

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL REVISION APPLICATION NO.70 OF 2020**

Bhagyashree w/o Purshottam @ Pritesh Chaudhari,
Age : 25 years, Occ: Household,
R/o.: C/o Dilip Amrut Chaudhari,
Plot No.14, Gut No.141,
Rukhmani nagar, Jalgaon. ...Applicant

Versus

Purshottam @ Pritesh s/o Suresh Chaudhari
Age.: 33 years, Occ: Police Constable/Service,
At present R/o: Gut No.10, Nehru Nagar,
Near Shantiniketan Building, Devpur, Delhi. ...Respondent

...
Advocate for Applicant : Mr. Navandar Mehul Vikas
Advocate for Respondent : Mr. Suresh S. Pidgrewar h/f Mr. N.L.
Chaudhari

...
CORAM : S.G. MEHARE, J.
DATED : 23rd NOVEMBER, 2022

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. The petitioner-wife has impugned the order of the learned Judge, Family Court, Jalgaon, in Petition No.E-329/2019 dated 29.01.2020.
3. The learned Judge refused the maintenance to the petitioner-wife on the sole ground that as the maintenance was already granted to the petitioner under the provisions of Protection of Women from Domestic Violence Act (for short 'PWDV Act'), there is no need to grant maintenance merely because the said petition was filed under different enactment.

4. Learned counsel for the petitioner has vehemently argued that the view taken by the learned Judge, Family Court refraining the petitioner from filing a petition under another Act is contrary to the view taken by the Hon'ble Supreme Court and various other courts, including the Bombay High Court. He would argue that there is absolutely no bar to file proceedings simultaneously under the various Enactments for similar relief. He would rely upon the case of Shome Nikhil Danani Vs. Tanya Banon Danani in Petition(s) for Special Leave to Appeal (Crl.) No(s).6005/2019 decided by the Hon'ble Supreme Court on 22.07.2019 and RD Vs BD, in M.A.T. APP. (F.C.) 149/2018, decided on 31.07.2019 by the High Court of Delhi. Arguing on the legal point, he would argue that the learned Judge has committed an error of law in rejecting the maintenance application; hence, it is liable to be set aside.

5. Per contra, learned counsel for the respondent-husband vehemently argued that the view taken by the learned Judge, Family Court is correct. No husband could be burdened to pay the maintenance under different enactments. The learned Judge has correctly relied upon the case laws discussed in the impugned order. That apart, the maintenance granted to the petitioner-wife under the PWDV Act was sufficient. The learned Magistrate granting the maintenance to the petitioner under the PWDV Act has considered the income source of the respondent. The petitioner resided with the

respondent for 45 days only. In the absence of evidence, the learned Judge erroneously recorded the finding that the respondent-husband has refused and neglected to maintain her. That finding also needs to be set aside. The petitioner is getting sufficient maintenance from the respondent. It is nothing but an unnecessary exercise and a waste of time for the Court to deal with the same issue. The case laws relied upon by the petitioner did not apply to the case in hand as distinguishable on facts. He prayed to dismiss the petition.

6. The following points arise for the determination of this Court and finding thereon are recorded for reasons to follow :

Sr No.	Points	Findings
1	Whether simultaneous proceedings are barred?	In negative
2	What Order?	As per final order

7. **Point No.1:-** It is not in dispute that the petitioner has filed the proceedings against the respondent-husband under the provisions of PWDV Act, 2005 and under section 125 of the Code of Criminal Proceedings. The application for maintenance under section 125 Cr.P.C. was filed after getting an order of maintenance under PWDV Act. The learned Magistrate considering the facts and law has rejected the application.

