

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 1094 of 2019

Partha Sakha Maity

-Vs-

Bijali Maity & Anr.

For the Petitioner: Mr. Amar Nath Sen,
 Mr. Malay Dhar,
 Mr. Biswajit Sarkar.

For the Opposite Party: Mr. Sankar Prashad Dalapati,
 Mr. Sourav Mondal.

Heard on: March 12, 2021.

Judgment on: March 26, 2021.

BIBEK CHAUDHURI, J. : –

1. The question as to whether maintenance allowance awarded to the wife/opposite party is adjustable with the monetary relief granted to her under Section 23 of the Protection of Women from Domestic Violence Act is the subject matter of adjudication in the instant criminal revision. The present petitioner is the husband of the opposite party No.1. The opposite party No.1 filed an application under Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereafter described as the said Act) praying for monetary relief. The learned court

below granted interim relief monetary at the rate of Rs.3000/- per month to be paid by the petitioner/husband to the opposite party No.1/wife under Section 23 of the said Act.

2. The present petitioner filed an application on 6th July, 2018 in the 3rd Court of the learned Judicial Magistrate, Contai praying for adjustment of order of interim monetary relief passed in Misc (DV Case No.7 of 2015 by the learned Judicial Magistrate, 3rd Court at Contai with the final order of maintenance of Rs.3000/- per month passed in Misc Case No.204/2014 under Section 125 of the Code of Criminal Procedure by the learned Additional Chief Judicial Magistrate, Contai.

3. The learned Judicial Magistrate rejected the application on twofold grounds, viz, interim monetary relief granted in favour of the wife/opposite party No.1 cannot be adjusted with final order of maintenance passed in a proceeding under Section 125 of the Code of Criminal Procedure, against the scope of both the above mentioned statute and the relief granted under them are distinct and different. The present petitioner has filed an appeal against the above mentioned order dated 10th July, 2018 under Section 29 of the said Act. The said appeal, though registered as Criminal Revision No.36 of 2018 was disposed of by the learned Additional District Judge, Fast track, 2nd Court by a judgment dated 19th January, 2019. The aforesaid revision/appeal was dismissed on contest.

4. The instant revision has been filed by the husband/petitioner challenging the legality, validity and propriety of the order dated 19th January, 2019 passed in Criminal Revision/Appeal No.36 of 2018.

5. In **Rajnesh vs. Neha & Anr.** reported in **(2021) 2 SCC 324** it is observed by Hon'ble Supreme Court as hereunder:-

“It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we

direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.”

6. Therefore Hon’ble Supreme Court in unequivocal terms has observed that adjacent of maintenance allowance granted in a previous proceeding is permissible in a subsequent proceeding filing even under the different statute but substantially for the same relief.

7. Mr. Dolapati, learned Advocate for the wife/opposite party has placed reliance of a judgment of the Bombay High Court in the case of **Prakash Babulal Dangi & Anr. vs. State of Maharashtra** in Criminal Appeal No.296 of 2017 dated 10th October, 2017.

8. Paragraph 7 and 8 of the said judgment is relevant and reproduced below.

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 WP-3791-16-&-3239-14.doc 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.

9. However in view of the judgment passed by the Hon'ble Supreme Court in the case of Rajnesh (supra) the decision of the Hon'ble Supreme Court in Prakash (supra) is no longer good in law.

10. Since the petitioner herein is entitled to get adjustment of the amount of maintenance which he has been paying on the basis of order under Section 125 of the Code of Criminal Procedure in a subsequent

proceeding under the D.V Act, the order passed in Criminal Appeal No. 36 of 2018 and Misc DV case No.7 of 2015 is set aside.

11. The revisional application is accordingly allowed on contest, however without cost.

12. The learned Judicial Magistrate, 3rd Court at Contai is directed to dispose of the application dated 6th July, 2018 filed by the petitioner herein in accordance on the basis of the observation made herein above.

(Bibek Chaudhuri, J.)