

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Revision No. 783 of 2017 (O&M)
Date of decision: 26.4.2018

Sanjay Gulati

...Petitioner

Versus

Harsh Lata

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. B.D. Sharma, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The instant revision has been filed seeking to challenge the order dated 9.2.2017 passed by the learned Additional Sessions Judge, Hisar, by which the order dated 7.9.2016 passed by the learned Judicial Magistrate Ist Class, Hisar, directing the petitioner to pay ₹3000/- per month to the respondent wife has been upheld.

2. In brief, facts as stated are that the respondent Harshlata filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short '**the Domestic Violence Act**') claiming relief of maintenance. It was alleged that the respondent-wife was given severe beatings and was turned out of the matrimonial home for bringing inadequate dowry. The matter was referred to the Panchayat and subsequent thereto, the parties arrived at a compromise and the police recommended for

cancellation report to be filed. The husband filed a petition for divorce before the Court at Fatehabad, which was dismissed and the appeal against the said judgment was also dismissed by this High Court. Since the act and conduct of the petitioner-husband was such, the respondent-wife filed a petition against the petitioner herein invoking provision of the Domestic Violence Act claiming maintenance.

3. Upon notice, the petitioner appeared and alleged that the parties had been residing separately since the year 2007 and, therefore, the instant petition filed after lapse of more than six years i.e. in the year 2013, would be barred by the period of limitation. It was further submitted that there is no report of Protection Officer regarding offences as claimed. It was further submitted that a false FIR No. 373 dated 2.8.2007 under Sections 498-A, 406/34 IPC was lodged against the petitioner herein, which stood cancelled and, in fact, a petition was filed under Section 125 of the Code of Criminal Procedure in which the respondent-wife has been awarded maintenance @ ₹ 4,000/- per month and, therefore, the petition ought to be dismissed.

4. The learned Judicial Magistrate Ist Class, Hisar, by order dated 7.9.2016 allowed the petition under Section 12 of the Domestic Violence Act and directed the petitioner to pay maintenance @ ₹3,000/- per month from the date of filing the petition. Aggrieved against the said order, an appeal was preferred under Section 29 of the Domestic Violence Act which too was dismissed, by impugned order dated 9.2.2017, giving rise to the present petition.

5. Learned counsel appearing on behalf of the petitioner contends

that the petition under Section 12 of the Domestic Violence Act is not maintainable since the parties had been residing separately since 2006 and the said petition has been preferred after a lapse of more than six years. Learned counsel for the petitioner argues that the respondent-wife has not shared residence after the year 2007 when she had got registered FIR No. 373 dated 2.8.2007 under Sections 498-A, 406/34 IPC and, therefore, the question of any domestic violence would not arise, while also arguing that the respondent-wife is not entitled to claim maintenance both under Section 125 of the Code of Criminal Procedure as well as under the provisions of the Domestic Violence Act. It is also submitted that once maintenance has been allowed under Section 125 of the Code of Criminal Procedure, enhancement, if any, could be claimed on instituting an application under Section 127 of the Code of Criminal Procedure and that too if there is change in circumstances, while also arguing that allegations regarding cruelty have been negated in the FIR that was lodged under Sections 406 and 498-A/34 IPC. In this regard, reliance has been placed on a judgment of the Madras High Court **B. Prakash Vs. Deepa and another 2016 (1) RCR (Criminal) 524.**

6. Per contra, Mr. B.D. Sharma learned advocate appearing for the respondent, submits that the petition under the provisions of the Domestic Violence Act is maintainable as the respondent-wife is an “aggrieved person” and is entitled to claim maintenance from her husband-petitioner herein, while also submitting that the maintenance is being sought under the Domestic Violence Act on account of subsequent development i.e. on

medical grounds . It is submitted that respondent has been diagnosed with cancer and she requires constant medical care. The amount, as assessed, under Section 125 of the Code of Criminal Procedure is wholly inadequate, while also submitting that there is no delay in filing the petition.

