

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.203 OF 2017

Vishal S/o. Rajesaheb Gore
Age:42 years, Occu:Service,
R/o. Jawahar High School,
Ashiv, Tq. AUSA, Dist. Latur

= PETITIONER
(ORIG.NON-APPLICANT)

VERSUS

1. Sow.Aparna W/o Vishal Gore
Age: 34 years, Occu.:Household,
2. Miss. Neha d/o Vishal Gore,
Age: 11 years, Occu.: Education,

Respondent No.2 is minor and
under guardianship of Respondent
No.1

Both R/o Mundkar Niwas,
Mantri Nagar, Latur, Taluka &
District Latur

= Respondents
(Orig. Applicants)

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Shri S.S. Halkude, Advocate for Petitioner;
Shri Anil H. Kasliwal, Adv.for Resp.Nos.1 and 2.

CORAM : P.R.BORA, J.

DATE OF RESERVING JUDGMENT : 6th April,2018

DATE OF PRONOUNCING JUDGMENT : 13th June,2018

JUDGMENT:

- 1) Heard finally with consent of the

learned counsel appearing for the parties.

2) The question which falls for consideration in the present criminal revision application is, whether interim monthly maintenance directed to be paid under Section 23 read with Section 20(1)(d) of The Protection of Women from Domestic Violence Act, 2005 can be adjusted against the amount of maintenance awarded under Section 125 of The Code of Criminal Procedure.

3) The respondent herein had filed two different proceedings against the present applicant; one under Section 125 of Code of Criminal Procedure (for short, Cr.P.C.) and another under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short DV Act). In an application under Section 125 of Cr.P.C. learned J.M.F.C. has awarded maintenance at the rate of Rs.3,000/- to respondent no.1 and Rs.2,000/- to respondent no.2 from the date of

application. Whereas in the proceeding under DV Act, by way of interim maintenance, the JMFC Court has directed present applicant to pay an amount of Rs.2,000/- per month to respondent no.1 and Rs.1,000/- per month to respondent no.2.

4) The respondents filed an application seeking recovery of the amount of Rs.61,000/- from the applicant towards arrears of maintenance of the period from 27.08.2014 to 27.08.2015 awarded under Section 125 of Cr.P.C. Applicant filed an application in the said execution proceeding praying that, the amount of Rs.33,000/- paid by him by way of interim maintenance under the DV Act shall be adjusted against the said arrears.

5) The learned Judge of the Family Court, Latur vide order dated 02.08.2017, rejected the said application on the ground that the applicant has not challenged the order passed under DV Act and that both the proceedings are independent and

hence adjustment as sought by the applicant was not permissible.

6) Shri Halkude, learned Counsel appearing for the revision applicant, assailed the impugned order on various grounds. The learned Counsel, relying upon the judgment of the Hon'ble Apex court in the case of Sudeep Chaudhari Vs. Radha Chaudhari - AIR 1999 SC 536, submitted that though the ratio laid down in the said judgment would squarely apply to the facts of the present case, trial court has erroneously refused to apply the same. In the aforesaid case, the Hon'ble Apex court has ruled that, 'the amount awarded under Section 125 of Cr.P.C. is adjustable against the amount awarded in matrimonial proceeding under Section 24 of the Hindu Marriage Act as alimony to wife'.

7) Shri Kasliwal, learned Counsel appearing for the respondent, opposed the submissions made on behalf of the revision applicant. The learned

Counsel submitted that the remedy, as provided under the provisions of the DV Act, is an independent remedy in addition to the provisions under Section 125 of the Cr.P.C. The learned Counsel read out Section 20(1)(d) of the DV Act, and submitted that in view of the clear provision, as aforesaid, in the DV Act, the request made by the revision applicant to adjust the amount of interim maintenance awarded under the provisions of the DV Act, was unsustainable and hence has been rightly rejected by the learned Judge of the Family Court. In order to support his argument, learned Counsel relied upon the judgment of the learned Single Judge of this Court in Criminal Writ Petition No.3791/2016 (*Prakash Babulal Dangi Vs. The State of Maharashtra and Anr.*) with Criminal Writ Petition No.3239/2014 delivered on 10th October, 2017. The learned Counsel also relied on the judgment of the Hon'ble Gujarat High Court in the case of *Haresh Narayan Jaguja and Ors.Vs. Namrata Haresh Jaguja and Ors. - MANU/GJ/0768/2015.*

8) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned order and the other material placed on record by the parties.

9) Section 125 of the Cr.P.C., relevant for deciding the controversy in the present matter, reads as under, -

125. Order for maintenance of wives, children and parents - (1) If any person having sufficient means neglects or refuses to maintain -
(a) his wife, unable to maintain herself, or
(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
(d) his father or mother, unable to maintain himself or herself,
a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to

such person as the magistrate may from time to time direct"

10) I also deem it appropriate to reproduce herein below Sections 20, 26, and 36 of the DV Act, which read thus, -

"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) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (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.

