

against Jitendra Shevate (for short 'Jitendra') challenging the order dated 20th September, 2016 passed by the learned Judge, Family Court 2, Pune in P.E. No.60 of 2014 in so far as quantum of maintenance is concerned. By that order, the learned trial Judge partly allowed the Petition instituted by Jyoti and her daughter Arohi for maintenance under section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C'). As against Jyoti's claim of maintenance of Rs.60,000/- per month for herself and Rs.10,000/- for daughter Arohi, the learned trial Judge awarded maintenance of Rs.8000/- per month to her and Rs.2000/- per month for daughter Arohi.

3. Criminal Revision Application No.633 of 2016 is instituted by Jitendra challenging the order dated 20th September, 2016. By that order, the learned trial Judge directed Jitendra to pay maintenance @ Rs.8,000/- per month to Jyoti from the date of the Petition and Rs.2000/- per month to Arohi under section 125 of the Cr. P.C. In so far as maintenance of Rs.2000/- per month to daughter Arohi is concerned, the order is to take effect from the date of birth of the child i.e from 28th March, 2014. Jitendra is further directed to pay litigation costs of Rs.10,000/- to Jyoti.

4. Rule in both the Petitions. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in these Petitions as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing.

5. Criminal Application No.383 of 2017 is taken out by Jyoti, inter alia, praying for permission to withdraw the amount of Rs.1,51,000/- deposited by Jitendra in this Court as per the order dated 3rd May, 2017.

6. Since the parties in the proceedings are common and the impugned order is also common, these Applications can conveniently be disposed of by this common order.

7. On 3rd January, 2013, marriage between Jyoti and Jitendra was solemnized. It is the case of Jitendra that Jyoti stayed with him barely for 7 months and few days. During tenure of 216 days, Jyoti was at her parents home for 80 days and stayed in the matrimonial home barely for 136 days. i.e 4 and ½ months. On 9th August, 2013, Jyoti left matrimonial home. Jitendra instituted H.M.P No.43 of 2014 in the Court of Civil Judge Senior Division, Satara on 16th January, 2014 seeking divorce on the ground of cruelty. Jyoti filed Criminal Misc. Application No.49 of 2014 under section 498-A of the Indian Penal Code 1860 on 25th January, 2014. She also filed application under section 23(2) of the Protection of Women from Domestic Violence Act, 2000 (for short 'D.V. Act') on 1st February, 2014. On 21st March, 2014, she has filed application under section 125 of the Cr. P.C before the Family Court.

8. In so far as the proceedings under the D.V. Act is concerned, Jyoti filed application for interim order under section 23 (2) thereof. By order dated 3rd March, 2015 the learned Judicial Magistrate First Class, Cantonment Camp, Pune allowed the application and directed Jitendra to pay maintenance @ Rs.1500/- per month to daughter Arohi from the date of her birth till conclusion of the trial. It is common ground between the parties that the proceedings under the D.V. Act are still pending.

9. During pendency of H.M.P. No.43 of 2014 filed by Jitendra, Jyoti took out application at Exhibit 11 claiming maintenance. By order dated 7th October, 2014, the learned Civil Judge, Senior Division, Satara directed

Jitendra to pay Rs.6,000/- per month towards maintenance from the date of the order.

10. It is common ground between the parties that ultimately by order dated 28th February, 2018, the learned trial Judge allowed H.M.P No.43 of 2014 and dissolved marriage between Jitendra and Jyoti by a decree of divorce. The learned trial Judge directed Jitendra to pay permanent maintenance of Rs.5,000/- per month to Jyoti and Rs.3,000/- per month to daughter Arohi from the date of order till she attains majority. Mr. Salunke submitted that aggrieved by this decision, Jyoti has preferred appeal before the District Court, Satara and the same is pending.

11. In support of Criminal Writ Petition No.633 of 2016 instituted by Jitendra, Ms. Kapre strenuously contended that the findings recorded by the learned trial Judge are perverse. She submitted that Jyoti has claimed maintenance in D.V. proceedings instituted before the Court of Judicial Magistrate where the learned Judicial Magistrate has awarded maintenance of Rs.1500/- per month to daughter Arohi. She also filed application Exhibit 11 in H.M.P. No.43 of 2014 claiming maintenance. By order dated 7th October, 2014, the learned trial Judge directed Jitendra to pay Rs.6,000/- per month to Jyoti. In addition to that, she also filed application under section 125 of Cr. P. C in the Family Court claiming maintenance @ Rs.60,000/- per month for herself and @ Rs.10,000/- per month for the daughter. As Jyoti is granted maintenance from various proceedings, the learned trial Judge was not justified in passing the impugned order.

