources of income generation. He would submit that respondent has obtained personal loan of

Rs.15,00,000/- for which he is required to pay EMI of Rs.33,000/-.
Inviting my attention to the cross-examination of petitioner conducted before the Family Court on 28.06.2022 he would submit that she admitted in cross-examination that the offer of appointment issued to her was fake. Mr. Nimbalkar would therefore submit that she indulged in conduct of posting a fake letter of appointment and considering such conduct, this Court should be loath in granting any equitable relief in her favour. He prays for dismissal of petition.

8. Rival contentions of the parties now fall for my consideration.

9. The Family Court has proceeded to reject petitioner's application for interim maintenance essentially on two counts of possession of higher qualifications and declaration made by her on social medial platform. It would be profitable to reproduce some of the observations recorded by the Family Court while rejecting petitioner's application for interim maintenance:

“The respondent relied on whatsapp status and Facebook post of the petitioner to show that she got an employment at London. The copies of her Whatsapp and Facebook status are also filed on record. However, such post itself is not sufficient to make out a case with regard to employment of the petitioner, but at the same time, it is pertinent to mention that in the era of social media, the people are having habit to share their emotions, developments, their present state of mind through the Social Media. In such circumstances, considering the qualification and social media status of the petitioner with regard to getting employment, cannot be ruled out. Further, as per the observations in the case of Mamata (supra), the petitioner being highly educated is not expected to keep herself ideal and seek maintenance from the respondent.”

10. Thus the findings recorded by the Family Court would indicate that it did not arrive at a definitive conclusion that petitioner actually secured employment or that she has been working on the post in consequent to the offer of appointment which was put on the social media platform. However, considering the her qualifications, the Family Court has raised presumption that the possibility of she securing a job could not be ruled out. This finding in my opinion appears to be totally erroneous. The Family Court itself has recorded a finding that mere publication of a post on social media platform is not sufficient to make out a case with regard to the employment of petitioner. Having held so, the Family Court ought not to have raised a presumption she secured an employment, just because she possesses higher qualifications.

11. Apart from the social media post, respondent has not put on record any other concrete material to prove that petitioner actually secured any employment or she has been working and earning. If petitioner is indeed working, respondent could have produced the relevant papers showing proof of income earned by her in the form of bank statement, Income Tax Returns etc. However, nothing of that sort is placed on record. It would therefore safe to assume that petitioner is not engaged in any employment and has not been earning any income for herself.

12. Respondent-husband has accused the Petitioner-wife of indulging in undesirable act of posting a fake letter of appointment on social media and urged before me to deny any relief to her on account of her conduct. He has particularly invited my attention on the reactions given to her post by her friends and relatives and her acknowledgement and reciprocation of the

congratulatory messages. He has also invited my attention to her mother's message on social media platform confirming the job offer to her daughter. It is submitted that either the information shared on social media platform should be accepted as true or if the information is false, she should be denied any relief in exercise of extraordinary jurisdiction by this court. No doubt, the act of Petitioner-wife in posting the letter of appointment, which she later claims to be fake, on social media platform is not commendable and she should have restrained herself from doing so without first verifying the genuineness of the offer. It is difficult to determine at this stage whether she was actually deceived or was merely attempting to gain praises and popularity on social media platforms by posting factually incorrect information. In absence of any concrete proof of actual employment, an inference cannot be drawn that the offer actually fructified in a job for her. Having arrived at a conclusion the Petitioner-wife is actually not employed, in my view, the doors of the Courts cannot be shut on her, even if her conduct may not be completely free from blemish.

13. Coming to the aspect of ability and capability of petitioner to earn income for herself, no doubt she possesses qualifications of Masters of Engineering. In **Mamta Jaiswal Vs. Rajesh Jaiswal** (supra) relied upon by Mr. Nimbalkar the Madhya Pradesh High Court has held as under:

“6. In view of this, the question arises, as to in what way Section 24 of the Act has to be interpreted: Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure ? Whether such spouse should be permitted to get pendente lite alimony at higher rate from other spouse in such condition ? According to me, Section 24 has been

enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself Or herself inspite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversory by implementing the provisions of law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service ? It really puts a bug question which is to be answered by Mamta Jaiswal with sufficient cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversory who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony,

and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself That cannot be treated to be aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient effort are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours.”