7. I have heard learned counsel for the parties and with their able assistance have perused the pleadings and the case law, as cited. Two fold question arises for determination in this case, firstly, whether the petition filed by the respondent-wife under the provision of the Domestic Violence Act is barred by limitation; secondly whether the respondent-wife can claim maintenance under the Domestic Violence Act, in view of the fact that she is already receiving maintenance under Section 125 of the Code of Criminal Procedure or a petition for enhancement has to be instituted under section 127 of the Code of Criminal Procedure?

8. There is no dispute about the fact that the marriage was solemnized between the petitioner and the respondent herein which is still in subsistence as the divorce petition filed by the petitioner stands dismissed upto this Court. It is also not in dispute that the parties are residing separately and the petition under the Domestic Violence Act was filed after more than six years of the respondent having been turned out of the matrimonial home. Could a petition filed under the provisions of the Domestic Violence Act be dismissed only on the ground being barred by law of limitation? This question is no longer res-integra and well settled. This Court recently in **Criminal Revision No. 3084 of 2016 titled Vikas and others Vs. Smt. Usha Rani and another** following the judgments of

the Supreme Court in **Krishna Bhattacharjee Versus Sarathi Choudhury and another 2016 (2) SCC 705** and **Shalini Versus Kishor and others 2015 (11) SCC 718**, held as under:-

“An aggrieved person is permitted to present an application to the Magistrate seeking one or more reliefs under this Act and the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer also. Section 12 of the Domestic Violence Act is an enabling provision to file an application, whereas Sections 18 to 22 of the Domestic Violence Act provide for rights of the aggrieved person to seek different reliefs like protection, residence, monetary relief, custody of minor and compensation. No limitation has been prescribed for seeking any such relief. Penal provisions under Section 31 of the Domestic Violence Act would get attracted on a breach of a protection order . It is only in a situation when there is a breach of any protection order on an application under Section 12 or on any of the reliefs under Sections 18 to 22 of the Domestic Violence Act, then and then only, an application under Section 31 of the Domestic Violence Act is to be filed within one year from the date of such breach and not thereafter. Therefore, the court is of the opinion that there is no limitation prescribed to institute a claim seeking relief under Sections 17 to 22 of the Domestic Violence Act.”

Therefore, the question is answered against the petitioner herein holding that any act of domestic violence is a continuing offence and would not be barred by the law of limitation.

9. Being the lawfully married wife of Sanjay Gulati, the petitioner in the instant petition, the respondent wife is entitled to seek maintenance under Section 125 of the Code of Criminal Procedure. Similar provision has been made under the provisions of the Domestic Violence Act if it can be substantiated that there is 'economic abuse'. It is trite to say that a husband is duty bound to maintain his wife. The other questions that arise for consideration is whether maintenance can be claimed by the respondent-wife under the DV Act, in view of the fact that she is already receiving maintenance under Section 125 of the Code of Criminal Procedure or a petition for enhancement should be preferred under Section 127 of the Code of Criminal Procedure ?

10. In this regard, learned counsel of the petitioner relies on **B. Parkash's case (Supra)**, wherein the Madras High Court held as under:-

“18. If the wife wants to modify an order made under Section 125 of the Code, seeking enhancement of the maintenance amount, the only option available for her is to file a petition under Section 127 of the Code before the same Magistrate, who passed the order. In other words, the order made under Section 125 of the Code can be modified or varied only by the same Magistrate, who passed the earlier order. An order made under Section 125 of the Code for maintenance by one Magistrate cannot be varied or modified by a Magistrate acting under Section 20 of the Act. Therefore, it should be noted that a monetary relief granted towards maintenance under Section 20

of the Act may be not in modification of the previous order for maintenance passed under Section 125 of the Code, but it may be in addition to the said order for maintenance passed under Section 125 of the Code. If an order has already been made under Section 125 of the Code for maintenance, there can be no doubt that the wife had proved either neglect or refusal on the part of the husband. If the wife wants an order under Section 20 of the Act, in addition to the order under Section 125 of the Code, she has to prove fresh acts of the husband constituting the domestic violence subsequent to the passing of the earlier order under Section 125 of the Code. She cannot rely on the acts of the husband constituting domestic violence, which happened prior to the passing of the order under Section 125 of the Code. For getting an order under Section 20 of the Act, in addition to the earlier order under Section 125 of the Code, the wife should plead and prove that subsequent to the said order made under Section 125 of the Code, the husband had caused domestic violence and on account of the same, she had suffered loss and thus, she is entitled for additional amount as maintenance. Thus, it is manifestly clear that a previous order made under Section 125 of the Code is not a bar for an aggrieved wife to approach a Magistrate under Section 20 of the Act, for monetary relief as an additional relief of maintenance, provided subsequent to the passing of the earlier order under Section 125 of the Code, the husband has committed domestic violence resulting loss to the wife.”

