

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO. 47 OF 2015**

Mr. Dajvip V. Patkar,
Son of Mr. Vilas M. Patkar,
aged 36 years, Advocate by profession,
resident of "Chamundavan",
Plot No. B-19, Housing Board Colony,
Mapusa, Bardez, Goa – 403 507.

... Petitioner

Versus

Mrs. Vina D. Patkar,
wife of Mr. Dajvip V. Patkar,
aged 31 years,
C/o Mrs. Vibha G. Nayak,
Sita Niwas, Near Safy Masjid,
Baina, Vasco da Gama, Goa.

... Respondent

Shri S.S. Kantak, Senior Advocate with Shri Preetam Talaulikar,
Advocate for the Petitioner.

Shri M.S. Khandeparkar, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 3rd JULY, 2015.

PRONOUNCED ON:- 6th JULY, 2015.

ORAL JUDGMENT:

Heard. Admit. Shri Khandeparkar, learned Counsel waives
service on behalf of the respondent. Heard finally with the consent
of the parties.

2. By this revision application, the petitioner is challenging the judgment and order dated 22.05.2015, passed by the learned Sessions Judge, Margao, in Criminal Appeal No. 5/2015. By the impugned judgment, the learned Sessions Judge has confirmed the order dated 09.01.2015, passed by the learned Judicial Magistrate First Class, Vasco-da-Gama, rejecting the application (Exhibit-10) filed by the petitioner.

3. The brief facts necessary for the disposal of the criminal revision may be stated thus:

That the parties are husband and wife. They were married on 27.08.2008 and the marriage is registered in the office of Sub-Registrar of Bardez at Mapusa. Sometime thereafter, the marriage ran into rough weather and disputes arose between the parties. It is undisputed that both, the petitioner and the respondent have filed separate matrimonial petitions, seeking dissolution of marriage. The respondent had lodged a complaint against the petitioner, under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. According to the petitioner, the said complaint is a malicious attempt by the respondent for wreaking vengeance. The petitioner has deliberately roped in other family members, in the

dispute. Be that as it may, the present dispute arises out of an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (the Act of 2005, for short), filed by the respondent before the learned Magistrate, for various reliefs under Sections 18, 19, 20, 21 and 22 of the Act of 2005. The controversy in the present appeal is confined to the relief as to prayer for maintenance to the respondent and custody of the child, who is said to be four years old and is presently staying with the petitioner. It appears that the petitioner after putting in appearance had filed an application (Exhibit-10), for rejection of the application for maintenance and custody of the child i.e. under Sections 20 and 21 of the Act of 2005. It was contended that the respondent has previously instituted a Matrimonial Petition No. 57/2014/B, in the Court of the Civil Judge Senior Division, Vasco, for dissolution of marriage and for grant of maintenance and custody of the child. It was contended that the respondent has also filed separate applications for interim reliefs, as regards maintenance and custody of the child. It was thus claimed that the reliefs sought under Sections 20 and 21 of the Act of 2005, are already claimed by the respondent before the competent Court. It was contended that a second application, seeking similar reliefs would not be maintainable,

particularly when the Civil Court is seized of the matter. It was contended that the reliefs sought under Sections 20 and 21 of the Act of 2005 are thus, an utter abuse to the process of the Court, resulting into multiplicity of judicial proceedings, so as to cause undue harassment to the petitioner.

4. The respondent filed a reply opposing the claim. It was not disputed that in the matrimonial petition, which was previously filed, a prayer for maintenance and custody of the child is made and is pending. It was contended that the proceedings under the Act of 2005 are distinct and the pendency of similar application before the Civil Court cannot preclude the respondent from seeking reliefs before the learned Magistrate.

5. The learned Magistrate by an order dated 09.01.2015 had dismissed the application (Exhibit-10), which has been confirmed in appeal. That is how the petitioner, is before this Court.

6. I have heard Shri Kantak, the learned Senior Counsel for the petitioner and Shri Khandeparkar, the learned Counsel for the respondent.