8. The object of PWDV Act is to provide for effective protection of the rights of women guaranteed under the Constitution

who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The very purpose of including the Domestic Violence Act was to provide for a remedy which is an amalgamation of the civil rights of the complainant i.e. the aggrieved person. The intention was to protect the women from violence of any kind, especially that occurring within the family, as the civil law does not trust this enactment in its entirety. The purpose of including the law was to provide a remedy in civil law for the protection of women from being the victims of domestic violence and prevent the occurrence of domestic violence in society. It is for this reason that the scheme of the Act, provides that in the first instance, the order that would be passed by the Magistrate on a complaint by the aggrieved person would be of civil nature, and if the said order is violated, it assumes the character of criminality. The object of this Act is to provide a minimum relief to the aggrieved person extending the emergent help of the Court orders to provide, for protection from violence, immediate assistance for residents, medications and fooding. The Act has special features granting the powers to the Magistrate to prescribe his own precedent to make the law most effective and protect women from domestic violence Act. Section 36 of PWDV Act provides that the provisions of the said Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. The Legislature has taken due

care by inserting Section 36 in the said Act to protect the rights of the women arising out of a matrimonial dispute under the existing laws. The provisions of any law if in addition and not in derogation of existing laws does not affect the rights of the parties conferred under the existing laws.

9. The Bombay High Court in the case of Prakash Babulal Dangi Vs. The State of Maharashtra and Ors, reported at MANU/MH/2438/2017, held that maintenance could be awarded both under the DV Act as well as under Section 125 of the Cr.P.C. However, the parties seeking similar relief have to specifically mention any such order in her or his favour passed by any other competent Court of law. The same view has been taken in the case of RD Vs. DD (cited supra). The Hon'ble Apex Court in the case of Shome Nikhil Danani (cited supra) has also taken the view that mere passing of an order under Section 125 of the Code of Criminal Procedure 1973 did not preclude the respondent from seeking appropriate reliefs under the Protection of Women from Domestic Violence Act 2005.

10. So far as the reliance on the case laws referred to in the impugned order by the learned Judge and supported by the respondent's counsel, in the case of Sanjay S/o Pundlikrao Niranjane Vs. Swati W/o Sanjay Niranjane, 2005 (4) Mh.LJ 122 and Vishal S/o Rajesaheb Gore Vs. Sau. Aparna W/o. Vishal Gore (Criminal Revision Application No.203 of 2017 decided on 13 June 2018), it has been

observed that where the wife is getting maintenance under Section 24 of the Hindu Marriage Act, she shall not be entitled to claim execution order passed under Section 125 of Criminal Procedure Code. Further, it has been observed that though the wife can simultaneously claim maintenance under the different enactments, it does not in any way mean that the husband can be made liable to pay the maintenance awarded in each of the said proceedings. A clear observations have been recorded in the case of Vishal S/o Rajesaheb Gore (cited supra) that the wife and children can claim maintenance under the provisions of Criminal Procedure Code and Hindu Adoption and Maintenance Act and also under the provisions of Domestic Violence Act. Hence those case laws were not supporting the respondent-husband. On the contrary, the mandate was that the wife could simultaneously claim the maintenance under different enactments.

11. In view of the clear provisions of law and the law laid down by the Hon'ble Supreme Court and Bombay High Court in the cases cited supra, the Court is of the view that the impugned order is erroneous on its face; hence, warrant interference. Therefore, point no.1 has been answered in negative.

12. **Point No.2:-** The discussions made above led the Court to arrive at a conclusion that the impugned order is erroneous, illegal and improper; hence, liable to be set aside. However, the learned Judge, Family Court, Jalgaon, did not determine the quantum of the

maintenance under Section 125 of the Code of Criminal Procedure, and the husband has also raised the objection to the finding of refusal and neglect to maintain his wife, the matter needs to be remitted to the Family Court for fresh disposal. Hence, the following order :

ORDER

- I) The revision application is allowed.
- II) The impugned order passed by the learned Judge, Family Court, Jalgaon, in Petition No.E-329/2019 dated 29.01.2020, is set aside.
- III) The case is remitted to the Family Court, Jalgaon, for a fresh decision after granting both parties an opportunity to contest on merit.
- IV) The learned Judge, Family Court, Jalgaon, shall make an endeavour to expedite the disposal.
- V) No order as to costs.
- VI) Rule made absolute in the above terms.

(S.G. MEHARE, J.)