

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2300 OF 2018
WITH
WRIT PETITION NO. 2281 OF 2018**

Anita Dashrath Dolare]
Age- 33 years, Occupation- Nil,]
Residing at C/o. Ravi Dharma Kale,]
Santosh Nagar, Bale, Taluka North Solapur,]
District Solapur] ...Petitioner
(Original Applicant)

Versus

1. Dashrath Mahadev Dolare]
Age- 43 years, Occupation -Service,]
Residing at post Shirpur, Taluka Malshiras,]
District Solapur] (Original Opponent)

2. The State of Maharashtra] ...Respondents

.....
Mr.A.S.Kulkarni for the Petitioner.
Mr.S.S.Shah for Respondent No.1.
Mr.N.B.Patil, APP for Respondent No.2-State.

.....
CORAM : S.S.SHINDE J.
RESERVED ON : 5TH SEPTEMBER 2019
PRONOUNCED ON : 13TH SEPTEMBER 2019

JUDGMENT

1. Rule. Rule made returnable forthwith. With the consent of the parties, these petitions are heard finally and disposed of at the stage of admission.

2. Since both the petitions are arising out of common judgment and order dated 09.04.2018 passed by learned Additional Sessions Judge, Solapur, the same are heard together and being disposed of by common judgment.

3. The Writ Petition No. 2300 of 2018 takes an exception to the judgment and order dated 09.04.2018 passed by learned Additional Sessions Judge, Solapur thereby allowing Criminal Revision Application No. 116 of 2017 arising out of order dated 11.08.2017 passed by learned Judicial Magistrate First Class, Solapur in Criminal Miscellaneous Application No. 1677 of 2016.

4. The Writ Petition No. 2281 of 2018 takes an exception to the order dated 09.04.2018 passed by learned Additional Sessions Judge, Solapur thereby allowing Criminal Revision Application No. 115 of 2017 arising out of order dated 11.08.2017 passed by learned Judicial Magistrate First Class, Solapur in Criminal Miscellaneous Application No. 1678 of 2016.

5. The brief facts and circumstances giving rise for filing the present petitions are as under :

6. In Writ Petition No. 2300 of 2018, it is the case of the petitioner that the petitioner is original applicant and respondent No.1 is original opponent. The petitioner and respondent No.1 are wife and husband. They got married on 20.05.1997 at Solapur, and all the marriage expenses were incurred by the petitioner. Respondent No.1 is working as a teacher in Zilla Parishad School at Vadibangla, Taluka- Malshiras, District -Solapur and getting salary of Rs. 50,000/- p.m. in Zilla Parishad School at Solapur. Respondent No.1 is having a big house consists of four rooms, which is situated at Gat No. 1466/A at Village Mahalunga, Taluka-Malshiras, District-Solapur and also having an agricultural land in the name of his father. It is further case of the petitioner that after marriage, for quite some time the relations with respondent No.1 were cordial, but later on respondent No.1 started quarreling for one or other reason with her, as well as with her father-in-law and mother-in-law. The parents of the petitioner resolved the dispute between them through mediator. However, all the efforts of the petitioner were in vain and respondent No.1,

unnecessarily harassed the petitioner. During the existence of first marriage, respondent No.1 contracted second marriage with one Sadhana in the year 2013 and out of that wedlock, they have one son. Thereafter, respondent No.1 started giving threats to the petitioner and therefore, the petitioner had no any option but to leave the matrimonial house, and after leaving the matrimonial house, she started residing with her parents. Therefore, the petitioner has filed an application under section 125 of the Code of Criminal Procedure (for short, "the Cr.P.C.") before the learned Judicial Magistrate First Class, Solapur in Criminal Miscellaneous Application No. 943 of 2012 and after hearing both the sides, the learned Magistrate was pleased to pass an order thereby granting maintenance amount of Rs.5,000/- p.m. and Rs.1,000/- towards cost on 29.07.2013.

