

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

CRIMINAL WRIT PETITION NO.788 OF 2019

Bhagwan s/o Kisan Janjal,
Age : 40 years, Occu.: Pvt. Service,
R/o.: Bajaj Nagar, CIDCO Mahanagar,
Aurangabad. ...

PETITIONER

VERSUS

1. Anita w/o Bhagwan Janjal,
Age : 35 years, Occu.: Housewife,
R/o.: H. No. Ramnagar, Post Wasadi,
Tq. Kannad, District : Aurangabad.
2. Aryan @ Kartik s/o Bhagwan Janjal,
Age : 8 years, Occu.: Education,
R/o.: H. No. Ramnagar, Post Wasadi,
Tq. Kannad, District : Aurangabad.
3. Aradhya d/o Bhagwan Janjal,
Age : 6 years, Occu.: Minor,
R/o.: H. No. Ramnagar, Post Wasadi,
Tq. Kannad, District : Aurangabad.
(Respondent No.1 is Guardian as a
mother of Respondent Nos. 2 & 3) ...

RESPONDENTS

...
Advocate for Petitioner : Mr. Rahul G. Joshi
Advocate for Respondents : Mr. R.V. Gore
...

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 05.09.2019

PRONOUNCED ON : 13.09.2019

JUDGMENT :-

Heard.

2. Rule. The Rule is made returnable forthwith. With the consent of both sides, the matter is heard finally at the stage of admission.

3. The petitioner is the husband of respondent No.1. She filed Criminal Miscellaneous Application No. 507 of 2017 under Section 125 of the Code of Criminal Procedure claiming maintenance for herself and her two children. Simultaneously, the petitioner filed a proceeding for divorce, which was pending before the learned Civil Judge (Senior Division) in the form of HMP Petition No. 23 of 2017. In that Hindu Marriage Petition the learned Civil Judge (Senior Division) awarded her interim alimony at the rate of Rs.7,000/- per month. He filed application before learned Magistrate in Criminal Miscellaneous Application No. 507 of 2017 pointing this fact and sought that the proceeding be stayed since she was already getting interim

alimony as directed in the Hindu Marriage Petition. Reliance was also placed upon the judgment of this Court in the case of ***Vijaykumar Gundappa Shetkar (Gandage) Vs. Bhagywati Vijaykumar Shektkar (Gandge) and others, 2009(1) BCR (Cri) 799.***

4. Learned advocate for the petitioner vehemently submitted that when respondent No.1 was already getting interim alimony, it was inappropriate for her to have filed and prosecuted a proceeding under Section 125 of the Cr.P.C. In fact the proceeding under Section 125 of the Cr.P.C. ought to have been stayed in the light of decision of this Court in the matter of ***Vijaykumar Shetkar (supra)***. Learned advocate for the petitioner also placed reliance upon decision of the Supreme Court in the matter of ***Sanjay Kumar Sinha Vs. Asha Kumari and another, reported in (2018) 5 SCC 333,*** wherein in similar set of facts, the wife was not allowed to continue with the proceeding for maintenance under Section 125 of the Cr.P.C. when divorce petition was pending and

interim alimony was granted.

5. The learned advocate for the respondents submitted that the order passed under Section 24 of the Hindu Marriage Act in Hindu Marriage Petition No.232 of 2017 in a proceeding for divorce initiated by the petitioner under Section 13 (1)(i-a) of that Act only permits that Court to grant her maintenance *pendente lite* and does not determine her right finally to have maintenance even after that litigation ends. Whereas by virtue of provisions of Section 125 of the Cr.P.C. she would be entitled to claim maintenance for the remainder of her life, rather it would be a final order. Therefore, it cannot be said that as of right the petitioner is entitled to seek stay to the proceeding initiated by her under Section 125 of the Cr.P.C. only on the ground that simultaneously she has been awarded maintenance *pendente lite* under Section 24 of the Hindu Marriage Act.

6. The learned advocate for the respondents also points out that in the divorce proceeding only respondent No.1 / wife is a

party and is entitled to claim maintenance *pendente lite* under Section 24 of Hindu Marriage Act, whereas the proceeding filed by respondents under Section 125 of the Cr.P.C., it is not respondent No.1 / wife alone but even respondent Nos. 2 and 3, who are her children, are entitled to and are claiming maintenance from the petitioner under Section 125 of the Cr.P.C. Therefore, when respondent Nos. 2 and 3 are not beneficiaries of the maintenance granted to respondent No.1 in the divorce proceeding, the proceeding initiated by them under Section 125 of the Cr.P.C. cannot be stayed rather staying such proceeding would deprive them of their right to claim maintenance. Therefore, unless the petitioner expresses his willingness to pay some interim maintenance to respondent Nos. 2 and 3, the proceeding initiated by them under Section 125 of the Cr.P.C. cannot be stayed.

7. The learned advocate for the respondents further submitted that in the peculiar facts and circumstances, it would be appropriate to allow the proceeding initiated by the

respondents under Section 125 of the Cr.P.C. to be decided finally with a direction to the concerned Magistrate to take into account the maintenance awarded to respondent No.1 under Section 24 of the Hindu Marriage Act while finalizing quantum of maintenance. No prejudice would be caused to the petitioner if such a course is followed. His concern should be only to see to it that the respondents are not paid anything over and above to which they are entitled to, irrespective of the number of proceedings in which they claim maintenance under different statutes. The learned Advocate would submit that the decision in the case of ***Ravindra Haribhau Karmarkar Vs. Mrs. Shaila Ravindra Karmarkar, 1992 Cri.L.J. 1845 and Vijaykumar Gundappa Shetkar Vs. Bhagyawati Shetkar (Supra)*** are clearly distinguishable on facts. So far as the decision of the Supreme Court in the case of ***Sanjay Kumar Sinha (supra)*** the learned advocate submits that it is under the powers conferred on the Supreme Court under Article 141 of the Constitution of India that in the similar set of facts several directions were given to the Family Court, wherein

the divorce proceeding was going on. By way of interim arrangement, the husband was directed to pay interim maintenance to the wife as well as children and the divorce proceeding was directed to be expedited. Only some observation was made on the concession to the effect that in view of the order passed by the Family Court under Section 24 of the Hindu Marriage Act, the order passed under Section 125 of the Cr.P.C. stood superseded. Therefore, the observations and the conclusions in the case of **Sanjay Kumar Sinha** (*supra*) do not lay down any ratio decidendi or even does not constitute an *obiter dicta*.

8. I have carefully gone through the papers. It is indeed an admitted fact that in Hindu Marriage Petition No. 232 of 2017 initiated by the petitioner for divorce under Section 13(1)(i-a) of the Hindu Marriage Act respondent No.1 claimed maintenance *pendente lite* under Section 24 of that Act and by the order dated 16.10.2018 the petitioner was directed to pay to her Rs.7,000/- per month from the date of the application

i.e. 20.12.2017. It is also admitted that the respondents simultaneously filed Criminal Miscellaneous Application No. 507 of 2017 in the Court of Judicial Magistrate, First Class claiming maintenance under Section 125 of the Cr.P.C. It is also admitted that both these proceedings are pending before the respective Courts.

9. It is trite that when different statutes provided for a similar remedy, the party may prosecute all such remedies and even simultaneously. The only precaution that needs to be taken in such an eventuality is that all such rights should ultimately be factored in and balanced so that the parties do not derive the benefit twice over. When the provisions of Section 125 of the Cr.P.C. and Section 24 of Hindu Marriage Act empower a wife to claim maintenance, no fault can be found with her in simultaneously pursuing both the remedies. However, that does not entitle her to claim twice the maintenance to which she would otherwise be entitled to. The only care that is required to be taken is that as and when she is

awarded maintenance under either of the proceedings, the quantum of maintenance awarded in such earlier proceeding is to be taken into account while determining quantum of maintenance in the subsequent proceeding or the proceeding to be decided subsequently. In such a manner a balance can be struck. This is precisely what the decision in ***Ravindra Karmarkar and Vijaykumar Shetkar*** (supra) seek to achieve. With respect, this is what has been done by the Supreme Court in the case of ***Sanjay Kumar Sinha*** (supra) .

10. Faced with the situation, the learned advocate for the respondents sought to salvage some ground by making distinction on facts by pointing out that under Section 24 of the Hindu Marriage Act it is only respondent No.1 being the wife who is entitled to claim maintenance and has been awarded Rs.7,000/- per month, whereas in the proceeding under Section 125 of the Cr.P.C. even respondent Nos. 2 and 3, who are the children, are claiming maintenance which they otherwise are not entitled to claim under Section 24 of the

Hindu Marriage Act. Therefore, though respondent No.1 can be said to have been benefited by the order under Section 24 of the Hindu Marriage Act, respondent Nos. 2 and 3 are not getting anything and directing the proceeding initiated by them under Section 125 of the Cr.P.C. even to their extent to be stayed would result in unnecessary hardship.

11. At the first blush, the submission of the learned advocate for the respondents does appear to be attractive. However, a careful perusal of the order passed under Section 24 of the Hindu Marriage Act would reveal that while deciding quantum of maintenance *pendente lite*, not only the requirement of respondent No.1 / wife has been taken into consideration but even the expenses which she is required to incur for maintenance of her two children that is respondent Nos. 2 and 3 has also been taken into consideration. The observations in paragraph Nos. 9 and 10 are relevant and read thus :

“9. It is evident that respondent is unable to maintain herself and the petitioner has source of income. Her sons are residing with her.

Petitioner has not submitted any document to show that he is providing any type of maintenance amount to respondent and his sons. In these circumstances, the applicant is entitled for the maintenance for herself and her children and certain expenses towards litigation.

10. Having regard to the source of income and needs of the respondent, I think if amount of Rs.7,000/- per month is granted towards the maintenance for herself and her two children including litigation expenses ends of justice would meet. Accordingly, point No.3 is answered in the affirmative”.

12. Therefore, although it is only the wife, who is entitled to claim maintenance *pendente lite* under Section 24 of the Hindu Marriage Act, in fact respondent No.1 has been granted maintenance at the rate of Rs.7,000/- per month for her maintenance as well as maintenance of respondent Nos. 2 and 3. Though no separate and independent order was passed in favour of respondent Nos. 2 and 3 as was case in the case of **Sanjay Kumar Sinha** (*supra*) the fact situation is exactly

similar. In that case, the wife was awarded Rs.8,000/- per month, whereas her minor daughter was awarded Rs.4,000/- per month by the Family Court in the divorce proceeding under Section 24 of the Hindu Marriage Act. Since proceeding under Section 125 of the Cr.P.C was already finally decided wherein the wife was awarded Rs.4,000/- per month and the daughter was awarded Rs.2,000/- per month, it was observed that the order passed under Section 125 of the Cr.P.C. stood superseded by the order passed by the Family Court under Section 24 of the Hindu Marriage Act. While directing the husband to continue to pay maintenance to the wife and the daughter during pendency of the divorce case and directing him to expedite the divorce case it was further directed to the Family Court that depending upon the outcome of the divorce proceeding appropriate order for payment of permanent maintenance and its arrears be passed. It is in such peculiar circumstances the aforementioned observations regarding supersession of order under Section 125 of the Cr.P.C. have been made.

13. Since as no final order has been pronounced in the matter in hand in respect of proceeding under Section 125 of the Cr.P.C. and since the order passed under Section 24 of the Hindu Marriage Act is only an interlocutory order which would terminate with the termination of the main proceeding, with respect the course followed in the case of **Sanjay Kumar Sinha** (*supra*) cannot be adopted. It would be in the fitness of things appropriate to allow the proceeding under Section 125 of the Cr.P.C. to be decided finally with a direction to the concerned Magistrate to take into account the maintenance granted to the respondent no.1-wife while determining the quantum of maintenance to all the three respondents. Issuing such direction would strike the desired balance.

14. The writ petition is therefore dismissed. Criminal Miscellaneous Application No. 507 of 2017 preferred by the respondent under Section 125 of the Cr.P.C. may proceed. However, while fixing the quantum of maintenance, the learned Magistrate shall take into account the amount of maintenance

pendente lite granted in Hindu Marriage Petition No. 232 of 2017 under Section 24 of the Hindu Marriage Act.

15. Rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

vsm/-