

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 1703 OF 2017

Suryankant Rajaram Sankpal	]	
Age 47 years, Occ.Business	]	
At Present Residing at -Flat No.4,	]	
Siddheshwar Apartment,	]	
S.No. 193A, Galli No.B-16, Garmala,	]	
Dahrayri, Pune City,	]	
Pune - 411 041	]	... Petitioner.

V/s.

1. Mrs.Sucheta Suryakant Sankpal	]	
Age 41 years, Occ. Household,	]	
R/at 4B Vasant Complex,	]	
Hingane Khurd Sinhagad road,	]	
Near Rokdoba Temple,	]	
Pune	]	
2. Master Pratik Suryakant Sankpal	]	
Age 17 years, Occ.Education	]	
Through natural Guardian-	]	
Mother Respondent No.1	]	
3. The State of Maharashtra	]	... Respondents.

- Mr.Venkatesh A. Shastry for the Petitioner.
- Mr.Vilas B. Tapkir a/w. Mr.J.S. Yadav for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATED : 11th OCTOBER, 2017.

ORAL JUDGMENT :-

1] Rule. Rule made returnable forthwith.

2] With consent of learned counsel for both the parties, heard finally at the stage of admission itself.

3] This Writ Petition is preferred by the Respondent challenging the order of interim maintenance of Rs.2,000/- per month each to Respondent Nos.1 and 2 as awarded by the Family Court No.1, Pune on 15/02/2017 in P. E. No. 227 of 2013 filed under Section 125 of Criminal Procedure Code (Cr.P.C.).

4] The submission of learned counsel for the Petitioner is that as per undisputed facts on record, Respondent No.1, the wife has filed Criminal M.A. No.0402677 of 2012 under Section 12(xii) of the Protection of Women From Domestic Violence Act (D.V. Act), in which she has also filed an application for interim maintenance. The said application was decided on 03/01/2014 and as per the order passed therein by the Magistrate, Respondent-wife was granted Rs.3,000/- per month as maintenance for herself and Rs.2,000/- per

month for the son. She has also been awarded the amount of Rs.5,000/- per month towards rent. Thus, totally she was awarded the amount of Rs.10,000/- per month. She has however not disclosed the said fact in her application for interim maintenance filed before the Family Court under Section 125 of Cr.P.C.. The said order was brought to the notice of the Family Court by the Petitioner herein. Thereafter also, Respondent No.1 has not amended the petition or the application for interim maintenance for making out a *prima-facie* case that she requires the addition amount of maintenance. It is urged that despite these facts, the Family Court has awarded the additional sum of Rs.2,000/- per month each to Respondent Nos.1 and 2.

5] According to learned counsel for the Petitioner, the provisions of Section 125 of Cr.P.C. as per the Maharashtra Amendment empowers the Magistrate to pass an order of interim maintenance, only if the *prima-facie* ground is made out, that wife is not able to maintain herself. Here in the case, according to him, no such *prima-facie* ground was made out as Respondent No.1 was already getting the interim maintenance as per the order passed under D.V. Act. She has not even averred that the said amount is not

sufficient and in such situation, according to learned counsel for the Petitioner, the Family Court has committed an error in awarding the amount of Rs.2,000/- per month each as interim maintenance to Respondent Nos.1 and 2, in addition to the interim maintenance awarded under the D.V. Proceeding. In his submission, if the provision of Section 125 of Cr.P.C. does not empower the Family Court to pass such order of interim maintenance unless the *prima-facie* ground is made out. Thus the impugned order passed by the Family Court being without jurisdiction needs to be quashed and set-aside.

6] Per contra, learned counsel for Respondents has supported the impugned order by pointing out that Respondent No.1 has filed the application for interim maintenance in the D.V. Proceeding on 21/10/2013, whereas this application for interim maintenance was filed on 23/09/2013. Hence when Respondent No.1 has filed application for interim maintenance, in this proceedings under Section 125 of Cr.P.C. there was no such order passed in D.V. Proceeding as the said order was passed only on 03/01/2014. Therefore, there was no question of disclosing the said order in her application filed in the Family Court. Secondly, it is submitted that

the order in D.V. Proceedings was passed on 03/01/2014, whereas in this proceedings before the Family Court, the order is passed on 15/02/2017. Hence, there was definitely change in circumstances, entitling the Respondent No.1 to get additional amount of interim maintenance. Thirdly, it is pointed out that the Petitioner is getting substantial income from the Computer business and the agriculture land. The Family Court has considered the said income and thereafter awarded the sum of Rs.2,000/- only per month each to Respondents. According to learned counsel for the Respondents, therefore, there is no prohibition or bar under the law in granting additional amount of maintenance as per the case made out by the Respondents.

