

Ayaz Ahmed Hafizullah	...	Petitioner
Vs.		
Sabina Ayaz Ansari and another	...	Respondents

Mr. S. R. Waghmare i/b. Mr. D. A. Patil for Petitioner.
Ms Seema Singh for Respondent No.1.
Mr. A. R. Patil, APP for Respondent No.2-State.

P.C. :

Heard Mr. Waghmare, learned Counsel for petitioner, Ms Singh, learned Counsel for respondent No.1 and Mr. Patil, learned APP for respondent No.2-State at length.

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Court, Mazgaon under Sections 12, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (for short 'Domestic Violence Act'). The said proceedings were taken out on or about 04.07.2011. By order dated 22.12.2011, the learned Metropolitan Magistrate directed the petitioner to pay maintenance to the respondent No.1 @ Rs.4,000/- per month from the date of the application i.e. 04.07.2011 till final disposal of the case. By order dated 04.09.2013, the Family Court had directed the petitioner to pay maintenance of Rs.5,000/- per month from the date of application i.e. 26.07.2011. The petitioner, therefore, took out the application, exhibit-23, by contending that respondent No.1 cannot seek maintenance from both the Courts.

3. In support of this Petition, Mr. Waghmare submitted that, earlier, respondent No.1 invoked provisions of the Domestic Violence Act and by order dated 22.12.2011, the learned Metropolitan Magistrate directed the petitioner to pay Rs.4,000/- per month from 04.07.2011. Respondent No.1 thereafter filed application under Section 125 Cr.P.C. and by order dated 04.09.2013, the Family Court directed the petitioner to pay interim maintenance @ Rs.5,000/- per month from the date of the application i.e. 26.07.2011. He submitted that respondent No.1 cannot claim maintenance under the provisions of the Domestic Violence Act as also under Section 125 Cr.P.C. Respondent No.1 should have claimed maintenance either under Domestic Violence Act or under Section 125 Cr.P.C. In short, he submitted that respondent No.1 cannot claim maintenance, both, under the Domestic Violence Act and also under Cr.P.C. He further submitted that the petitioner is earning Rs.5,000/- per month. He is working as a Clerk with one Mr. Sushil Singhanian. Earlier, the petitioner was carrying on business. He however, suffered heavy losses and now he is working as a Clerk with Mr. Singhanian. Apart from that, even his mother has instituted proceedings against him

under the Domestic Violence Act. For all these reasons, he submitted that appropriate order may be passed directing payment either under the Domestic Violence Act or under Section 125 Cr.P.C.

4. On the other hand, Ms Singh supported the impugned order. She submitted that though the petitioner claims that he is working with Mr. Sushil Singhanian as a Clerk, he did not produce any material for substantiating the said contention. On the other hand, he is a businessman having vast properties. She further submitted that in view of Section 20(d) read with Section 26 of the Domestic Violence Act, respondent No.1 is entitled to claim maintenance under the Domestic Violence Act as also under Section 125 Cr.P.C.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, respondent No.1 has invoked the provisions of the Domestic Violence Act. By order dated 22.12.2011, the learned Metropolitan Magistrate directed the petitioner to pay maintenance @Rs.4,000/- per month from the date of the application i.e. 04.07.2011 till final disposal of the case. By order dated 04.09.2013, the Family Court directed the petitioner to pay interim maintenance @ Rs.5,000/- per month from the date of the application i.e. 26.07.2011. The question is whether the respondent No.1 can claim maintenance under the Domestic Violence Act and also under Section 125 Cr.P.C. Sections 20(d) and 26 of the Domestic Violence Act 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 is not limited to—"

...

(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."

6. Perusal of Section 20(d) extracted hereinabove clearly shows that the aggrieved person can claim maintenance for herself as well as her children including an order under or in addition to an order of maintenance under Section 125 Cr.P.C. or any other law for the time being in force. Provisions of Section 26 also indicate that any relief referred to in sub-section (1) of Section 26 can 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. In view thereof, I do not find any merit in the submission of Mr. Waghmare that respondent No.1 can claim maintenance either under the Domestic Violence Act or under Section 125 Cr.P.C and not under both.

7. As far as the other contention that the salary of the petitioner is Rs.5,000/- per month is concerned, equally, I do not find any merit in this submission. In paragraph 11, the Family Court noted that though the petitioner claims to be earning Rs.5,000/- per month as salary, he has not relied upon any document. In view thereof and also having due

regard to the fact that the order passed by the Family Court is the interim order, no case is made out for invocation of powers under Article 227 of the Constitution of India read with Section 482 of the Cr.P.C. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab