

Chandrakant Ganpat Sabale	...	Petitioner
Vs.		
Kavita @ Kaveri Chandrakant Sabale	...	Respondent

CORAM : R. G. KETKAR, J.
DATE : APRIL 23, 2018

Heard Mr. Patil, learned Counsel for the petitioner, Mr. Tapkir, learned Counsel for the respondent at length.

3. In support of this Petition, Mr. Patil invited my attention to the order dated 27.07.2015 passed by the learned Judicial Magistrate First Class, Ghodnadi (Shirur) in Criminal Miscellaneous Application No.204 of 2015. That application was filed by the respondent under Sections 21

and 23 of Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'). By that order, the learned Magistrate directed the petitioner-husband to pay interim maintenance of Rs.2000/- per month to the respondent from the date of filing of the application i.e. 14.05.2015 till further orders, among other directions. Mr. Patil submitted that aggrieved by this decision, respondent has preferred appeal and the said appeal is pending. He submitted that custody of the children is with the petitioner. Petitioner has paid the amount of interim maintenance as per the order dated 27.07.2015 regularly and is not in arrears. He submitted that petitioner has instituted divorce proceedings before the Court of Civil Judge, Senior Division, Pune being Marriage Petition No.17 of 2015. In that proceedings, respondent filed application under Section 24 of the Act. He fairly pointed out that in paragraph 2 of that application, respondent has referred to the order dated 27.07.2015 passed by the learned Magistrate in proceedings under the D.V. Act.

4. Mr. Patil relied upon the order dated 10.10.2017 passed by this Court in Criminal Writ Petition No.3791 of 2016 along with Criminal Writ Petition No.3239 of 2014 and the order dated 10.01.2018 passed by the Apex Court staying the operation of the High Court's order. In paragraph 2 of that order, this Court noted the submissions as regards the confusion caused between the parties as to which order is to be followed namely, whether the order of maintenance passed in the proceedings filed under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is to be followed, or, whether the order passed in the proceedings filed under the D.V. Act is to be followed? In paragraph 8, this Court referred to Section 20(1)(d) of the D.V. Act which provides that in proceedings under the D.V. Act, the Magistrate may direct the respondent to pay the maintenance to 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 Cr.P.C. or any other law for the time being in force. Mr. Patil submitted that this order was stayed by the Apex Court on 10.01.2018. Though Section 20(1)(d) of the D.V. Act provides for payment of maintenance in addition to order of maintenance under Section 125 of Cr.P.C. or any other law for the time being in force, as the Apex Court has granted stay, the application requires consideration and the impugned order deserves to be stayed. In any case, the appropriate direction may be issued directing the petitioner to pay maintenance of Rs.2,500/- per month i.e. mean of Rs.2,000/- per month as per the order dated 27.07.2015 and Rs.3000/- per month as per the order dated 30.11.2017.

5. On the other hand, Mr. Tapkir supported the impugned order. He relied upon Sections 26 and 36 of the D.V. Act.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that respondent had instituted proceedings under Sections 21 and 23 of the D.V. Act. By order dated 27.07.2015, among other directions, the learned Magistrate directed the petitioner to pay interim maintenance of Rs.2,000/- per month to the respondent. On 19.07.2016, respondent filed present application exhibit-28 under Section 24 of the Act. In paragraph 2, she specifically made reference to the order dated 27.07.2015 passed by the learned Magistrate awarding maintenance of Rs.2,000/- per month. She contended that the amount is inadequate to maintain her. She has no source of income and she is on the verge of starving. Respondent is unable to maintain herself. She also referred to the financial status of the petitioner. In paragraph 3, she has made reference to the expenses incurred in travelling from Kendur

to Pune and that her brother has to accompany her for attending the dates fixed by the trial Court. On that basis, she claimed maintenance of Rs.20,000/- per month.

7. In paragraph 6 of the impugned order, the learned trial Judge has referred to 7/12 extract produced by the respondent showing that City Survey No.1009 is an agricultural land standing in the name of the petitioner and his brother. The learned trial Judge also considered the order awarding maintenance of Rs.2,000/- per month to the respondent. For the reasons recorded in paragraphs 11 and 12 of the impugned order, I do not find that the learned trial Judge committed any error in awarding maintenance @ Rs.3,000/- per month. Sections 26 and 36 of the D.V. Act read thus,

“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.

36. Act not in derogation of any other law. - The provisions of this Act shall be in addition to , and not in derogation of the provisions of any other law, for the time being in force.”

8. A perusal of sub-section (2) of Section 26 clearly shows that 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 proceedings before a civil or criminal Court. Section 36 lays down that the provisions of D.V. Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. Thus, the order dated 27.07.2015 passed under the provisions of D.V. Act awarding maintenance of Rs.2000/- per month cannot be given set-off while considering the impugned order. In view thereof, I do not find any case is made out for interfering with the impugned order. Mr. Patil relied upon the order dated 10.10.2017 passed by this Court in Criminal Writ Petition No.3791 of 2016 along with Criminal Writ Petition No.3239 of 2014 and the order dated 10.01.2018 passed by the Apex Court staying the operation of the High Court's order. It is not in dispute that as of today, the Apex Court has not set aside the order dated 10.10.2017 passed by this Court in those cases. Hence, reliance placed on the order dated 10.01.2018 of the Apex Court does not advance the case of the petitioner. Consequently, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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