

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

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Judgment reserved on: 25th January, 2019

Judgment delivered on: 11th April, 2019

+ CRL. REV. PET. 994/2018

SHOME NIKHIL DANANI

..... Petitioner

versus

TANYA BANON DANANI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Geeta Luthra, Sr. Advocate with Mr. Sanjay Abbot, Mr. Altamish Siddiki and Ms. Shivani Luthra Lohiya, Advocates.

For the Respondents: Mr. Madhav Khurana with Ms. Trisha Mittal, Advocates with respondent in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner impugns order dated 26.09.2018 whereby the appellate court set aside order dated 06.04.2018 and remanded the matter to the trial court to decide the application under section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the DV Act), afresh.

2. Application under section 23 of the DV Act was filed by the Respondent-wife *inter-alia* seeking monetary relief under section 20, residence orders under section 19(f) and prevention of alienation of assets under section 18(e) of the DV Act.

3. By order dated 06.04.2018 the application under section 23 was dismissed. The Trial Court rejected the monetary relief claimed by the Respondent on the ground that she had already been granted maintenance of Rs 1,20,000/- per month under section 125 Cr.P.C. by the family court. Further the Trial Court observed that the rent to be paid by the Respondent had been considered by the family court while deciding the quantum of maintenance thus she was not entitled to relief under section 19 of the DV Act. In so far as the prayer for preventing alienation of assets was concerned the Trial Court declined the same holding that whether the Respondent-wife had a share holding in the company was a matter of trial and said relief could not be granted to her.

4. Petitioner and Respondent were married on 28.06.2014. Respondent left her matrimonial home on 28.05.2015 allegedly on account of being physically and mentally tortured. The parties have been living separately ever since.

5. Respondent-wife filed a petition under section 125 Cr.P.C., wherein by order dated 23.01.2017 interim maintenance was granted to her from the date of filing of the petition.

6. Respondent-wife thereafter filed a petition under the DV Act inter alia seeking a right of residence. By order dated 06.04.2018, the Trial Court declined to grant monetary relief and also declined to pass any order for residence on the ground that the DV Act did not contemplate restoration of possession but provided for alternate accommodation to be provided to the wife and the Respondent – wife had agreed to be compensated by payment of rental for alternative accommodation. The court further noticed that in the application under section 125 Cr.P.C., Respondent-wife had made a claim of Rs. 2,50,000/- per month towards rental and taking the same into account, the court under section 125 Cr.P.C., had awarded interim maintenance at Rs. 1,20,000/, thus she was not entitled to any order for residence or rental for alternative accommodation.

7. By the impugned order the appellate court held that the trial court had not considered the judgements of the Supreme Court as well as this court wherein it had been laid down that both Cr.P.C. and DV Act provided concurrent jurisdiction and the relief under section 12 of the DV Act was in addition to any relief which could be granted by any court of law in any forum. Noticing the fact that the trial court had

not considered the law as laid down, the appellate court remitted the matter to the trial court to reconsider the relief sought for by the respondent.

8. Learned senior counsel for the Petitioner submits that the appellate court has erred in remanding the matter to the trial court to decide the application under section 23 in view of the fact that the Respondent had already been granted interim maintenance under section 125 Cr.P.C. and enhancement if any could only be sought before the same court and a second application for interim maintenance would not lie before another forum.

9. Reliance is placed on the decision of a coordinate bench of this court in *Rachna Kathuria vs Ramesh Kathuria*, 173(2010) DLT 289.

10. Per contra, learned counsel for the Respondent submits that the Respondent-wife suffered domestic violence and thus was entitled to monetary relief under the DV Act. Further it is submitted that the respondent had not only sought relief under section 20 but also prayed for residence orders under section 19 and protection order under section 18 of DV Act, which are beyond the scope of Section 125 Cr.P.C..

11. Further it is submitted that the maintenance granted under section 125 Cr.P.C. does not put an embargo on the court to pass an

order granting monetary relief under the provisions of DV Act. Reliance is placed on the decision of another coordinate bench in *Karamchand & Ors Vs State NCT of Delhi & Anr* (2011) 181 DLT 494.

12. It may be seen that the Family Court by order dt. 23.01.2017, on the Application of the Respondent – wife under Section 125 Cr.P.C. assessed the income of the petitioner – husband at Rs. 7,50,000/- to Rs. 8,00,000/- per month and his monthly expenditure at Rs. 1,42,000/- per month. With regard to the income and expenditure of the Respondent, the Family Court assessed her monthly expenditure at Rs. 5,04,566/- excluding rental of Rs. 2,50,000/- per month and her total monthly income at Rs. 1,01,040/-. However, held that certain amounts claimed by her in her financial affidavit amounted to luxury and could not be granted. The Family Court awarded her interim maintenance of Rs. 1,20,000/-per month. The Family Court, while assessing the respective income and expenditure of the parties, specifically excluded the rental claim of the Respondent – wife.

13. In the subject proceedings under the DV Act, the Trial Court by order dated 06.04.2018 declined to grant any monetary relief to the Respondent – wife holding that that all the heads for which the maintenance was being sought had been considered by the Family

Court while passing the said orders and as she had already moved to Court and her right of maintenance had been adjudicated by a competent Court, for any enhancement of maintenance already granted, she would have to move the same Court. With regard to residence order, the Trial Court held that although she had prayed for entry into the shared household but during arguments her counsel had submitted that the husband be directed to pay for the rent of the rented premises. The Trial Court held that the Family Court in by order dated 23.01.2017 had already considered the rent for the rented accommodation while assessing interim maintenance at Rs. 1,20,000/- per month.

14. The finding the Trial Court that the Family Court had taken into account the rent for the rented premises, is contrary to record. The Family Court had specifically held that the expenditure claimed by the wife was Rs. 5,04,566/- excluding rental of Rs. 2,50,000/- per month. Thereafter the Trial Court further reduced the expenditure claim by holding that some of it was for luxury, which could not be granted. Clearly the Trial Court had not taken into account the rental. Further, the rental could not have been considered by the Trial Court in the application under section 125 Cr.P.C. because the wife was not living on rent but was claiming rent for taking an accommodation on rent.

15. In the present proceedings under the DV Act, the Respondent has claimed residence order in the shared household and during arguments, alternatively claimed rental in lieu of the residence order in the shared household.

16. Section 20 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) ***** *****

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 incurium* 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..

22. In view of the above, I find no infirmity in the order of the Appellate Court in setting aside the order of the Trial Court and remitting the matter for reconsideration of the application of the Respondent. There is thus no merit in the Petition, the same is dismissed.

23. Order *Dasti* under signatures of Court Master

APRIL 11, 2019 **SANJEEV SACHDEVA, J**