7. It is further the case of the petitioner that, respondent No.1 has not challenged the order dated 29.07.2013 passed by learned IXth Judicial Magistrate First Class, Solapur in Criminal Miscellaneous Application No. 943 of 2012 and therefore, the said order attained finality, and hence, as respondent No.1 is not paying an amount of maintenance in compliance with order passed by the learned

Magistrate, to the petitioner, she preferred Cri. Miscellaneous Application No. 1677 of 2016 for execution of order dated 29.07.2013 passed by learned IXth Judicial Magistrate First Class, Solapur in Criminal Miscellaneous Application No.943 of 2012. During pendency of the said Application, respondent No.1 preferred an Application below exhibit 6 thereby stating that, the petitioner cannot recover maintenance amount in both the proceedings i.e., the Application filed under section 125 of the Cr.P.C. and in the Application filed under section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "the D.V. Act"). The petitioner did file a reply to the said Application, and after hearing both the parties, learned Magistrate was pleased to reject the Application below exhibit 6 preferred by respondent No.1 in Cri. Miscellaneous Application No. 1677 of 2016 on 11.08.2017.

8. It is further the case of the petitioner that, respondent No.1 being aggrieved by the order dated 11.08.2017 passed by learned Judicial Magistrate First Class, Solapur in Criminal Miscellaneous Application No. 1677 of 2016 below exhibit 6 preferred Criminal Revision Application No. 116 of 2017 before the Sessions Court,

Solapur. The learned Sessions Judge, Solapur after hearing both the sides was pleased to allow the Revision Application preferred by respondent No.1 by its judgment and order dated 09.04.2018.

9. In Writ Petition No. 2281 of 2018, it is the case of the petitioner that the petitioner is original applicant and respondent No.1 is original opponent. The petitioner filed an application under section 12 of the D.V. Act before the learned Judicial Magistrate First Class, Solapur in Cri. Miscellaneous Application No. 1983 of 2014 and after hearing both the sides, the learned Magistrate was pleased to pass an order granting maintenance amount of Rs. 4,000/- p.m. and Rs. 1,000/- towards house rent on 22.12.2015.

10. It is further the case of the petitioner that, being aggrieved by the judgment and order dated 22.12.2015 passed by learned IXth Judicial Magistrate First Class, Solapur in Criminal Miscellaneous Application No. 1983 of 2014 thereby not allowing the prayer of the petitioner in toto to direct respondent No.1 to pay Rs. 50,000/- p.m. towards maintenance and Rs. 10,000/- p.m. towards house rent. The petitioner filed Criminal Appeal No. 9 of 2016 before the

Sessions Court, Solapur praying therein to direct respondent No.1 to pay Rs. 50,000/- towards maintenance. However, it appears that the Appellate Court did not cause interference in the order passed by the trial Court and hence, the order passed by the learned Magistrate attained finality. As respondent No.1 was not paying amount of maintenance as directed by the learned Magistrate, the petitioner preferred Criminal Miscellaneous Application No. 1678 of 2016 for execution of order dated 22.12.2015 passed by learned IXth Judicial Magistrate First Class, Solapur in Criminal Miscellaneous Application No. 1983 of 2014. During pendency of the said Application, respondent No.1 preferred an application below exhibit 6, thereby stating that the petitioner cannot recover maintenance amount in both the proceedings i.e., arising out of the Application filed under section 125 of the Cr.P.C. and the Application filed under section 12 of the D.V. Act. The petitioner filed a reply to the said Application and after hearing both the parties, learned Magistrate was pleased to reject the Application below exhibit 6 preferred by respondent No.1 in Criminal Miscellaneous Application No. 1678 of 2016 on 11.08.2017.

11. It is further case of the petitioner that respondent No.1 being aggrieved by the order dated 11.08.2017 passed by learned Judicial Magistrate First Class, Solapur in Criminal Miscellaneous Application No. 1678 of 2016 below exhibit 6 preferred Criminal Revision Application No. 115 of 2017 before the Sessions Court, Solapur. The learned Sessions Judge, Solapur after hearing both the sides was pleased to allow the Revision Application preferred by respondent No.1 by its judgment and order dated 09.04.2018. Hence, these petitions.

