

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION 1315 OF 2017

(1) Sunil s/o Badrinath Chopde
Age 28 years, Occ-Agricultural Labour

(2) Badrinath s/o Manikrao Chopde
Aged 57 years, Occu.Agriculture

(3) Anil s/o Badrinath Chopde
Aged 32 years, Occu.Agri

(4) Subhadrabai w/o Badrinath Chopde
Aged 52 years, Occupation Agriculture,

(5) Jijabai w/o Anil Chopde
Aged 27 years, Occu : Agriculture

All residing at village Karajgaon,
Taluka and District Aurangabad.

.. PETITIONERS
(Orig.Non-Applicants)

Versus

(1)The State of Maharashtra
Copy to be served through
The Public Prosecutor,
High Court at Aurangabad

(2)Sou.Shakuntala w/o Sunil Chopde
Aged 24 years, Occu.Household,
R/o. Gadhe Jalgaon, Taluka and
District Aurangabad.

.. RESPONDENTS

Mr.Imale Ramesh, Advocate for petitioners.
Mrs.V.S.Chaudhari,APP for Respondent 1.
Mrs.Pooja Langhe Adv. For respondent no.2.

CRIMINAL WRIT PETITION NO.1316/2017

Sunil s/o Badrinath Chopde
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Residing at village Karajgaon
Taluka and District Aurangabad.

.. PETITIONER
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[Orig.Applicant]

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Mr.Imale Ramesh, Advocate for petitioner.
Mrs.V.S.Chaudhari,APP for Respondent 1.
Mrs.Pooja Langhe Adv. For respondent no.2.

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CORAM : MANGESH S. PATIL, J.

RESERVED ON : 05/06/2018.

PRONOUNCED ON :09/07/2018.

JUDGMENT :

These are the Writ Petitions by husband against his wife who has been able to secure an order of maintenance under Section 12 of the Protection of Women from Domestic Violence Act 2005 (hereinafter referred to as D.V. Act) as well as the right

to share household and also an order of maintenance under Section 125 of the Code of Criminal Procedure. Both these proceedings were tried and decided by the learned Magistrate separately but by the judgment and order passed on the same day. To avoid repetition, both the Writ Petitions have been heard together and are being disposed of by this common judgment.

2] For avoiding confusion the parties are hereinafter referred to as husband and wife.

3] Shorn of unnecessary details, the facts leading to the filing of these Writ Petitions are to the effect that the wife filed Miscellaneous Criminal Application No.1071/2013 under Section 12 of the D.V.Act *inter alia* alleging that she was ill treated by the husband, parents in laws, brother in law and the sister in law on account of their demand for a dowry. She alleged that she was beaten and thereafter she lodged complaint with police and thus she alleged that she was being neglected. She then alleged that the husband and the in laws have agriculture land and they have been earning Rs.10 lakhs every year from agriculture produce. Besides she alleged that they were having a grocery shop and were earning Rs.25,000/- p.m. She also alleged that the husband, his father and brother have also been dealing in properties and have been earning Rs.2 lakh p.m. from that occupation. She therefore, claimed maintenance at the rate of Rs.15,000/- p.m.

4] She also alleged that she was staying in two rooms in the house of the in laws which constituted a shared household and also claimed that she may be allowed to continue to occupy those two rooms. It is to be noted that this application was filed on 2/5/2013.

5] The wife then preferred Miscellaneous Criminal Application No.1215/2013 on 28/5/2013 against the husband seeking maintenance under Section 125 of the Cr.P.C. repeating the very same allegations in respect of the property of the husband and his income. She claimed a maintenance at the rate of Rs.3000/- per month.

6] The husband and the other in laws opposed both these proceedings. They flatly denied that they had made unlawful demand for money or to have subjected the wife to ill treatment. They also denied that she was being neglected. They also denied that she was occupying two rooms from their house property and thus prayed to reject the applications.

7] After conducting necessary hearing, the learned Judicial Magistrate by the separate orders passed on the same day i.e. 16/2/2015 allowed the application filed under Section 12 of the D.V.Act and directed the husband, the father in law and the brother in law to pay Rs.2000/- p.m. to her. Her right to the two rooms in the shared household was also recognized and a direction was given to allow her to occupy these two rooms and

preventing the in laws from obstructing her occupation therein. She was awarded Rs.10,000/- towards compensation and costs.