11. A bare reading of the provisions of Domestic Violence Act would reveal that an ‘aggrieved person’ who has been subjected to ‘domestic violence’ is entitled to claim a right to residence in a shared household, the right to maintenance, the right to access to joint property.

The term 'domestic violence' as defined in Section 3 of the Domestic

Violence Act is not limited to, physical abuse or the limited scope of cruelty under Section 498-A IPC, but has been expanded to also include sexual abuse, verbal and emotional abuse as well as economic abuse. In fact, the Domestic Violence Act was enacted in the year 2005 to protect women from being victims of domestic violence and the definition of the term 'domestic violence' is expansive.

Section 3 of the DV Act is as under :

“3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or*
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or*
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.—For the purposes of this section,—*
 - (i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;*

- (ii) *“sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;*
 - (iii) *“verbal and emotional abuse” includes—*
 - (a) *insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and*
 - (b) *repeated threats to cause physical pain to any person in whom the aggrieved person is interested.*
 - (iv) *“economic abuse” includes—*
 - (a) *deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and **maintenance**;*
 - (b) *disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and*
 - (c) *prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.*
- Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the*

respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration”

12. The maintenance to which an 'aggrieved person' would be entitled under the Domestic Violence Act has been specified under Section 20, which reads as under:

“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 is 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.”

On careful examination of Section 20 of the Domestic Violence Act which allows for monetary relief, section 20 [\(d\)](#) provides for maintenance to the aggrieved person as well as her children, if any, which would be 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. Section 26 further stipulates that any relief available under sections 18, 19, 20, 21 and 22 of the Act may also be sought in any legal proceedings before a civil court family court or a criminal court and such relief may be sought **in addition to thereto**. Whereas section 36 clearly stipulates “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.” A co-joint reading of the aforesaid Sections 20, 26 and 36 would clearly establish that the provisions of the Domestic Violence Act are supplementary to provisions of other law and, therefore, this Court, respectfully disagrees with the dictum in **B Prakash versus Deepa, (supra)** the case as cited by the counsel for the petitioner.

13. Therefore, the upshot of the discussion would be that the respondent wife would be entitled to claim maintenance under Section 20 of the Domestic Violence Act, even though she is already getting maintenance under Section 125 of the Code of Criminal Procedure. There is no requirement for the aggrieved person, the respondent herein, to file an application under Section 127 of the Code of Criminal Procedure seeking enhancement of maintenance and to prove that they are changed circumstances. An aggrieved person can institute a petition under the Domestic Violence Act, in addition to proceedings under Section 125 of the Code of Criminal Procedure. However, the courts, while deciding quantum of maintenance have to take into account the maintenance being awarded to

the aggrieved person under other provisions of law, be it under Section 125 Code of Criminal Procedure, Section 24 of the Hindu Marriage Act or any other provisions applicable thereto, while awarding maintenance.

14. The petitioner herein is working and drawing a salary of ₹31,539/- per month as per the salary statement of March 2016 with the net pay of ₹29,069/- per month after permissible deductions. The respondent herein has been awarded ₹4,000 per month as maintenance allowance in proceedings under Section 125 Code of Criminal Procedure and a sum of ₹3,000/- under the impugned order making it a total of ₹7,000/- per month, which is not excessive given that medical treatment is highly expensive. The respondent wife herein is stated to be suffering from an incurable disease and in dire need of medical treatment.

15. Therefore, finding no infirmity in the impugned orders so passed, the present revision is dismissed.

26.4.2018

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No