

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL.REV.P.NO.88 OF 2014

Sri Ratan Debnath,
son of late Harilal Debnath,
resident of Narsingarh, 70 Colony,
P.O. Bimangarh, P.S. Airport,
District West Tripura, PIN-799015

..... Petitioner

– Vs –

Smt. Sumitra Debnath,
wife of Sri Ratan Debnath,
daughter of Sri Santi Debnath,
resident of Chandinamura,
P.O. Ramnagar, P.S. West Agartala,
District West Tripura, PIN-799002

.....Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. Samarjit Bhattacharji, Advocate

For the respondent : Mr. S. Mahajan, Advocate

Date of hearing & order : 12.02.2015

Whether fit for reporting:

Yes	No
√	

JUDGMENT & ORDER (ORAL)

Heard Mr. Samarjit Bhattacharji, learned counsel appearing for the petitioner as well as Mr. S. Mahajan, learned counsel appearing for the respondent.

2. By this petition filed under Section 19(4) of the Family Courts Act, 1984, the order dated 12.08.2014 passed by the Judge, Family Court, West Tripura, Agartala in Case No.Misc.53/2012 has been questioned.

3. There is no dispute that the respondent has been granted monetary benefit under Section 20(1)(d) of the Protection of Women from Domestic Violence Act, 2005 (in short "Domestic Violence Act, 2005") @ ₹3,500 inclusive of the cost of residence. The respondent also filed one petition under Section 125 of the Cr.P.C. for granting maintenance since she could not live with the husband for the reasons mentioned in the petition so filed and the husband, the petitioner herein, refused to maintain her. The impugned order has been passed in that proceeding under Section 125 of the Cr.P.C. in the manner as under :

"8. In view of the above, I find that the opposite party is no doubt under obligation to provide maintenance for the petitioner and accordingly, considering all aspects, the need of the petitioner and the earning of the opposite party it is ordered that the opposite party be directed to provide maintenance @Rs.2,000/- (Rupees two thousand only) per month to the petitioner w.e.f. 01-08-2014. Accordingly, the Superintendent of Police, West Tripura, Agartala, is requested to issue necessary instruction to the DDO of the opposite party to deduct Rs.2,000/- per month w.e.f. 01-08-2014, from the salary of the opposite party Sri Ratan Debnath, S/O Lt. Harilal Debnath, L.D. Clerk, and send the same to the petitioner by money order to her address noted below within 10th day of every English Calendar month. Money order commission is to be deducted from the salary of the opposite party. The amount can also be sent to the petitioner through her Savings Bank Account if furnished alter on."

4. Mr. Samarjit Bhattacharji, learned counsel appearing for the petitioner, has submitted that even though the petitioner has been paying the monetary benefit as granted in the proceeding under the Domestic Violence Act, 2005, the respondent had initiated an execution proceeding for recovery of the maintenance in terms of the impugned order.

5. From the other side, Mr. S. Mahajan, learned counsel appearing for the respondent, has submitted that from the order it would be apparent that ₹2,000 as granted by the Judge, Family Court, Agartala, West Tripura is in addition to the monetary benefit as granted in the proceeding under the Domestic Violence Act, 2005. As such, in total the respondent is entitled to get ₹5,500 per month from the petitioner. He has further submitted that the proceeding under Section 125 Cr.P.C. cannot foreclose a proceeding under Section 20(1)(d) of the Domestic Violence Act, 2005. In support of his submission, he has relied on a decision of the High Court of Judicature for Rajasthan (Order dated 02.04.2013, in S.B. Crl.Rev.No.1268/2011, **Smt. Manju Vs. Rameshwar Changani & Anr.**). He has also referred a decision of the apex court in **Nagendrappa Natikar Vs. Neelamma**, reported in **AIR 2013 SC 1541**.

6. In **Smt. Manju Vs. Rameshwar Changani & Anr.**, the Rajasthan High Court has observed that :

“The provision of Section 20(1)(d) of the Protection of Women from Domestic Violence Act makes it clear that the monetary reliefs under this Act can be included or can be in addition to an order of maintenance under Section 125 Cr.P.C. Sub-section 2 of Section 20 provides that the monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.”