8] The learned Magistrate also simultaneously allowed the application under Section 125 of the Cr.P.C. and directed the husband to pay Rs.1500/- p.m. to the wife.

9] The husband, his father and his brother carried the order passed under the D.V.Act in Criminal Appeal No.31/2015 under Section 29 of the D.V.Act, but the Appeal was dismissed. Similarly the husband also preferred Criminal Revision Application No.60/2015 impugning the order passed under Section 125 of the Cr.P.C. However, even the revision was dismissed. Hence these Writ Petitions by the husband and his relatives.

10] It is also important to note that the wife also filed a Regular Civil Suit No.797/2013 on 28/8/2013 against the husband and father in law under Section 18 of the Hindu Adoption and Maintenance Act which was decreed by the judgment and order dated 28/11/2015 wherein the husband was directed to pay her Rs.2000/- per month towards maintenance and further created a charge over the property of the family bearing land Gat no.65.

11] The learned advocate for the husband and the relations vehemently submitted that though the wife is entitled in law to

invoke as many remedies available to her as possible, however, simultaneously, she cannot be allowed to derive such a relief to which she is not ultimately entitled to. He would submit that the wife has simultaneously resorted to the provisions under Section 12 of the D.V.Act, Section 125 of the Cr.P.C. as well as Section 18 of the Hindu Adoption and Maintenance Act and has secured orders of maintenance in all these proceedings which in aggregate turns out to be Rs.5500/- p.m. More importantly, the learned Judges while deciding these proceedings have not taken into account the maintenance awarded in a previous proceeding. In fact the self same Magistrate has awarded maintenance at the rate of Rs.2000/- p.m. under the D.V.Act and Rs.1500/- p.m. under Section 125 of the Cr.P.C. by the orders pronounced on the same day but without referring to the quantum of maintenance being awarded in the other proceedings. The learned advocate would therefore, submit that the wife is being awarded a maintenance disproportionate to her need as well as the income of her husband. Since the orders are separate, now the husband has become liable to pay maintenance disproportionate to his income. Therefore, now that the matters have reached this Court, the amount of maintenance awarded to the wife may be rationalised based on the evidence to a figure commensurate with the need of the wife and the income of the husband.

12] As far as the order directing the wife to share the two rooms from the household is concerned, the learned advocate for

the husband would submit that both the Courts below have erred in appreciating the fact that the household is in fact only a building comprising of a ground floor and an upper floor totally comprising of four rooms. As per the direction of this Court, an assessment record of the house property is also referred to, to point out that it is a property, the total area of which comprises of 357 Sq.ft., whereas the wife has been allowed to occupy two rooms which would literally make the husband and his relations who are five in number to occupy the balance two rooms only. Therefore, even this direction is not legal and proper particularly when the wife even according to her own case has not been staying in the house since the year 2013 and has been staying with her parents.

13] The learned advocate for the wife strongly opposes both these Writ Petitions. He would point out that there are consistent findings of facts of the two Courts below and therefore, this Court while exercising the writ jurisdiction is not expected to reappraise it and to arrive at some independent conclusion. He would submit that the Courts below have recorded a finding after correct appreciation of evidence. The observations and the conclusions are plausible. The evidence brought on the record by the wife clearly demonstrates that the shared household in fact consists of three storeys wherein there is a shop on the ground floor and the residence on the upper two floors. The property is indeed a shared household within the meaning of D.V.Act. Even if the property stands in the name of the father in

law, still it would not seize to be a shared household. She had lastly resided and cohabited with the husband and his relations in the same property and therefore she is entitled to share it. He would further point out that irrespective of the fact that the orders of maintenance have been passed long back, the maintenance was not paid which had fallen in huge arrears and even she was not allowed to occupy the shared household. No error has been committed by the Courts below and the Writ Petitions may be dismissed.

14] I have carefully perused the impugned orders and the papers with the able assistance of the learned advocates of both the sides. It is trite that when a law creates a right in favour of an individual and also makes a provision to enforce it, no fault can be found with the wife in invoking her such right under different Statutes. Therefore as far as maintainability of these different proceedings under Section 12 of the D.V. Act, Section 125 of the Cr.P.C. and Section 18 of the Hindu Adoption and Maintenance Act are concerned, no fault can be found in lodging these proceedings and claiming maintenance.

