

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

CRL.REV.P. 755/2018

Reserved on : 16.12.2019

Pronounced on : 18.12.2019

IN THE MATTER OF:

SMT. NIHARIKA YADAV

..... Petitioner

Through: Ms. Rishu Agarwal, Advocate.

versus

MR. MANISH KUMAR YADAV

..... Respondent

Through: Mr. Jai Gopal Garg and Mr. Vishal, Advs.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present revision petition assails the order dated 25.04.2018 passed by Family Court in Complaint Case No.71/2017.
2. Vide the aforesaid order passed in the petition filed under Section 125 Cr.P.C on behalf of the petitioner/wife for grant of interim maintenance, the Family Court dismissed the same on account of the fact

that the petitioner was capable of maintaining herself. It was also held that petitioner was getting maintenance of Rs.10,000/- per month in an application under Section 24 HMA which was offered voluntarily by the respondent and that the petitioner cannot get maintenance in two different proceedings simultaneously for the same period.

3. I have heard learned counsel for the parties and have gone through the case records.

4. The Family Court while passing the order dated 25.04.2018 in an application under Section 24 HMA, noted that after mandatory deductions towards income tax and provident fund, the respondent's salary slip for the month of February, 2018 showed his net salary as Rs.47,998/- per month.

5. The issue whether the petitioner/wife is to be denied the maintenance only on account of the fact that she was capable of earning came before this court in Arun Vats vs. Pallavi Sharma, reported as **(2019) SCC OnLine Delhi 11817** wherein while relying on decision rendered in the case of Shaliya v. Khobbana reported as **(2018) 12 SCC 199**, it was held that 'capable of earning' and 'actual earning' are two different requirements. Merely because the wife is capable of earning is not a sufficient reason to deny her the maintenance.

6. Coming to the second issue whether grant of maintenance under Section 24 HMA could be a reason to deny maintenance under Section 125 Cr.P.C, it is profitable to refer to various statutes which provide for maintenance to the aggrieved wife. The Legislature has provided for grant of maintenance to a wife under various statutes i.e., The Hindu Marriage Act, 1955 (HMA), Section 125 Cr.P.C., Section 20 of The Protection of

Women from Domestic Violence Act, 2005 (DV Act) and Hindu Adoption and Maintenance Act, 1956.

7. Sections 20 and 26 of the DV Act 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.

26. Relief in other suits and legal proceedings.—

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

8. Section 20(d) of the DV Act provides that the maintenance provided under the Act shall be in addition to an order of maintenance under Section 125 of the Cr.P.C. or any other law for the time being in force. Similarly, Section 26 of the DV Act provides that any relief available under Sections 18 to 22 can also be sought in any proceeding before Civil Court or Family Court or a Criminal Court. A conjoint reading of the above sections shows that grant of maintenance pendente lite under Section 24 of HMA does not bar the award of maintenance under any other proceedings subject to the condition that the grant of maintenance in one shall be kept in mind while awarding the maintenance in the other. (Refer Shome Nikhil Danani Vs. Tania Banon Danani reported as **(2019) 258 DLT 742**, Juveria Abdul Majid Khan Patni Vs. Atif Iqbal Masoori reported as **(2014) 10 SCC 736**, Sanjay Chopra v Shyama Chopra in Crl. Appeal No.121/2001 decided on 05.01.2001, R.D. Vs. B.D. reported as **2019 SCC OnLine Del 9526 [DB]** and Sujit Kumar Vs. Vandana reported as **(2016) 233 DLT 39 [DB]**).

9. Accordingly, impugned order dated 25.04.2018 passed by the Family Court is set aside and the matter is remanded back for fresh consideration in the light of the fact that the amount of interim maintenance awarded under Section 24 of HMA was voluntarily and not judicially determined. The Family Court shall be at liberty to grant adjustment of the maintenance awarded under Section 24 of HMA while considering the application under Section 125 Cr.P.C.

10. Consequently, the present criminal revision petition is allowed in aforesaid terms.

11. A copy of this order be communicated to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 18, 2019

SSC

