

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

WRIT PETITION (STAMP) NO. 1476 OF 2017

Prajakta Raju Kamble	...	Petitioner.
V/s.		
Raju Gulab Kamble	...	Respondent.

ALONG WITH

WRIT PETITION NO. 13453 OF 2016

Raju Gulab Kamble	...	Petitioner.
V/s.		
Prajakta Raju Kamble	...	Respondent.

- Ms.Saloni M. Ghule for the Petitioner in WPST/1476/2017 and for the Respondent in WP/13453/2016.
- Mr.Abhijit P. Kulkarni a/w. Mr.Manoj Badgujar for the Petitioner in WP/13453/2016 and for the Respondent in WPST/1476/2017.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATED : 4th OCTOBER, 2017.

P.C. :-

- 1] Heard learned counsel for both the parties.
- 2] Writ Petition (Stamp) No.1476 of 2017 is preferred by the wife challenging the order passed by the 12th Jt. Civil Judge Senior

Division, Pune on 29th August, 2016 thereby awarding her interim maintenance at the rate of Rs.4,000/- per month in H.M.P. No.1008 of 2014, on the ground that the amount of Rs.4,000/- as awarded by the trial Court is too meager and needs to be enhanced taking into consideration the income of the husband from the salary and other sources. It is submitted that her husband is working in the Premier Private Limited Company and earning the salary of more than Rs.35,000/- per month. He is also having a 2-BHK flat at Ganesh Nagar and 2.5 Guntha land at Hinjwadi, where he has put up a shade and given it on rent. He is earning from the said plot Rs.15,000/- per month as rent. Thus, it is submitted by the learned counsel for the wife that if one has regard to the income of the husband, the amount of Rs.4,000/- per month, which was awarded by the trial Court for maintenance is very meager and needs to be enhanced and to that extent the interference is warranted in the impugned order of the trial Court.

3] Per contra, Writ Petition No.13453 of 2016 is preferred by the husband contending *inter-alia* that in the proceedings filed by the wife under the Domestic Violence Act, the trial Court had awarded her interim maintenance at the rate of Rs.10,000/- per

month which was reduced by the Appellate Court in Criminal Appeal No. 107 of 2015 vide its order dated 12th May, 2015 to Rs.5,000/- per month and when that order was in force, without there being any change in circumstances, the trial Court has again awarded the interim maintenance at the rate of Rs.4,000/- per month. Thus, the total amount of maintenance now comes to Rs.9,000/- per month which being excessive and exorbitant; it needs to be quashed and set-aside.

4] To substantiate this submission, that once the maintenance is awarded in one proceeding, another application for maintenance in different proceeding is not maintainable, learned counsel for the husband has relied upon the judgment of the Division Bench of this Court in the case of *Sangeeta Piyush Raj vs. Piyush Chaturbhuj Raj*, AIR 1998 Bombay 151. However, the perusal of the said judgment reveals that, the questions raised for determination in the said judgment were totally different. They were;

- (i) *Whether in the proceedings under Section 18 of the Hindu Adoption and Maintenance Act, the Court can grant interim maintenance ? and*
- (ii) *Whether if matrimonial proceedings are pending between the parties then an application for interim*

maintenance must be made only to the Family Court under the provisions of Section 24 of the Hindu Marriage Act ?”

5] While dealing with this question No.(ii), the Court has considered the provisions of Section 24 of the Hindu Marriage Act and it was held that;

“Once the conclusion is arrived that an application under Section 18 of the Hindu Adoptions and Maintenance Act is maintainable during the pendency of the proceedings under the Hindu Marriage Act, then, obviously, the result would be that the application for interim maintenance could be filed before the Court dealing with the right arising under provisions of Section 18 of the Hindu Adoptions and Maintenance Act”.

6] In that context, it was held that, once the interim maintenance is granted under Section 24 of the Hindu Marriage Act or under Section 18 of the Hindu Adoptions and Maintenance Act, then, there is no question of entertaining the application under other Act. It was held so, in order to avoid multiplicity of proceedings, because the criteria for awarding maintenance under both the provisions would be same.