7. There cannot be any disagreement on that proposition of law. Rather this proposition of law goes against the entire submission of Mr. Mahajan, learned counsel appearing for the respondent. It categorically provides, unless either of the courts take care of the monetary relief in whatever form has been granted to the beneficiary that would nullify the subsequent order, because fairness is not an one act devil, it has to be equally applicable for both the parties.

8. The apex court in **Nagendrappa Natikar Vs. Neelamma**, while dealing with the jurisdictional aspects of the courts, has observed as under :

“Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a Court of Law and such an agreement is void, since the object is unlawful. Proceeding under Section 125, Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125, Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18(2) of the 1956 Act.”

9. That proposition does not also help the respondent in this matter. Rather this also provides that the jurisdiction under

Section 125 of the Cr.P.C. is intermediate in nature, it cannot foreclose its substantive jurisdiction for determining the maintenance. Similarly, any intermediate relief provided under Section 125 of the Cr.P.C. cannot foreclose the provisions made under Section 20(1)(d) of the Domestic Violence Act, 2005 and that court has the power to provide adequate, fair and reasonable monetary reliefs to the victim. But, from the reading of the operative part of the order, it appears that nowhere it has been stated that the maintenance is in addition to ₹2,000 and unless the order is direct, this court cannot read into the order any other meaning which has not come out from the order itself. There is no denying fact that the Judge, Family Court, Agartala, West Tripura, has taken care of the monetary reliefs passed by the Judicial Magistrate in the proceeding under the Domestic Violence Act, 2005, but nowhere it has been stated that the maintenance is in addition to the monetary reliefs granted by the Judicial Magistrate under the Domestic Violence Act, 2005. As such, this court is not persuaded to interfere with this order. In the considered opinion of this court, the respondent would be entitled to get the maintenance of ₹3,500 per month at present unless there is any change in the circumstances.

10. Mr. Bhattacharji, learned counsel appearing for the petitioner, has highlighted another aspect of the impugned order, whether simultaneously with the order of maintenance, the order of attachment can be passed by the Presiding Judge, who is

exercising his power under Section 125 of the Cr.P.C. The answer must be in the negative. According to the scheme of Section 125(3) or Section 128 of the Cr.P.C., if the husband or the person to whom the direction has been passed to pay the maintenance, fails to pay the maintenance in terms of the direction, those provision cannot be attracted. There cannot be any presumption in regards the non-payment. As such, it is the duty of the court to see whether actually the order has been disobeyed or direction to pay the maintenance has been violated or not. Thereafter only such order, as contemplated by Sections 125(3) and 128 of the Cr.P.C., should be passed.

11. Having said so, this court is also aware that taking the advantage sometimes the person who is under obligation to pay the maintenance, does not pay and forces the wife in distress or the dependant on distress to come to the court for enforcement of the order.

12. Thus this court directs the petitioner to pay the maintenance regularly in terms of the impugned order and if he does not pay the maintenance, the order of attachment would immediately be passed. For that purpose, no notice, particularly in this case would be required to be passed. It is again made clear that this observation shall not form any precedent, but the statutory provisions be followed in the ordinary course without being aberrant. The petitioner shall pay the maintenance within 10th day of every English calendar month and he shall bear the

commission charge for the money order. At this juncture, Mr. Mahajan, learned counsel appearing for the respondent produced the particulars of Bank Account of the respondent, which are as under :

Customer Name : **SMT. SUMITRA DEBNATH,**
D/O SRI SANTI DEB NATH

Account No. : **30134752864**
SBI, RMS CHOWMUHANI, ROAD NO.2
IFSC-SBIN000245

13. The petitioner is permitted to remit the money in the said Bank Account within 10th day of every English calendar month. The impugned order stands modified to that extent. The direction of attachment issued by the D.D.O. stands quashed w.e.f. 01.07.2014. The respondent shall however be at liberty to approach the court for enforcement or attachment in the event of default.

14. With this observation and direction, this petition stands disposed of.

Before parting with the record, this court observes that the intermediate jurisdiction of Section 125 of the Cr.P.C. does not foreclose the jurisdiction provided under Section 20 of the Protection of Women from Domestic Violence Act, 2005.

JUDGE

ROY