12. Learned Counsel appearing for the petitioner submits that the learned Judge did not appreciate and accepted the contention of the petitioner that, the proceedings under section 125 of the Cr.P.C. and proceedings under the D.V.Act, are independent proceedings and therefore, both the orders of maintenance will stand independently and hence, the petitioner is entitled to receive maintenance in both the proceedings from respondent No.1. He further submits that learned Judge has not properly considered purport and scope of section 20 (1) (d) of the D.V. Act, and that provisions of the said Act

shall be in addition to and not in derogation of the provisions of any other law for the time being in force. He further submits that the learned Judge ought to have considered the fact that, an amount of maintenance awarded under the D.V. Act, cannot be considered an amount of maintenance under section 125 of the Cr.P.C.

13. Learned Counsel further submits that, respondent No.1 has not challenged the order passed by the learned Magistrate on the application preferred by the petitioner under section 125 of the Cr.P.C. Respondent No.1 is working as a teacher in Solapur Zilla Parishad School and getting salary of Rs. 60,000/- p.m. and, therefore, respondent No.1 can easily pay Rs. 5,000/- p.m. towards maintenance. He further submits that, during existence of first marriage with the petitioner, in the year 2013, respondent No.1 illegally contracted second marriage with one Sadhana, and out of said wedlock, they have one son. He further submits that, the petitioner is residing with her parents and she has no other source of income except an amount received towards maintenance. He further submits that, the learned Sessions Judge erroneously exercised jurisdiction and passed the impugned order without considering

overall facts and circumstance of the present case. In support of aforesaid contentions, learned Counsel appearing for the petitioner placed reliance on the exposition of law in the case of (1) Prakash Babulal Dangi Versus The State of Maharashtra & Anr. along with connected petition, decided by learned Single Judge of this Court on 10.10.2017 in Criminal Writ Petition No. 3791 of 2016, (2) Shome Nikhil Danani versus Tanya Banon Danani, decided by learned Single Judge of Delhi High Court on 11.04.2019 in Criminal Revision Petition No. 994 of 2018 and (3) Shome Nikhil Danani Versus Tanya Banon Danani, decided by the Supreme Court on 22.07.2019 in Petition (s) for Special Leave to Appeal (Crl.) No. (s). 6005/ 2019.

14. Learned Counsel appearing for respondent No.1 while relying upon the contents of the applications filed by respondent No.1 below exhibit 6 in Criminal Miscellaneous Application Nos. 1677 of 2016 and 1678 of 2016, submits that the petitioner herein filed two separate applications praying for maintenance, before the trial Court. One under section 125 of Cr.P.C. and another application was filed under section 12 of the D.V. Act. He further submits that in both the applications, the Court directed respondent No.1 to pay Rs.5,000/-

p.m. towards maintenance to the petitioner. He further submits that the petitioner is not entitled to receive maintenance amount in both the proceedings. The petitioner is entitled to recover/ receive maintenance amount in only one case out of two cases filed by the petitioner. In support of aforesaid contentions, learned Counsel appearing for respondent No.1 pressed into service the ratio laid down by learned Single Judge of Bombay High Court, Bench at Aurangabad, in the case of Vishal s/o.Rajesaheb Gore Vs. Sow. Aparna w/o. Vishal Gore & Anr.¹. He invites attention of this Court to the reasons assigned in the orders passed by the Sessions Court in Revision Applications filed by respondent No.1, and submits that both the petitions may be rejected.