12. Ms. Kapre further submitted that without any reasonable cause, Jyoti had left matrimonial home. During the tenure of marriage of hardly 7 months, Jyoti stayed in the matrimonial home hardly for 136 days. Initially,

Jitendra had instituted proceedings under section 9 of the Hindu Marriage Act, 1955 (for short 'Act') for restitution of conjugal rights. Because of acts and omissions of Jyoti, he was constrained to institute the proceedings for divorce. She submitted that the learned trial Judge after a full-fledged trial held that cruelty was inflicted by Jyoti on Jitendra and her family members and decreed the Petition on the ground of cruelty. She submitted that though Jyoti has preferred appeal against the said order, the appeal is yet to be admitted and as on date, there is no interim relief.

13. Ms. Kapre submitted that Jyoti has deserted Jitendra without any cause. In view of section 125 (4) of Cr. P.C, she is not entitled to any maintenance as without any sufficient reason, she has refused to live with her husband. In support of this proposition, she relied on the following decisions;

[1] Bhagwan Raoji Dale Vs. Sushma alias nanda Bhagwan Dale, 1999 (5) Bom. CR 851.

[2] Sudeep Chaudhary Vs. Radha Chaudhary, AIR 1999 SC 536.

14. On the other hand, Mr. Salunke submitted that having regard to the findings recorded by the learned trial Judge in the impugned order, the learned trial Judge was not justified in directing payment of maintenance of Rs.8,000/- per month to Jyoti and Rs.2,000/- per month to Arohi. He states that Jyoti is present in the Court. He has tendered photo copy of her Aadhar Card, which is taken on record and marked 'X' for identification. Upon taking instructions from her, he states that Jyoti is not claiming any maintenance awarded by the learned trial Judge while passing decree of divorce. Jyoti is claiming maintenance only in the proceedings under section 125 of Cr. P.C. Statement made by Mr. Salunke, on instructions, is recorded.

15. Mr. Salunke submitted that by order dated 3rd March, 2015, the learned Judicial Magistrate had awarded maintenance of Rs.1500/- per month to daughter Arohi from the date of birth till conclusion of the trial. In so far as the order dated 7th October, 2014 below Exhibit 11 is concerned, he submitted that, that order was interim order, pending the trial of H.M.P No.43 of 2017. That order merged in the final order dated 28th February, 2018 passed by the learned trial Judge dissolving marriage by decree of divorce. As Jyoti is not claiming permanent alimony as per that order, reliance placed on behalf of Jitendra on that order will not advance his case. In short, he submitted that interim maintenance is claimed by Jyoti only in the proceedings under section 125 of the Cr. P.C.

16. Mr. Salunke has invited my attention to paragraphs 16,25,27 and 28 of the impugned order. In paragraph 27, the learned trial Judge recorded a finding that Jitendra must be earning within a range of Rs.4,00,000/- to 5,00,000/- per annum from the resources. He, therefore, submitted that Jyoti is entitled to maintenance as claimed in her application.

17. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, Jitendra has instituted proceedings for divorce against Jyoti being H.M.P No.43 of 2014. During pendency of this proceeding, Jyoti filed application Exhibit 11 claiming maintenance. By order dated 7th October, 2014, the learned trial Judge partly allowed that application and directed Jitendra to pay maintenance @ Rs.6,000/- per month to Jyoti from the date of the order. By order dated 28th February, 2018, the learned trial Judge allowed that Petition and dissolved marriage between the parties. The learned trial Judge directed Jitendra to pay permanent maintenance of Rs.5000/- per month to Jyoti and Rs.3,000/- per month to daughter Arohi from the date of the order

till she attains majority. In view of the statement made by Mr. Salunke that Jyoti is not claiming any permanent alimony in pursuance of order dated 28th February, 2018 passed by the learned trial Judge, interim order dated 7th October, 2014 passed by the learned trial Judge below Exhibit 11 will not survive for consideration. The only question remains about correctness of the impugned order.

18. A perusal of paragraph 16 of the impugned orders shows that the learned trial Judge has considered evidence adduced by the parties. The learned trial Judge has referred to several properties owned by the family of Jitendra. During the course of cross-examination, Jitendra admitted that crop of Sugarcane, turmeric and banana is taken from agricultural land. He also admitted presence of bore well in survey No.414/3 in Wai and a well in survey No.493/5. After considering the admissions, the learned trial Judge observed that the family holds agricultural lands and the lands have irrigation facilities from bore well and well. The learned trial Judge also considered the photographs Exhibit 80 and 81 that were placed on record. These photographs reveal that he has spacious house and the board of Siddhivinayak Enterprises is also seen in one of the photographs at Exhibit 80 and 81. The learned trial Judge referred to marriage invitation card at Exhibit 78 which is not disputed by the parties. Marriage Invitation Card reflected Firms owned by family of Jitendra namely Vaishnavi Gano Therapy Centre situate in Wai, Opposite Police Station, Songirwadi, Dist Satara and Siddhi Vinayak Enterprises, Shahabag, Phulenagar, Tal. Wai, Dist. Satara. The learned trial Judge also noted residential address of Jitendra as Shahabag, Phule Nagar, Wai, District Satara and further observed that he has no reason to mention that Firm in the marriage invitation card if the family does not have the said firm. Photograph at Exhibit 80 confirms that he and his family are in the business of selling building materials. They run Vaishnavi Gano Therapy Centre at Wai, Dist.