7] Thus, from perusal of the said judgment, it can be seen that in that case totally different issues were raised for consideration and in order to avoid the multiplicity of proceedings; it was also held that the wife need not be driven to file an application for maintenance under Section 24 of the Hindu Marriage Act; when the proceedings under Section 18 of the Hindu Adoptions and Maintenance Act were pending. In my considered opinion, therefore, this judgment has no application to the facts of the present case.

8] Learned counsel for the husband has then placed reliance on the judgment of the Delhi High Court in the case of *Rachna Kathuria vs. Ramesh Kathuria*, 2010 SCC OnLine Delhi 2929. The facts of the said case also reveal that in the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005, the wife has applied for maintenance under Section 29 of the said Act, when already she was getting maintenance under Section 125 of CrPC and hence, it was held that if she felt that maintenance awarded to her was not sufficient, the proper course for her was to approach the concerned Court for modification of the order, instead of filing separate application for maintenance under the provisions of the D.V. Act. It was observed so in the light of the

legal position that the Protection of Women From Domestic Violence Act, 2005 does not create any additional right to claim maintenance on the part of the aggrieved person. It only puts the enforcement of existing right of maintenance available to an aggrieved person on a fast track. Hence, it was held that, “under the D.V.Act, the Magistrate has power to grant maintenance and monetary reliefs on an interim basis in a fast track manner only in those cases where women has not exercised her right of claiming maintenance either under Civil Court or under Section 125 of Cr.P.C.”. Thus, having regard to the provisions of the D.V. Act, these observations were made. This judgment also does not lay down any such legal proposition that, if wife has received certain amount of maintenance under Section 125 of CrPC, then she is precluded from asking or getting any interim alimony under Section 24 of the Hindu Marriage Act.

9] Learned counsel for the wife has relied upon the judgment of the Apex Court in case of *Manish Jain vs. Akanksha Jain*, (2017) 2 JLT 42, and the judgment of the Delhi High Court in case of *Kusum Sharma & Ors. vs. Mahinder Kumar Sharma*, (2014) 214 DLT 493; wherein the criteria are laid down for awarding the

interim maintenance under Section 24 of the Hindu Marriage Act.

10] Having regard thereto, it has to be held that, there is no bar as such to filing of an application under Section 24 of the Hindu Marriage Act, merely because the wife is getting some amount of maintenance as per order passed under Section 125 of Cr.P.C. While considering such application, the Court has to ensure that total amount of maintenance including the one awarded earlier, does not exceed the paying capacity of the husband.

11] In the instant case, when the application for maintenance filed under D.V. Act was allowed, the income of husband was Rs.26,623/- per month, according to the salary slip of January 2015. In the said proceedings, the Magistrate has awarded the maintenance at the rate of Rs.10,000/- per month, which was reduced by the District Court in Appeal preferred against it, bearing Criminal Appeal No.107 of 2015 to Rs.5,000/- per month. The said order was passed on 12/05/2015. The impugned order is passed on 29/08/2016 i.e. after more than one year and the latest salary slip of the husband which is produced in this proceedings shows that now his gross salary is Rs.38,586/-; whereas net salary is Rs.36,013/-. Therefore, it reveals that now the income of the husband has

increased considerably and at the same time the expenses of the wife for her day today living are also increased on account of inflation. In such situation, if the trial Court has awarded her interim maintenance under Section 24 of the Hindu Marriage Act, at the rate of Rs.4000/- per month, that too taking into the consideration the fact that she was awarded Rs.5,000/- per month as maintenance under the D.V. Act, it cannot be said that the trial Court has committed any error on that count.

12] At this stage, it may also be taken into consideration that, in addition to income from the salary, there is also a clear averment that the Petitioner / husband is getting income from the rent and having his own flat for the residence. The trial Court has taken into consideration the said aspect also. Therefore, the impugned order passed by the trial Court does not call for any interference either at the instance of the wife so as to enhance the same or even at the instance of the husband so as to cancel or reduce the same.

13] Both the Writ Petitions, therefore, being devoid of merits stand dismissed.