15. Heard learned Counsel appearing for the petitioner and learned Counsel appearing for respondent No.1 at length. With their able assistance, perused the pleadings in the petitions and grounds taken therein, and also annexures to the petitions. I have also perused reasons assigned by both the Courts below. This Court (Coram: Dr.Shalini Phansalkar-Joshi, J.) on 10.10.2017 had occasion to

¹ 2018 ALL MR (Cri) 3339.

consider similar issue in the case of Prakash Babulal Dangi (*supra*) and reached to a conclusion that, the proceedings initiated under section 125 of the Cr.P.C. and proceedings initiated by an aggrieved person i.e., wife taking recourse to section 20 (1) (d) of the D.V. Act are independent proceedings and, therefore, both the orders passed in the said proceedings will stand independently. It would be apt to reproduce paragraph Nos. 7 and 8 of the said judgment, which reads as under :

"7. Now both the proceedings being independent, both the orders will stand independently and, hence, husband will have to pay not only the maintenance awarded under the Domestic Violence Act, which was of an interim nature and taking into consideration that maintenance only, the wife was awarded the maintenance under Section 125 of Cr.P.C. only from the date of the order. It has to be held that this order under Section 125 of Cr.P.C. stands independently and in addition to the maintenance awarded under the Domestic Violence Act.

8. It has to be held so in view of Section 20 (1) (d) of the Domestic Violence Act, which clearly 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'. Therefore, the power to award maintenance under D.V. Act is in addition to an order of maintenance under Section 125 of Cr.P.C. or any other law for the time being in force. Section 36 of the D.V. Act makes the things further clear by providing that, ' the provisions of the 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'. Therefore, it follows that the amount of maintenance awarded under the D.V.Act cannot be substituted to the order of maintenance under Section 125 of Cr.P.C".

16. After recording the aforesaid findings, in paragraph No. 11 of the said judgment, the learned Single Judge has observed that, both the orders; the one passed under the provisions of Domestic Violence Act and another passed under section 125 of Cr.P.C., are required to be complied by the petitioner therein i.e., Prakash Babulal Dangi in the said case.

17. The learned Single Judge of Delhi High Court while considering the similar issue in the case of Shome Nikhil Danani (*supra*), in paragraph Nos. 17 to 21 has observed as under :

"17. Clearly the scope of Section 20 of the DV Act is much wider than that of Section 125 Cr.P.C. While Section 125 Cr.P.C. talks only of maintenance, Section 20 DV Act stipulates payment of monetary relief to meet the expenses incurred and losses suffered as a result of the domestic violence including but not limited to loss of earning, medical expenses, loss caused due to destruction, damage or removal of any property from the control of aggrieved person. Further, Section 20(1)(d) of the DV Act clearly provides that "In proceedings under the DV 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 Cr.P.C. or any other law for the time being in force".

18. This clearly shows that an order under Section 20 DV Act is not restricted by an order under section 125 Cr.P.C. The Trial Court clearly erred in not appreciating the distinction between the two provisions and the reasoning is clouded by an impression that the respondent- wife in the application under section 23 was only seeking an order of maintenance, which is not the case. In her application under section 23 of the DV Act, the respondent wife has inter-alia sought

residence rights under Section 19 and protection under Section 18 apart from the monetary relief under Section 20.

19. *Reference may also be had to the Judgment of a coordinate bench of this court in Karamchand & Ors Vs State NCT of Delhi & Anr (2011) 181 DLT 494 and of the Supreme Court of India in Juveria Abdul Majid Khan Patni Vs Atif Iqbal Masoori (2014) 10 SCC 736, wherein the Supreme Court has held that monetary relief as stipulated under Section 20 is different from maintenance, which can be in addition to an order of maintenance under Section 125 Cr.P.C. or any other law.*

20. *Further, it may be seen that proceeding under the DV Act and under section 125 Cr.P.C are independent of each other and have different scope, though there is an overlap. In so far 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 DV Act, maintenance fixed under section 125 Cr.P.C shall be taken into account.*

21. *The Judgment in the case of Rachna Katuria Versus Ramesh Kathuria (supra) relied upon by learned Senior Counsel for the Petitioner to contend that DV Act does not create any additional right to claim maintenance on the part of the aggrieved person and if a woman had already filed a suit claiming maintenance and after adjudication maintenance has been determined, she does not have a right to claim additional maintenance under the DV Act is per in curium as it does not notice the very provisions of Section 20 and 23 of DV Act. Further now the Supreme Court of India in Juveria Abdul Majid Khan Patni Vs Atif Iqbal Masoori (supra) has held that monetary relief under Section 20 DV Act is in addition to maintenance under section 125 Cr.P.C".*

18. The judgment passed by learned Single Judge of Delhi High Court in the case of Shome Nikhil Danani (*supra*) was challenged by revision petitioner therein before the Hon'ble Supreme Court, by filing Petition (s) for Special Leave to Appeal (Crl.) No (s). 6005 of 2019.