(2) 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.

(3) The Magistrate shall have the power to order an appropriate lump

sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

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 proceedings, 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 the Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force."

11) Section 20(1)(d) of the DV Act makes it clear that the maintenance, which can be granted under the said Act, can be in addition to an order of maintenance under Section 125 of Cr.P.C. and or any other law for the time being in force. Whereas sub-section(3) of Section 26 of said Act enjoins the duty on the aggrieved person to inform the Magistrate, if she has obtained any relief available under Sections 18, 19, 20, 21 and 22 in any other legal proceeding filed by her before the Civil Court, Family Court or criminal

court. It is discernible that the object behind incorporating the aforesaid specific provision is that while granting any of the reliefs sought under Sections 18, 19, 20, 21 and 22 of the DV Act, the Magistrate shall take into account and consider, if any similar relief is already obtained by the aggrieved person. To illustrate, if the maintenance is sought by the aggrieved person under Section 20 of the DV Act, she shall be bound to inform the Magistrate, if she is already receiving the maintenance under Section 125 of Cr.P.C. or in any legal proceeding before the civil court. The purpose underlying the said provision is explicit that the Magistrate must be in a position to take a reasonable decision while awarding the maintenance, if any under the provisions of the DV Act. It is thus evident that though the proceeding under the DV Act may be an independent proceeding, the Magistrate cannot ignore the maintenance awarded, if any, in any other legal proceeding before the civil court or criminal court and has to take into account

the maintenance already awarded, if any, while taking a decision whether in addition to the maintenance already awarded any more amount is required to be awarded and if yes, to what extent ? and shall have to record reasons therefor.

12) Admittedly, there is no such provision, as aforesaid, under Sections 125 of Cr.P.C. The question is, whether the J.M.F.C. or the Judge of the Family Court, while deciding the application filed under Section 125 of Cr.P.C., more particularly, while determining the quantum of monthly maintenance can ignore or/refused to take into account the order, if any, passed under DV Act, whereby the aggrieved person has been already granted certain maintenance or interim maintenance, as because there is no such express provision in Cr.P.C.? It appears to me that it would be wholly unjust, if the Magistrate fails or refuses to take into account the maintenance or interim maintenance already awarded under the provisions of DV Act while determining the

quantum of maintenance to be awarded under Section 125 of Cr.P.C. Section 125 of Cr.P.C. enjoins the duty on the Magistrate to award fair and appropriate amount of maintenance, meaning thereby that it shall not be inadequate or insufficient and at the same time shall also not be excessive or unreasonable. In the circumstances, though there may not be any express provision under Section 125 of Cr.P.C., it may not be impermissible to take into account the maintenance or interim maintenance, if any, already awarded to the aggrieved person under the provisions of the DV Act while finally determining the quantum of maintenance u/s 125 Cr.P.C. The same principle would apply to the application u/s 128 of Cr.P.C. and thus the amount of interim maintenance awarded under DV Act shall liable to be adjusted in the amount of maintenance finally awarded u/s 125 Cr.P.C., so long the aggrieved person is receiving such amount.

13) In view of the above, it appears to me that the revision applicant was fully justified in making a request in the application u/s. 128 of Cr.P.C. to adjust the amount paid by him to the respondents by way of interim maintenance in the proceedings under the DV Act, against the amount of maintenance awarded u/s. 125 of the Code. The learned Judge of Family Court has, however, refused to accept the said request on the ground that the revision applicant has not challenged the order passed under the DV Act or has secured any stay to the execution of the said order.

14) In the case of Sudeep Chaudhary vs Radha Chaudhary – AIR 1999 SC 536, wife had filed an application under Section 125 of Code of Criminal Procedure and was awarded the maintenance @ of Rs.350/- per month and was subsequently enhanced to Rs.500/- per month. In the proceeding under the Hindu Marriage Act, 1955 also interim alimony was sought by the wife under Section 24 of the

Hindu Marriage Act, 1955. It was granted @ of Rs.600/- per month and was subsequently enhanced to Rs.800/- per month. Since, the husband failed to pay the amount of maintenance as aforesaid, the wife started recovery proceedings, whereupon the husband contended that the maintenance amount under Section 125 of Cr.P.C. should be adjusted against the interim alimony and the Magistrate, before whom the recovery proceedings were pending, upheld the contention. The High Court, however, held that the Magistrate was in error in directing the adjustment of the maintenance amount awarded under Section 125 of Cr.P.C. against the amount awarded under Section 24 of the Hindu Marriage Act. The Hon'ble Apex Court set aside the order passed by the Hon'ble High Court by observing that the amount awarded under Section 125 of Cr.P.C. for maintenance was adjustable against the amount awarded in the matrimonial proceedings and no maintenance was liable to be given over and above the same.