7] In support of his submission, learned counsel for the Respondents has relied upon the provisions of Section 36 of the D.V. Act which laid down that the provisions of the D.V. Act shall be in addition and not in derogation of the provisions of any other law for the time being in force. Thus, according to him, the right which the Respondent-wife and the child has to get the interim amount of maintenance as per provisions of Section 125 of Cr.P.C. remained as it is, as the said right is not taken away by the provisions of D.V. Act.

Therefore, according to him, the impugned order passed by the Family Court does not suffer from any illegality or jurisdictional error.

8] In order to appreciate these rival submissions advanced by learned counsel for both the parties, it would be necessary to consider the provision of Section 125 of Cr.P.C. as per the Maharashtra State Amendment. It reads as follows;

“In Section 125 -

(a) in sub-section (1)-

(i) for the words “not exceeding five hundred rupees”, substitute the words “not exceeding fifteen hundred rupees”;

(ii) before the existing proviso, insert the following provisos, namely:-

“Provided that, the Magistrate on an application or submission being made, supported by an affidavit by the person who has applied for the maintenance under this sub-section, for payment of interim maintenance, on being satisfied that, there is a prima facie ground for making such order, may direct the person against whom the application for maintenance has been made, to pay a reasonable amount by way of interim maintenance to the applicant, pending the final disposal of the maintenance application:

(Emphasis Supplied).

Provided further that, such order for payment of interim maintenance may, in an appropriate case, also be made by the Magistrate ex-parte, pending service of notice of the application, subject, however, to the condition that such an order shall be liable to be modified or even cancelled after the respondent is heard in the matter:

Provided also that, subject to the ceiling, laid down under this sub-section, the amount of interim maintenance shall, as far as practicable, be not less than thirty percent of the monthly income of the respondent.”;

(iii) in the existing proviso, for the words “Provided that”, substitute the words “Provided also that”;

(b) after sub-section (2), insert the following sub-section, namely:-

(2A) Notwithstanding anything otherwise contained in sub-sections (1) and (2), where an application is made by the wife under clause (a) of sub-section (1) for the maintenance allowance, the applicant may also seek relief that the order may be made for the payment of maintenance allowance in lump-sum in lieu of the payment of monthly maintenance allowance, and the Magistrate may, after taking into consideration all the circumstances obtaining in the case including the factors like the age, physical condition, economic conditions and other liabilities and commitments of both the parties, pass an order that the respondent shall pay the maintenance allowance in lump-sum in lieu of the monthly maintenance allowance, covering a specified period, not exceeding five years at a time, or for such period which may exceed five years, as may be mutually agreed to, by the parties.”;

(c) in sub-section (3),-

(i) after the words, “so ordered”, insert the words, brackets, figures and letter “either under sub-section (1) or sub-section (2A), as the case may be,”;

(ii) after the words “each month's allowance”, insert the words “or, as the case may be, the lump-sum allowance to be paid in lieu of the monthly allowance”.

[Vide Maharashtra Act 21 of 1999 sec.2 (w.e.f.20-4-1999).] Ed. These amendments have been made prior to the enactment of the Code of Criminal Procedure (Amendment) Act, 2001 (Central Act 50 of 2001) whereby the words “not exceeding five hundred rupees in whole” have been omitted by sec.2 (w.e.f.24-

9-2001)”.

9] Much emphasis is laid by learned counsel for the Petitioner on the Provisions under Clause (ii) which says that such application for payment of interim maintenance can be allowed by the Magistrate being satisfied that there is *prima facie* ground for making such order and then allow a reasonable amount of interim maintenance to the applicant pending the final disposal of the main application for maintenance.

10] Here in the case, according to learned counsel for the Petitioner, there was absolutely no *prima facie* ground for making such order of interim maintenance, as the Respondents were already awarded interim maintenance under the D.V. proceedings. He fairly concedes that if the facts were otherwise like the Respondents were awarded interim maintenance under Section 125 of Cr.P.C.. then in view of the provisions of Section 20 of D.V. Act relating to Monetary Relief specially sub Clause (d) thereof, Respondents would have been entitled for the maintenance in those proceedings in addition to an amount of maintenance awarded under Section 125 of Cr.P.C. However, the provisions of Section 125 of Cr.P.C., Maharashtra

Amendment, do not contain similar such provision. Conversely, it categorically provides that only when *prima facie* ground is made out, such order of payment of reasonable sum of maintenance can be passed by the Court under Section 125 of Cr.P.C.. Therefore it does not empower the Court to pass an order of interim maintenance which is in addition to amount of maintenance already awarded under D.V.Act.