The Supreme Court while dismissing the said petition observed as under :

".... we are of the view that the High Court of Delhi was justified in coming to the conclusion that the mere passing of an order under Section 125 of the Code of Criminal Procedure 1973 did not preclude the respondent from seeking appropriate reliefs under the Protection of Women from Domestic Violence Act 2005. Hence, we decline to entertain the special leave petition under Article 136 of the Constitution. The special leave petition is accordingly dismissed".

19. In the light of discussion made herein-above and since the scope of section 20 of the D.V. Act is much wider than section 125 of the Cr.P.C., and further proceedings under section 20 (1) (d) of the D.V. Act empowers the Magistrate to grant maintenance to the wife as well as her children. In addition to an order of maintenance passed under section 125 of the Cr.P.C., therefore, the contention of respondent No.1 that the petitioner is entitled to receive maintenance amount in only one case is devoid of any merits. Learned Counsel appearing for respondent No.1 while relying upon the judgment of learned Single Judge (Coram: P.R.Bora,J.) of Bombay High Court, Bench at Aurangabad, in the case of Vishal s/o.Rajesaheb Gore (*supra*), made submission that, the view taken by this Court in the said judgment is after interpreting the scope of section 125 of the Cr.P.C and the provisions of the D.V.Act, and ultimate conclusion

reached is that, an aggrieved person i.e., wife is entitled to receive maintenance amount in only one case and not in both the proceedings. In this respect, it is relevant to mention that the judgment in the case of Prakash Babulal Dangi (*supra*) was delivered by the learned Single Judge (Coram: Dr.Shalini Phansalkar-Joshi, J.) of this Court on 10.10.2017, and the judgment in the case of Vishal s/o.Rajesaheb Gore (*supra*) was pronounced on 13.06.2018. An exposition of law in the case of Prakash Babulal Dangi (*supra*) has binding force and Co-ordinate Bench is bound to follow the same unless some dissent is expressed, and the matter is referred to a larger bench by formulating issues / questions for consideration of said Bench. In that view of the matter, exposition in the case of Prakash Babulal Dangi (*supra*) had binding effect and, therefore, the said judgment ought to have been followed in the case of Vishal s/o.Rajesaheb Gore (*supra*) .

20. Apart from it, as already discussed, there is judgment of the Delhi High Court in the case of Shome Nikhil Danani (*supra*) taking view that the proceedings under section 20 of the D.V.Act and section 125 of the Cr.P.C. are independent and both the proceedings are maintainable. The said judgment is confirmed by the Supreme

Court. Therefore, the aforesaid proceedings, which were filed under section 125 of the Cr.P.C. and under the D.V.Act were maintainable, and as a corollary and in addition to maintenance already granted under section 125 of the Cr.P.C., the petitioner was entitled to claim maintenance under the D.V.Act.

21. For the aforesaid reasons, the impugned judgment and order dated 09.04.2018 passed by learned Additional Sessions Judge, Solapur in Criminal Revision Application Nos. 115 of 2017 and 116 of 2017 is hereby quashed and set aside. The order dated 11.08.2017 passed by learned Judicial Magistrate First Class, Solapur rejecting the applications, below exhibit 6, of respondent No.1 in Criminal Misc. Application Nos. 1677 of 2016 and 1678 of 2016 stand's restored and confirmed, and consequently respondent No.1 is directed to continue to deposit amount towards maintenance strictly as ordered by the learned Magistrate in both the proceedings, independently.

22. Rule made absolute in above terms. Both the petitions stand disposed of accordingly.

(S.S.SHINDE, J.)