15) The aforesaid decision was cited by the Revision Applicant before the Trial Court. The Trial Court has however failed in appreciating the ratio laid down in the said Judgment and has wrongly held that the Judgment of the Civil Court is binding on the Criminal Court so far as the amount of maintenance is concern and not vice-versa. From the Judgment of the Hon'ble Apex Court it is clear that the Hon'ble Apex Court allowed the adjustment of the lower amount (Rs.500/-) awarded by the Magistrate against the higher amount of Rs.800/-, which was subsequently enhanced to Rs.1000/-, awarded by the Matrimonial Court.

16) In the case of Shailendra Nath Gosh vs. State of West Bangal – 1997 CRI.L.J. 4591, the Hon'ble Calcutta High Court allowed the adjustment of maintenance awarded by the Matrimonial Court under Section 24 of the Hindu Marriage Act against the maintenance awarded under Section 125 of Cr.P.C. since the amount of

maintenance awarded by the Matrimonial Court was lower than the amount awarded by the Magistrate's Court under Section 125 of Cr.P.C.

17) In Sanjay vs. Swati – 2006 DMC 731 Bombay, the maintenance was awarded to the wife in the proceeding under Hindu Marriage Act under Section 24 of the said Act and also in an application filed by her under Section 125 of Cr.P.C. The maintenance @ of Rs.1500/- was awarded under Section 125 of Cr.P.C.; whereas, maintenance was awarded @ 2000/- per month under Section 24 of the Hindu Marriage Act. The wife had filed an application before the Family Court for recovery of the arrears of maintenance ordered under Section 125 of Cr.P.C. In the said application the husband claimed that he was not bound to pay the amount of maintenance under Section 125 of Cr.P.C. since he was already paying higher amount of maintenance in compliance with the order passed under Section 24 of the Hindu Marriage Act. The Family Court rejected

his request and hence the husband approached the High Court. The learned Single Judge of this Court set aside the order passed by the Family Court and clarified that the respondent wife shall not be entitled to claim execution of the order under Section 125 of the Cr.P.C. until she receives or continue to receive the amount of maintenance under section 24 of the Hindu Marriage Act.

18) What I intend to emphasize is the fact that the adjustment is permissible and the adjustment can be allowed of the lower amount against the higher amount. Though the wife can simultaneously claim maintenance under the different enactments, it does not in any way mean that the husband can be made liable to pay the maintenance awarded in each of the said proceedings.

19) The wife and children can claim maintenance under Section 125 of the Code of

Criminal Procedure, under Section 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 and also under Section 20 read with 23 of the D.V. Act. The wife additionally can claim interim alimony under Section 24 of the Hindu Marriage Act. Even if all these remedies are simultaneously pursued by the wife and some or the other order is passed in each of the said proceedings, it would not be permissible for the wife to claim the amount of maintenance awarded in each of the said proceedings independently. Firstly, the propriety demands that if any similar relief is granted in the earlier proceedings, the person in whose favour such relief is granted has to disclose the said fact in the subsequent proceedings. For a moment even if it is presumed that no such discloser was made or in a hypothetical situation, all the proceedings are simultaneously decided, the husband will definitely have a right to claim adjustment of the amount awarded in the said proceeding and can not be subjected to

independently pay the amount of maintenance awarded under each of the said proceedings.

20) In the case of Sudeep Chaudhary (cited supra) the Hon'ble Apex Court has laid down a law that the amount awarded under Section 125 of Cr.P.C. is adjustable against the amount awarded in matrimonial proceedings under Section 24 of the Hindu Marriage Act as alimony to wife. No narrow meaning can be given to the law laid down by the Hon'ble Apex Court in the aforesaid judgment by interpreting the same to mean that the amount awarded by the Criminal Court only can be adjusted against the amount awarded by the Civil Court in the proceeding before it. The Judgment read and interpreted in proper spirit lays down a law that the lower amount is to be adjusted against the higher amount. As noted earlier, in the case of Shailendra Gosh (cited supra) the Hon'ble Calcutta High Court allowed such request by permitting the adjustment of the maintenance awarded under Section 24 of the Hindu

Marriage Act by the Civil Court against the amount of maintenance awarded by the Criminal Court under Section 125 of Cr.P.C., since the amount awarded under Section 125 of Cr.P.C. was higher than the amount awarded under Section 24 of the Hindu Marriage Act.