14. However, Mamta Jaiswal (supra) was filed seeking enhancement of maintenance. In that judgment, the husband was earning salary of Rs.5,852/- and wife was awarded maintenance of Rs.800/-, of which she sought enhancement. While dealing with the issue of enhancement, the learned Single Judge of the Madhya Pradesh High Court has made aforementioned observations in paragraph no.6 of its judgment. Thus Mamta Jaiswal (supra) cannot be said to have laid down a law that a wife is not entitled for any maintenance merely on account of possession of higher qualifications. Also of relevance is the fact that in Mamta Jaiswal (supra), the wife was working in college till the year 1994 and that aspect has also been taken into consideration by the High Court while dismissing the petition seeking enhancement of maintenance. In the present case, it is not the case of respondent that petitioner was previously employed and was earning any income.

15. Mr. Deshmukh has relied upon the decision of the Apex Court in **Shailja** (supra), in which it is held has under:

“7. We are not satisfied with the order passed by the High Court considering the income of the respondent – husband, which we have been told, is more than Rs.80,000/- per month since the respondent – husband is a Senior Lecturer in college. It is stated by learned counsel for the appellants that

the respondent – husband is also the owner of 26 acres of irrigated land.”

16. Thus the Apex Court has made distinction between capability to earn and actually earning. It is held that merely because the wife is capable of earning, the same cannot be a reason to reduce maintenance awarded by the Family Court.

17. In **Megha Khandelwal** (supra) the Rajasthan High Court was concerned with the issue of enhancement of maintenance awarded to the wife. The petition for enhancement was opposed by placing reliance on qualification of Degree of MSC (Biotechnology) and preparation for PHED by the wife. Despite this, the High Court proceeded to enhance the maintenance from Rs.5000/- to Rs.9000/-. The matter was carried before the Apex Court by the wife which was pleased to further enhance the maintenance to Rs.25,000/-.

18. The position of law thus appears to be that mere possession of qualifications by wife who is admittedly not employed, cannot *ipso facto* be a reason to deny interim maintenance altogether.

19. The respondent husband has failed to prove that petitioner is actually employed. The political position allegedly occupied by her mother is totally irrelevant. Also of irrelevance are the documents produced by respondent to show that petitioner herself is allegedly occupying some political post.

20. Coming to the income of husband, in the affidavit of assets and liabilities filed by him, he has declared his monthly income as Rs.78,598/-. He is employed on the post of Technical Consultant in Hitachi Vantara. He has also placed on record his

salary certificate showing gross salary of Rs.76,750/- for the month of April 2019. The salary certificate shows that after statutory deductions, the net salary receivable is Rs.66,050/-. Also placed on record by respondent husband is his bank statement. Petitioner has relied upon one of the entries relating to the month of August 2018 in support of her contention the salary earned by respondent husband is Rs.1,33,377/-. One stray entry in the bank statement, in my opinion, cannot be indicative of the exact salary earned by respondent husband. There is no reasons to disbelieve the salary certificate placed on record by respondent husband as well as the statement made in his affidavit of assets and liabilities showing that his monthly gross salary is Rs.76,750/-.

21. Taking conspectus of the overall position of Petitioner being unemployed, possession of higher qualifications by her on the strength of which she could make an endeavor to secure job as well as net monthly income of husband as Rs.66,050/-, I am of the view that ends of justice would meet if petitioner is awarded interim maintenance of Rs.7500/- during the pendency of the proceedings before the Family Court.

22. The proceedings before the Family Court are pending since the year 2019. It appears that the evidence of petitioner is in the process of being recorded. In these circumstances, it would be necessary in the interest of justice to expedite the proceedings pending before the Family Court. I, therefore, proceed to pass the following order:

ORDER

A. The order dated 04.12.2019 passed by the Family Court, Jalgaon on application at Exhibit-7 in Petition A-334/2019

is set aside. Respondent husband is directed to pay interim maintenance of Rs.7500/- per month to petitioner wife from the date of filing of Petition A-334/2019. The respondent husband to pay arrears of maintenance to petitioner wife within a period of two months from today.

- B. Hearing of Petition A-334/2019 is expedited and the Family Court is requested to make an endeavor to decide the same as expeditiously as possible and preferably within a period of six months from today. Both the parties shall cooperate in earlier disposal of the Petition A-334/2019 and shall not seek any unnecessary adjournments.
- C. With the above directions the petition is partly allowed. Rule made partly absolute in the above terms.

(SANDEEP V. MARNE)
JUDGE

Devendra/November-2022