7. It is submitted by Shri Kantak, the learned Senior Counsel for the petitioner that the conjoint reading of Sections 20(1)(d), 26 and 36 of the Act of 2005 would show that the remedies available before the Civil Court and before the Magistrate under the Act of 2005 cannot be simultaneously pursued. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of, **The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others**, reported in **(1976) 1 SCC 496**, in order to submit that where rights are available under general law and for enforcement of such rights, a remedy is provided, both, under the plenary jurisdiction, such as before the Civil Court and before a Special Forum, the party has to elect between the remedies available. Reliance is placed on the decision of the Delhi High Court in the case of, **Sanjay Bhardwaj and Others Vs. State and Another**, reported in **2010 (118) DRJ 385**, in order to submit that the Act of 2005 does not create any additional right in favour of the wife, but provides a remedy before the Magistrate to obtain maintenance order, as per the rights available under the existing laws. It is contended that the right of maintenance and seeking custody of the child are not the creation of the Act of 2005 and they were available

under the general law. The Act of 2005 has created an additional remedy/forum for enforcement of such rights. The submission is that in such a case, the respondent/wife has to elect between the two remedies and cannot take simultaneous recourse to both the remedies. It is submitted that under Section 23 of the Act of 2005, the Magistrate has an authority to grant appropriate interim and ex-parte orders and as such, the petitioner can always elect between the two remedies. Lastly, it is submitted that if both the remedies are availed simultaneously, it may result into conflict of decisions/orders, which has to be avoided at all costs. The learned Senior Counsel would also submit that in such cases, principles akin to Section 10 of the Code of Civil Procedure would come into play requiring the Court, to which the party has subsequently approached to stay its hands. It is submitted by the learned Senior Counsel that the Court below have not properly appreciated this aspect.

8. On the contrary, it is submitted by Shri Khandeparkar, the learned Counsel for the respondent that the provisions of the Act of 2005 are in addition, and not derogation of any other law for the time being in force, under which the respondent/wife can exercise her rights. Reliance is placed on the decision of the Kerala High Court, in

the case of **Vijesh P.K. and Others Vs. Divya and Another**, passed in Crl. MC. No. 380/2013 on 14.02.2014, in order to submit that parallel proceedings for maintenance under the Act of 2005 and under Section 125 of the Code of Criminal Procedure are held permissible. It is submitted that the Kerala High Court held that, pendency of a claim for maintenance before the family Court, will not preclude the petitioner therein, from seeking relief including that of maintenance under the Act of 2005. It is submitted that the object of the Act of 2005 is to grant relief, where the aggrieved person/wife is subjected to the act of domestic violence. It is submitted that the Act of 2005 does not contain any prohibition for the parties to take recourse to such other remedy, as may be available in law, before other forums. On the contrary, the Act of 2005 provides that the same is in addition and not derogation of any other law. He submitted that the remedy under the Act of 2005 is a summary and speedy remedy. As such, the respondent cannot be precluded from taking recourse to the remedy under the Act of 2005 notwithstanding the pendency of similar applications before the Civil Court.

9. I have considered the rival circumstances and the submissions made. On hearing the learned Counsel for the parties

and perusal of record, I do not find that any case for interference is made out.

10. The statement of object and reasons of the Act of 2005 shows that the Act of 2005 is enacted to provide for more effective protection of the rights of women guaranteed under the constitution, who are victims of violence of any kind, occurring within the family and for matter connected therewith or incidental thereto. Thus, it is clear that the Act of 2005 makes provision for effective protection of the rights of women, who are subjected to the acts of domestic violence, as defined in Section 2(g), read with Section 3 of the Act of 2005. It is clear that the jurisdiction of the Magistrate to entertain an application and grant reliefs is a conditional jurisdiction. In other words, the Magistrate is clothed with the jurisdiction to grant various reliefs under the Act of 2005, on finding that the woman/aggrieved person, subjected to the acts of domestic violence. That is the *sine qua non* for exercise of jurisdiction by the Magistrate. In other words unless and until, the Magistrate finds that the aggrieved person is subjected to acts of domestic violence by the respondent, the Magistrate would not get any jurisdiction to grant various reliefs. In that view of the matter, the jurisdiction of the learned Magistrate is

circumscribed by the provisions of the Act of 2005. It is obvious that the Act of 2005 makes provision for a summary and speedy remedy to the aggrieved person, when it provides under Section 12(4) of the Act of 2005 that the Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application and further Section 12(5) of the Act of 2005 provides that the Magistrate shall endeavour to dispose of every application made under Section 12(1), within a period of 60 days from the date of its first hearing. Thus, the Act of 2005 is a special law, governing the subject of domestic violence and the reliefs to be granted thereunder to the aggrieved person.

