

\$~3

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

% ***Date of Judgment: 02nd December, 2020***

+ **CRL.REV.P. 1091/2019 and CRL.M.A. 13677/2020**

RANI & ANR.

..... Petitioners

Through: Dr Amit George, Mr Amol
Acharya, Mr Piyo Hardo
Jaimon, Mr Rayadurgam
Bharat, Advocates.

versus

DINESH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing held through video conferencing]

VIBHU BAKHRU, J. (ORAL)

1. The petitioners have filed the present petition impugning an order dated 04.07.2019 (hereafter 'the impugned order') passed by the learned Family Court, Karkardooma, whereby the petitioner's application for interim maintenance under Section 125 of the Criminal Procedure Code, 1973 (Cr.PC) was rejected.

2. A plain reading of the impugned order indicates that the petitioner's application was rejected on the sole ground that the petitioners had been granted interim maintenance of ₹4,000/- per month in proceedings filed under Section 12 of the Domestic Violence Act, 2005 (DV Act). The Court held that since the petitioners had been

awarded interim maintenance for the same period and no appeal had been preferred against the said interim order, an application under Section 125 Cr.PC for seeking interim maintenance for the same period was not maintainable. The Court referred to the decisions of this Court in ***Renu Mittal v. Anil Mittal: Crl. Rev. P. 633/2010, decided on 27.09.2010*** and ***Rachna Kathuria v. Ramesh Kathuria: Crl. (M) Petition No. 130/2010, decided on 30.08.2010*** in support of the said proposition. The Court held that it was not open for the petitioners to claim maintenance from two different courts in different proceedings for the same period. And, in the event the petitioners were of the view that the amount of interim maintenance granted was insufficient, the appropriate remedy would be to approach the concerned court for modification or enhancement of the interim maintenance.

3. None appears for the respondent despite notice.
4. Dr Amit George, learned counsel appearing for the petitioners contends that the aforesaid reasoning is erroneous and the decisions relied upon by the learned Family Court are no longer good law.
5. In view of the above, the only question to be addressed is whether it is open for the petitioners to maintain an application under Section 125 Cr.PC after having secured interim maintenance by an order passed in proceedings under the DV Act.
6. The controversy in the present case arises in the following context:

6.1 The petitioner no.1 is a estranged wife of respondent and petitioner no.2 is their minor son. The petitioners had initially filed a petition under Section 12 of the DV Act which was registered as CC No. 229/2017 before the learned MM (Mahila Court), Karkardooma. The petitioners had also filed accompanying application seeking interim maintenance till the disposal of the said petition.

6.2 The aforesaid application for interim maintenance was allowed by the learned MM (Mahila Court) and, by an order dated 23.10.2018, the respondent was directed to pay *ad interim* maintenance of ₹4,000/- per month. The said interim order was subsequently confirmed by an order dated 10.12.2018.

6.3 On 15.11.2018, the petitioners filed an application under Section 125 Cr.PC which was registered as MT No. 1307/2018. The said application was rejected by the impugned order.

7. There is merit in Dr George's contention that the grounds on which the learned Family Court had rejected the application is erroneous. The question whether an application for interim maintenance under Section 125 Cr.PC could be maintained for the same period for which interim maintenance has been awarded under the DV Act, is no longer *res integra*. The Division Bench of this Court in ***R.D. v. B.D.: 2019 SCC OnLine Del 9526 (DB)*** has held that an order for interim maintenance granted under the DV Act does not preclude an applicant to claim interim maintenance for the same period in separate proceedings. The earlier decisions in ***Renu Mittal***

v. Anil Mittal: (2010) SCC OnLine Del 3390 and **Rachna Kathuria v. Ramesh Kathuria: 2010 SCC OnLine 2929** relied upon by the learned Family Court, were expressly overruled in **R.D. v. B.D. (supra)**. The relevant extract of the said decision is set out below:

“15. A careful perusal of Section 20 of DV Act shows that it provides maintenance to the aggrieved person as well as her children, if any, which would be in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure or any other law for the time being in force. Further, Section 26 of DV Act stipulates that any relief available under Sections 18 to 22 of DV Act may also be sought in any legal proceedings before a civil court, Family court or a criminal court and such relief may be sought in addition thereto. Whereas Section 36 of DV Act clearly stipulates ‘*Act not in derogation of any other law—The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.*’

16. A conjoint reading of the aforesaid Sections 20, 26 and 36 of DV Act would clearly establish that the provisions of DV Act dealing with maintenance are supplementary to the provisions of other laws and therefore maintenance can be granted to the aggrieved person (s) under the DV Act which would also be in addition to any order of maintenance arising out of Section 125 of Cr.P.C.

17. On the converse, if any order is passed by the Family Court under Section 24 of HMA, the same would not debar the Court in the proceedings arising out of DV Act or proceedings under Section 125 of Cr.P.C. instituted by the wife/aggrieved person claiming maintenance. However, it cannot be laid down as a proposition of law that once an order of maintenance

has been passed by any Court then the same cannot be re-adjudicated upon by any other Court. The legislative mandate envisages grant of maintenance to the wife under various statutes such as HMA, Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'HAMA'), Section 125 of Cr.P.C. as well as Section 20 of DV Act. As such various statutes have been enacted to provide for the maintenance to the wife and it is nowhere the intention of the legislature that once any order is passed in either of the proceedings, the said order would debar re-adjudication of the issue of maintenance in any other Court.

18. Having regard to the law settled by the Hon'ble Supreme Court and various other High Courts to the facts of the present case, we find that the Family Court in different matters is placing reliance on the judgments of *Rachana Kathuria* (supra) and *Renu Mittal* (supra). In our view the impugned order passed by the Family Court needs to be tested on the anvil of the settled law and requires to be reconsidered. The law laid down in the aforesaid two judgments is not a good law and has been over ruled. Accordingly, the interim order dated 18.04.2018 arising out of the application under Section 24 of HMA is set aside.”

8. It is also necessary to observe that although a separate application seeking interim maintenance for the same period is maintainable, the Court would of necessarily bear in mind the interim maintenance awarded in the other proceedings while considering the merits of the application. A similar view was expressed by a Coordinate Bench of this Court in ***Smt. Niharika Yadav v. Mr. Manish Kumar Yadav: Crl. Rev. P. 755/2018, decided on 18.12.2019***, wherein the Court held as under:

“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. In view of the above, the impugned order is set aside. The matter is remanded to the learned Family Court to consider the petitioner's application for interim maintenance under Section 125 Cr.PC on merits.

10. The pending application is also disposed of.

VIBHU BAKHRU, J

DECEMBER 02, 2020
RK