15] However, when it is a matter of maintenance being claimed under three different Statutes and when the quantum of maintenance is to be determined on the parameters which are broadly the same, viz. ability of the wife to maintain herself, her income, if any and income of the husband etc., the maintenance awarded in one proceeding would certainly have a

bearing on the maintenance to be awarded in the subsequent proceeding. The income of the husband which is relevant in all these proceedings, would be constant. Therefore, irrespective of the fact that a wife is entitled to invoke as many remedies as possible for claiming maintenance, the maintenance awarded in the earlier proceeding will necessarily have to be taken into account while determining the quantum of maintenance in a subsequent proceeding. It cannot be comprehended that by making available such several remedies under different Statutes, the Legislature was intending that a wife should get some additional maintenance. The wife cannot be allowed to take advantage of such proceeding to claim a maintenance disproportionate to the income of the husband. It is bound to remain constant in all these proceedings.

16] This is precisely where as has been rightly pointed out by the learned advocate for the husband, the learned Magistrate as well as the learned Additional Sessions Judge seem to have fallen in error. The learned Magistrate who has decided the proceeding under Section 12 of the D.V.Act as well as the proceeding under Section 125 of the Cr.P.C. by the judgment and order pronounced on the same day, has arrived at different figures for awarding compensation but ignoring or without taking into account the maintenance being awarded in the other proceeding. Similarly the learned Additional Sessions Judge has erred in deciding the Criminal Appeal and the Criminal Revision arising from such orders of the Magistrate independently

ignoring the maintenance that was being awarded in the other proceeding. Interestingly, even the same Additional Sessions Judge has decided these two proceedings by separate orders passed on the same day.

17] Apart from these two proceedings, even the wife has obtained a decree under Section 18 of the Hindu Adoption and Maintenance Act wherein an amount of Rs.2000/- p.m. has been directed to be paid to her by way of maintenance. It is apparent duplication and something more has been sought to be recovered by way of maintenance by resorting to three different proceedings. I do not intend to blame the wife but the fact remains that by such three different orders, an aggregate maintenance of Rs.5500/- p.m. has been saddled upon the husband. She cannot be allowed to do so.

18] It is trite that in the matters of maintenance the decree of a Civil Court eclipses the orders of maintenance awarded under the Criminal Statutes. Taking into account the evidence and the fact of passing of such three different orders of maintenance though the wife cannot be prevented from executing all these orders, a direction needs to be given to appropriate the money recovered by her towards the maintenance awarded to her which is aggregate should not exceed Rs.2000/- p.m. In my considered view, therefore, though no illegality can be found in passing of the orders of maintenance under Section 12 of the D.V.Act and Section 125 of the Cr.P.C. those being the orders of the Criminal

Courts those should sub-serve the order of maintenance passed in the Civil Suit. In these circumstances, I find no hesitation in observing that the wife would be entitled to a maintenance of Rs.2000/- p.m. in aggregate i.e. irrespective of the order which she chooses to enforce.

19] As far as the dispute regarding shared household is concerned, both the Courts below, based on evidence have recorded a concurrent finding that the structure consists of three storys wherein there is a shop on the ground floor and there are in all four rooms on the upper floors. Admittedly, she was cohabiting with the husband in the same household. However, taking into account the fact that the husband and his relations comprise of he himself, both his parents, his brother and the wife of the brother i.e. five members in all, it would certainly cause hardship to them if they are asked to share half of the house with the wife. Without going into the aspect as to how many floors are there in the house, the evidence reads that there are four rooms in all, out of which by the impugned order, the wife is to get right to occupy two rooms. In my considered view, this fact has been clearly ignored by the learned Magistrate as well as the learned Additional Sessions Judge. It certainly has a bearing. Though wife would be entitled to share a household, taking into account the number of family members, it would certainly be improper to allow the wife to occupy two out of four rooms. To this extent, in my considered view, a direction needs to be given by modifying the impugned order and allowing the

wife to occupy only one room in the shared household.

20] The Writ Petitions are partly allowed in following terms :

The impugned orders stand modified to the effect :

(i) That the wife shall be entitled to occupy only one room from the shared household.

(ii) That the wife shall be entitled to a maintenance of only Rs.2000/- p.m., irrespective of whether she chooses to recover this maintenance in execution of any of the three orders; one based under Section 12 of the D.V.Act or under Section 125 of the Cr.P.C. or under Section 18 of the Hindu Adoption and Maintenance Act.

(iii) Rest of the directions in the impugned orders stand confirmed.

(MANGESH S. PATIL,J.)

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