11. The precise submission on behalf of the petitioner which is based on the conjoint reading of Sections 20(1)(d), 26 and 36 of the Act of 2005 is that, although a remedy may be available, both under the Civil Court and before the Magistrate under the Act of 2005, the aggrieved person cannot simultaneously pursue such remedy, and the party will have to elect. In order to examine the submission, it would be necessary to set out the provisions of the relevant sections which read as under:

"20. Monetary reliefs.— (1) *While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to—*

(a)

(b)

(c)

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

26. Relief in other suits and legal proceedings.— (1) *Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.*

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

36. Act not in derogation of any other law.

—The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.”

(emphasis supplied)

12. It can thus be seen that Section 36 of the Act of 2005, in no uncertain terms says that the provisions of the Act of 2005 shall be in addition and not derogation of any other law, for the time being in force.

Section 26 of the Act of 2005 would make it explicit that any remedy available under Sections 18, 19, 20, 21 and 22 of the Act

of 2005 may also be sought before a Civil Court or Family Court or Criminal Court, affecting the aggrieved person and the respondent whether such proceedings were initiated before or after the commencement of the Act of 2005. Sub-section (2) of Section 26 of the Act of 2005 provides that any such relief under Section 26(1) of the Act of 2005 may be sought for in addition to and “along with any other relief” that the aggrieved person may seek in such suit before the Civil or Criminal Court.

Section 20(1)(d) of the Act of 2005 would make it clear that the maintenance which can be granted under the Act of 2005, can be in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure or any other law for the time being in force. It is difficult to see as to how a wife can be precluded from prosecuting/pursuing the remedy for maintenance and custody of the child before the Magistrate under the Act of 2005, notwithstanding the claim for similar reliefs before the Civil Court.

As noticed earlier the precise submission on behalf of the petitioner is that although, such remedies may be available, the aggrieved person, cannot simultaneously pursue them. In other words, it is submitted that the principles akin to Section 10 of the Civil Procedure Code would apply and the Court to which the

wife/aggrieved person approaches subsequently, has to stay its hands. I have considered the submissions, and I am not able to persuade myself to accept the submissions as made. The apprehension expressed on behalf of the petitioner is that there is a possibility of conflicting decisions/orders between the two Court. I find that adequate care about any such situation is taken by provisions of sub-section 3 of Section 26 of the Act of 2005, which mandates that the aggrieved person shall be bound to inform the Magistrate of the grant of such reliefs as is claimed under Section 26(1) of the Act of 2005. That apart, nothing prevents the petitioner from bringing to the notice of the Court, of any previous orders granting such relief in favour of such aggrieved person. Even as far as quantum of maintenance is concerned, the Court which is subsequently dealing this issue is bound to take into account the maintenance already granted, and is bound to mould the relief appropriately. In this regard a useful reference may be made to the provisions contained in Section 12(2) of the Act of 2005 and the proviso appended thereto, which reads as under:-

“12. Application to Magistrate.—

(1)

(2) The relief sought for under sub-section (1)

may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off."

13. This will make it further clear and strengthen the conclusion that the Act of 2005 is not intended to restrict other remedies if available. The proviso also states that the amount granted as compensation or damages will be set off against any amount payable under such decree. In other words, the Magistrate acting under the Act of 2005 or the Civil Court is bound to take note

of any order passed by the other Forum/Court, so that the relief can be appropriately moulded.