11] However, in this respect, as rightly pointed out by learned counsel for the Respondents, the provisions of Section 36 of the D.V. Act clearly provide that the provisions of the said Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force; thereby indicating that merely because order of maintenance is passed under the provisions of D.V. Act, it will not take away the right of the applicant-wife to get maintenance under any other provisions of law, including the provisions of Section 125 of Cr.P.C.. This Section 36 of D.V.Act therefore, makes it clear that whatever amount of maintenance is granted under the D.V. Act is in addition and not in any way in derogation to the maintenance to which applicant will be entitled or may be entitled, under any other provisions of the Law. It

necessarily therefore follows that merely because, the Respondent-wife is awarded some amount of maintenance under the D.V. Act, she can not loose her right to get maintenance under Section 125 of Cr.P.C..

12] According to learned Counsel for Petitioner however for getting such interim maintenance, U/s 125 of Cr.P.C., the Respondent-wife has to make out a “*prima facie* ground” and Court should be satisfied of such ground. Here in the case no such *prima facie* ground is made out. It is true that in this case the Respondent No.1 has not stated in her application filed before the Family Court that she has already been granted the interim maintenance in the D.V. proceeding but that appears to be so on account of the fact that she has filed application for interim maintenance before the Family Court on 23/10/2013 whereas the order of interim maintenance was passed in the D.V. proceedings on 03/01/2014. Therefore, when she had filed the application for interim maintenance in the Family Court, the order of interim maintenance in D.V. proceeding was not passed, hence there is no intentional suppression of this material fact on her part.

13] It is a matter of record that thereafter this order was brought to the notice of the Family Court when it passed the impugned order. It would have been definitely in the fitness of things that after this order dated 03/01/2014 was passed in the D.V. proceedings, Respondent No.1 had amended her application to make out the case for additional amount of maintenance. However, the question posed for consideration is merely because she has not amended such application, whether Court cannot take into consideration the change of circumstances? The answer is emphatic 'no'. Court is not absolved from its duty of coming to conclusion whether she has made out *prima facie* ground, merely because she has not pleaded or amended her application to that effect. The law is well settled that the Court has to take into consideration the change of circumstances even if not pleaded as such, because the very wording of Clause (ii) Section 125(a) provides that it is “on Court being satisfied that there is *prima facie* ground for making such order”, the Court can pass such order of interim maintenance. Therefore, it follows that it is the “satisfaction” of the Court. It may be arrived at on the basis of the pleading raised by the parties or it may be on account of certain facts which are brought to the notice of the Court, or those facts, of which the Court is expected to take the

judicial notice.

14] Here in the case, the Family Court has taken the judicial notice of the fact that the order of interim maintenance in the D.V. proceeding was passed on 03/01/2014, whereas this application before the Family Court was decided in February 2017. Therefore, there was lapse of more than three years and during this period there has been change in circumstances. Not only in the requirements of the child, who is a growing child and studying in 9th Standard, but also on account of the rise in the prices of essential commodities, which made it necessary to grant some additional amount of maintenance. The Family Court has taken into consideration these aspects of the case and it has observed that the Court has to see whether that amount of maintenance awarded in D.V. proceedings is sufficient and further held that the amount of Rs.3,000/- per month for the wife and Rs.2,000/- per month for her son is definitely not sufficient for their maintenance and educational expenses of son. Therefore, having regard to the income of the Petitioner and also having regard to the requirements of the Respondent in the change of circumstances, after the laps of three years, the Family Court has thought it fit to award additional sum of

Rs.2,000/- per month each to Respondent Nos.1 and 2.

15] If one considers all these facts and circumstances on record, then it can not be said that the impugned order passed by the Family Court is passed without the jurisdiction vested in the Family Court or it is so unreasonable, exorbitant or excessive, so as to warrant interference therein in the writ jurisdiction of this Court. In this respect, it may be useful to refer to the pleadings of the Respondent which show that the Petitioner is doing the Computer business and earning Rs.10,000/- per month, he is also having the agriculture land. Therefore, this additional amount of maintenance which is a small increase in the amount of maintenance awarded in the year 2013 does not require any interference by this Court. Hence, the Writ Petition being without merits stands dismissed.

16] Rule is discharged.

(DR. SHALINI PHANSALKAR-JOSHI, J.)