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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 07.02.2018

+ **CRL.REV.P. 314/2017**

TANUSHREE & ORS.

..... Petitioners

versus

A.S.MOORTHY

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Charu Sachdev,
Mr R.P.Panwar and Ms Baby Sharma,
Advocates.

For the Respondents : Mr.Akshay Malik, Addl. PP for the
State.
Mr Ankur Singhal, Advocate.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
07.02.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioners are aggrieved by order dated 29.03.2017, whereby the Trial Court has adjourned *sine die* the proceedings under Section 125 of the Code of Criminal Procedure (Cr.P.C.) filed by the petitioner seeking maintenance on the premise that two parallel proceedings, i.e. proceedings under Section 125 Cr.P.C. and proceedings under Section 12 of the Protection of Women from

Domestic Violence Act, 2005 (hereinafter referred to as ‘the D.V.Act’) seeking maintenance would not lie. The petitioner was given liberty to seek revival of the proceedings in case maintenance issue was not sought for in the Domestic Violence proceedings. This order was passed, relying on the decision of a Coordinate Bench of this Court in *Renu Mittal versus Anil Mittal & Others*, 2010 (119) DRJ 306.

2. Learned counsel for the petitioners submits that there is no embargo on two Courts parallelly considering the issue of maintenance. It is contended that the ambit of proceedings under Section 12 of the D.V.Act are much wider than mere award of maintenance, however once the order of maintenance is passed either by the Court exercising power under Section 125 Cr.P.C. or by the Court under Section 12 of the D.V.Act, the other Court is to take into account the said order and appropriately pass an order. Learned counsel further submits that there is misapplication of the ratio in *Renu Mittal (supra)*.

3. Section 20 of the D.V.Act lays down 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”

4. Reading of Section 20(1)(d) of the D.V.Act, shows that a Court, which is considering an application under Section 12 of the D.V.Act, would take into account an order of maintenance passed under Section 125 Cr.P.C. or any other law, for the time being, in force.

5. Reading of Section 20(1)(d) of the D.V.Act further shows that the two proceedings are independent of each other and have different scope, though there is an overlap. Insofar as the overlap is concerned, law has catered for that eventuality and laid down that at the time of consideration of an application for grant of maintenance under Section 12 of the D.V.Act, the maintenance fixed under Section 125 Cr.P.C. shall be taken into account.

6. Pendency of proceedings under section 12 of the D.V.Act do not act as an embargo for consideration of an application under section 125 Cr.P.C. Rather, it implies that both the proceedings can

continue simultaneously. It is only when there is a determination of maintenance under section 125 Cr.P.C., that the order would become a relevant factor to be taken into account by the court considering grant of maintenance under section 12 of the D.V.Act.

7. The mere fact that two proceedings are initiated by a party; one under Section 125 Cr.P.C. and another under Section 12 of the Act does not imply that one of the two has to be adjourned *sine die*, as has been done in the present case. The Trial Court has erred in adjourning *sine die* the 125 Cr.P.C. proceedings and not appreciating that unless there is a determination of maintenance under section 125 Cr.P.C., the order does not become relevant for the determination of maintenance under Section 12 of the D.V.Act.

8. It may also be noticed that the proceedings under the D.V.Act are not only confined to award of maintenance but several other monetary reliefs *inter alia* expenses incurred, losses suffered, loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property maintenance etc.

9. There is thus clearly a distinction between the scope and power exercised by the Magistrate under Section 125 Cr.P.C. and under Section 12 of the D.V.Act.

10. In *Renu Mittal (supra)*, a Coordinate Bench of this Court held as under:-

“4. It must be considered that for granting maintenance, a party can either approach the Court of MM under Domestic Violence Act soon after commission of Domestic Violence or under Section 125 Cr. P.C. claiming maintenance. The Jurisdiction for granting maintenance under Section 125 Cr. P.C. and Domestic Violence Act is parallel jurisdiction and if maintenance has been granted under Section 125 Cr. P.C. after taking into account the entire material placed before the Court and recording evidence, it is not necessary that another MM under Domestic Violence Act should again adjudicate the issue of maintenance. The law does not warrant that two parallel courts should adjudicate same issue separately. If adjudication has already been done by a Court of MM under Section 125Cr. P.C., re-adjudication of the issue of maintenance cannot be done by a Court of MM under Domestic Violence Act. I, therefore, consider that learned MM was right in allowing maintenance only to the tune of Rs. 6,000/- p.m.”

11. In *Renu Mittal (supra)*, the court was dealing with an issue where the Trial Court while deciding an application under section 12 of the D.V.Act, had followed the determination under Section 125 Cr.P.C. and reconfirmed the maintenance awarded under Section 125 Cr.P.C.. It is in these circumstances that the court held that two parallel courts should not adjudicate same issue separately. If adjudication has already been done by a Court of MM under Section 125Cr. P.C., re-adjudication of the issue of maintenance cannot be done by a Court of MM under Domestic Violence Act. The said judgment is clearly not applicable to the facts of the present case.

12. In view of the above, the impugned order cannot be sustained. The impugned order is accordingly set aside. The order adjourning the proceedings *sine die* is recalled. The Trial Court shall proceed with the application in accordance with law. The revision is allowed.

13. The application of the petitioner under section 125 Cr.P.C. is directed to be listed before the concerned Trial Court for directions on 08.03.2018. The Trial Court is further directed to expedite the hearing of the application.

14. Order Dasti under signatures of the Court Master.

FEBRUARY07, 2018

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SANJEEV SACHDEVA, J

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