The learned Senior Counsel had posed a hypothetical situation where both the proceedings are closed for orders simultaneously. I do not propose to go into such hypothetical situation, because such instances would be either remote or far and few between. The question whether the aggrieved person/wife can pursue the claim for maintenance and custody of child before the Civil Court, as also before the Magistrate under the Act of 2005, cannot be decided on the basis of such hypothetical situation and it will have to be decided on the basis of the existing legal provisions.

14. It was submitted on behalf of the petitioner that under Section 28(2) of the Act of 2005, the Magistrate can devise his own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23 of the Act of 2005. It is submitted that thus, the Magistrate has a free play in the matter and as such, nothing prevented the learned Magistrate invoking principles akin to Section 10 of the Civil Procedure Code, when similar reliefs were claimed and were pending consideration in the previous proceedings.

I do not find that the submission can be accepted. Although, it cannot be disputed that under Section 28(2) of the Act of 2005, the Court can lay down its own procedure, for disposal of an application under Section 12 or under Section 23(2) of the Act of 2005, the object behind the said provision will have to be looked into. As noticed earlier, the Act of 2005 is a piece of special legislation governing the field of effective protection of the rights of women, who are subjected to the acts of domestic violence, as defined under the said Act. The procedure which the learned Magistrate can adopt is for effectuating the object of the Act of 2005 and not otherwise. Thus, it is apparent that the Court would follow such procedure, which will ultimately be in aid of the object to be achieved, under the Act of 2005 and not in derogation thereof. Thus, the provisions of Section 28(2) of the Act of 2005 will have to be read in the context of the overall provisions under which the reliefs can be claimed by the aggrieved person and granted by the Court. Thus, when Section 26(2) of the Act of 2005 provides that the reliefs under Sections 18, 19, 20, 21 and 22 of the Act of 2005, may also to be sought before the Civil Court or Family Court or Criminal Court, the Magistrate is not expected to call into aid principles akin to Section 10 of the Civil Procedure

Code, which will itself be in derogation of the provisions of Section 26 of the Act of 2005 and would tend to frustrate the very purpose of the Act of 2005. Thus, the said submission will have to be refuted.

15. There cannot be any manner of dispute, with the proposition that the right to claim maintenance and also custody are not creation of the Act of 2005, as such rights were available prior thereto. In the case of **Premier Automobiles Ltd.** (supra), the question was about jurisdiction of Civil Court (under Section 9 of the Civil Procedure Code) to entertain labour dispute, in the context of provisions of Industrial Disputes Act, creating certain rights and also providing certain remedies for its enforcement. Reliance was placed on paragraph 9 of the judgment, which reads thus:

"It would thus be seen that through the intervention of the appropriate government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial disputes. But since an individual aggrieved cannot approach the Tribunal or the Labour Court directly for the redress of his grievance without the intervention of the Government, it is legitimate to take the view that the remedy provided

under the Act is not such as to completely oust the jurisdiction of the Civil Court for trial of industrial disputes. If the dispute is not an industrial dispute within the meaning of section 2(K) or within the meaning of section 2A of the Act, it is obvious that there is no provision for adjudication of such disputes under the Act. Civil Courts will be the proper forum. But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the Civil Court. It is plain that he can't have both. He has to choose the one or the other. But we shall presently show that the Civil Court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event Civil Court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged-breach of contract if the contract is one which is recognized by and enforceable under the Act

alone.”

It is clear that the controversy was in the context of provisions of the Industrial Disputes Act. It is apparent that the Industrial Disputes Act does not contain provisions, similar to one contained in Section 26 of the Act of 2005, which shows that the reliefs, under Sections 18, 19, 20, 21 and 22 of the Act of 2005, can also be claimed before any other Civil or Criminal Court. In my considered view the ratio in the case of **Premier Automobiles Ltd.** (supra) cannot come to the aid of the petitioner in this case. As noticed earlier, Section 26(3) of the Act of 2005 takes adequate care to avoid the possibility of conflicting decisions/orders. I have carefully gone through the judgment and order of the Courts below and I do not find any irregularity, requiring interference.

16. In the result, there is no merit in the revision application, which is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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