Satara. The learned trial Judge, therefore, concluded that material on record establishes that Jitendra has sufficient means to provide maintenance.

19. In paragraph 27, the learned trial Judge also noted that Jitendra's father is leader of Shetkari Sanghatana and owns a car. Family of Jitendra is not ordinary family of agriculturalist but a family of progressive agriculturist and businessman. Jitendra is residing in a bungalow constructed in R.C.C. Though no proof was produced by Jyoti to indicate that Jitendra earns within the range of Rs.12,00,000/- to 14,00,000/- from the sources, the learned trial Judge held that he might be earning Rs.4,00,000/- to 5,00,000/- per annum from all these sources. It was further observed that it is not his case that he is residing separately. On the contrary, it has come on record that family is residing jointly and, therefore, the learned trial Judge disbelieved case of Jitendra that he owns only 55 R land, which cannot generate huge income. The learned trial Judge accordingly awarded maintenance of Rs.8,000/- per month to Jyoti and Rs.2,000/- per month to Arohi i.e in all Rs.10,000/-. Daughter Arohi is born on 28th March, 2014. As on date, she is around 5 years old. As mentioned earlier, against the decree of divorce, Jyoti has instituted appeal in the District Court, Satara and the same is pending. In other words, the findings recorded by the learned trial Judge while passing the decree of divorce had not attained finality.

20. Ms. Kapre relied on section 125 (4) of the Cr. P. C as also decisions in **Bhagwan Raoji Dale** and **Sudeep Chaudhary** (supra). In case of **Bhagwan Raoji Dale** (supra), Division Bench has referred to section 125 (4) of Cr. P.C and held that no wife is entitled to receive alimony from her husband if she refuses to live with her husband. At the cost of repetition, I mention that the proceedings are pending before the District Court and, therefore, at this stage, it cannot be concluded that without any sufficient

reason, Jyoti has refused to live with Jitendra. In view thereof, reliance placed on the decision of **Bhagwan Raoji Dale** (supra) does not advance Jitendra's case.

21. In so far as decision in **Sudeep chaudhary's** case (supra) is concerned, the Apex Court observed that amount awarded under maintenance under section 125 of Cr. P.C by the learned Magistrate is adjustable against the amount awarded under section 24 of the Act. In the present case, interim order is merged in the final order. Mr. Salunke has already made a statement that Jyoti is not claiming permanent alimony in terms of order dated 26th February, 2018. In view thereof, reliance placed on the decision of **Sudeep Chaudhary** also does not advance case of Jitendra.

22. The learned trial Judge has recorded a categoric finding that Jitendra is earning within the range of Rs.4,00,000/- to 5,00,000/- per annum by the resources. In my opinion, this is the modest estimate of the income. Even if, we take into account the said income for consideration, the learned trial Judge was not justified in awarding maintenance of Rs.8,000/- per month to Jyoti and Rs.2,000/- to daughter Arohi. Nobody is dependent on Jitendra. Considering the status of the parties as also their living standards, in my opinion, Jyoti is entitled to maintenance of Rs.16,000/- per month and Arohi is entitled to maintenance of Rs.4,000/- per month.

23. In view thereof, the impugned order deserves to be modified by directing Jitendra to pay maintenance @ Rs.16,000/- per month to Jyoti and Rs.4,000/- per month to daughter Arohi under section 125 of Cr. P.C. Jitendra will pay maintenance @ Rs.16,000/- per month to Jyoti from the date of the Petition under section 125 of Cr. P.C. Maintenance of Rs.4,000/- per month to daughter Arohi is payable from 28th March, 2014 i.e her date of birth. Rule is

partly made absolute in Writ Petition No.715 of 2016. Rule is discharged in Writ Petition No.633 of 2016. In so far as Criminal Application No.383 of 2017 is concerned, Jyoti is permitted to withdraw the amount deposited by Jitendra in this Court along with accrued interest in terms of prayer clause (a) with no order as to costs. Order accordingly.

[R.G. KETKAR, J.]