21) In the case of Merchandise Vs. State — (1990) 1 DMC 38, the Hon'ble Allahabad High Court was hearing a revision by the husband directed against the order granting maintenance allowance to the wife under Section 125 of Cr.P.C. and it was contended on behalf of the respondent that he has already filed a petition for divorce and in that divorce proceeding, he has been directed to pay maintenance to the wife. In the circumstances, the High Court directed adjustment of the amount paid towards the maintenance in the matrimonial proceeding against the maintenance payable under section 125 of Cr.P.C. The Court held that double payment of maintenance is not intended by law and that if any money has been

deposited towards the payment of maintenance in the divorce proceeding, the same was liable to be adjusted in the payment of maintenance ordered under section 125 of Cr.P.C.

22) There may be different enactments, to which I have referred to herein above, containing some or other provision providing maintenance to wife and children, but the object behind every such provision is common; to prevent vagrancy and destitution. Such a provision in all these enactments is meant to achieve a social purpose and a measure of social justice specially incorporated to protect women and children. It falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. However, as I have discussed herein before, these provisions cannot be interpreted to mean that the husband can be made liable to pay maintenance/interim maintenance awarded under each of the said provisions independently and cannot be permitted to seek

adjustment of the amount of maintenance awarded in the earlier proceeding against the amount awarded in the subsequent proceeding or vice versa.

23) In the instant matter, two proceedings were filed by the wife with a gap of one day. The application under the DV Act was filed on 26th August, 2014; whereas the application under Section 125 of Cr.P.C. was filed on 27th August, 2014. In the proceeding under the DV Act, interim order came to be passed on 16th January, 2015 whereby the husband was directed to pay interim maintenance to the present respondents @ Rs.2,000/- and Rs.1,000/- respectively. The application under Section 125 of Cr.P.C. was finally decided later on, i.e. on 1.9.2015. The learned Magistrate awarded the maintenance @ Rs. 3,000/- to the wife and @ Rs.2,000/- to the daughter and the husband was directed to pay the said amount from the date of application, i.e. 27.8.2014.

24) The fact that the interim maintenance was awarded under the DV Act was not brought to the notice of the learned Magistrate while deciding the application under Section 125 of Cr.P.C. either by the wife or by the husband. The learned Magistrate held the proved income of the husband to the tune of Rs. 15,000/- per month and accordingly granted maintenance to the wife @ Rs.3,000/- and to the daughter @ Rs.2,000/- per month. The wife has not challenged the order passed under Section 125 of Cr.P.C. Therefore, it can be reasonably inferred that the amount of maintenance awarded by the learned Magistrate is adequate and sufficient to meet her requirements to lead life of her standard.

25) When the interim order came to be passed under the DV Act, there was no other order in existence awarding any maintenance to the wife and the daughter. Therefore, it cannot be said that the amount, as has been awarded by way of interim maintenance under the DV Act, is in

addition to the amount of maintenance awarded under any other provision of law. Had there been any earlier order in existence awarding some maintenance to the respondents and in spite of the said order, if the learned Magistrate dealing with the proceeding under the DV Act, by recording reasons, would have granted some more amount by way of maintenance in addition to the maintenance already granted in favour of the aggrieved person, the position would have been different. In such a case, the adjustment could not have been permissible. In the instant matter, since the interim maintenance awarded under the DV Act is not in addition to the amount already granted in any other civil or criminal proceeding, the same is certainly liable to be adjusted against the amount of maintenance finally awarded under Section 125 of Cr.P.C. even though the husband has not challenged the said order before any higher court.

26) Though the learned Counsel for the

respondents sought to rely upon the decision of the learned Single judge of this Court in the case of Prakash Babulal Dangi (cited supra), it is brought to my notice that the Hon'ble Apex Court in SLP (Cree.) No.10280-10281/2017 has stayed the operation of the said order and has directed the husband to continue to pay the maintenance as awarded under the DV Act. It is not in dispute that in the aforesaid case, the amount of maintenance awarded under the DV Act is higher than the amount awarded under Section 125 of Cr.P.C. Thus, the higher amount only is made payable by the Hon'ble Apex court.

27) In view of the facts, circumstances and legal provisions discussed herein above, the impugned order passed by the learned Judge of the Family Court, Latur, cannot be sustained and deserves to be quashed and set aside. It is accordingly quashed and set aside. It is directed that while computing the amount of maintenance payable to the respondents for the period from

27.8.2014 to 26.8.2015, as per the order passed under Section 125 of Cr.P.C., the learned Judge of the Family Court shall take into account the amount of maintenance paid by the husband under the DV Act for the aforesaid period and adjust the said amount against the amount payable under Section 125 of Cr.P.C.

28) The Criminal Revision Application thus stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

bdv/
fldr 4.5.18