

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

919 CRIMINAL WRIT PETITION NO.799 OF 2022

JASWANT BHAGWANRAO IRALE
VERSUS
MADHURI W/O. JASWANT IRALE

...

Mr. Mukul S. Kulkarni, Advocate for Petitioner.

Mr. D. G. Nagode, Advocate for Respondent.

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CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 21st September, 2022.

Per Court:

. Heard finally with consent of both the sides.

2 The petitioner has challenged the order of interim maintenance passed by the learned Judicial Magistrate First Class, Court No.7, Ahmednagar in PWDV No.1008 of 2016 below Exhibit-20 dated 26th March, 2019 and upheld by the appellate authority / Additional Sessions Judge, Ahmednagar while deciding in Criminal Appeal No.97 of 2019 dated 16th December, 2021.

3 Heard Mr. Mukul Kulkarni, learned counsel for the petitioner and Mr. D. G. Nagode, learned counsel for the respondent.

4 Mr. Kulkarni, learned counsel for the petitioner vehemently submitted that the respondent while submitting an application for interim maintenance under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the “DV Act”) has suppressed the fact of getting interim maintenance of Rs.5,000/- per month awarded by the learned Judicial Magistrate First Class in a proceedings under Section 125 of the Code of Criminal Procedure. He submitted that it is a suppression of material fact from the Court. He then invited my attention to the affidavit of the present respondent about her income, assets and liabilities produced before the learned Magistrate and pointed out that in her statement on oath, she has stated that previously she had employment on contractual basis and getting some income per month, but on the date of swearing the affidavit, she had no job and she had no source of income. He invited my attention to the various contractual orders, which are at page Nos.163, 165, 167, 169 and 174. He submitted that contractual appointment of the respondent was renewed from year to year basis. She was getting salary of Rs.8,000/- per month in the year 2018 and as per her contractual appointment dated 3rd March, 2022, she is now drawing salary at the rate of Rs.19,635/- per month. He submitted that it is again suppression of material fact from the Court while obtaining the order of interim maintenance in a DV Act proceedings.

5 Mr. Kulkarni, learned counsel for the petitioner submitted that various proceedings are filed by the respondent against the present petitioner seeking maintenance. One under Section 125 of the Code of Criminal Procedure, second under the DV Act and third under the Hindu Adoption and Maintenance Act, 1956. He submitted that the respondent has also prayed for interim maintenance in a proceedings in a civil suit under the Hindu Adoption and Maintenance Act, but her prayer for interim maintenance came to be rejected by the Civil Court. He further pointed out that the order of interim maintenance passed by the learned Magistrate under Section 125 of the Code of Criminal Procedure at the rate of Rs.5,000/- per month is not challenged by the respondent before the higher Court. She has also not challenged the rejection of her interim maintenance passed by the Civil Court.

6 Mr. Kulkarni, learned counsel for the petitioner vehemently submitted that the respondent is getting good salary. That aspect was not considered by the learned Magistrate while deciding the quantum of interim maintenance as well as the order of interim maintenance passed earlier in a proceedings under Section 125 of the Code of Criminal Procedure. He further submitted that in view of landmark decision of the Apex Court in case of ***Rajnish Vs. Neha and another, AIR 2021 SC 569***, the Honourable Supreme Court has issued

certain guidelines regarding adjustment of maintenance order passed in various proceedings and set-off. He submitted that in view of the guidelines laid down by the Honourable Supreme Court in case of *Rajesh Vs. Neha and another* (supra), that exercise needs to be made. He submitted that the appellate Court has also not considered all these aspects while deciding the appeal. Certain documents were sought to be produced before the appellate Court in support of the submissions, but those were not allowed. He submitted that the order of interim maintenance passed by the learned Magistrate in a DV Act proceedings by completely overlooking the order under Section 125 of the Code of Criminal Procedure coupled with other aspects, is not sustainable. The impugned order is bad in law and liable to be quashed and set aside.

7 Mr. Nagode, learned counsel for the respondent, per contra, supported the impugned order of interim maintenance passed by the learned Magistrate as well as the order passed by the appellate authority. However, Mr. Nagode, learned counsel has been fair enough to admit that in an application for interim maintenance filed by the respondent before the learned Magistrate under the DV Act proceedings, she has not disclosed about grant of

interim maintenance under Section 125 of the Code of Criminal Procedure at the rate of Rs.5,000/- per month at the hands of the learned Magistrate.

8 He submitted that the petitioner has not paid arrears of interim maintenance awarded under Section 125 of the Code of Criminal Procedure as well as not cleared the amount of arrears of maintenance awarded under the DV Act. Let the petitioner clear the arrears of maintenance first. He submitted that even for the sake of argument accepted that the respondent is getting maintenance of Rs.5,000/- per month under Section 125 of the Code of Criminal Procedure and Rs.6,000/- per month under the DV Act towards interim maintenance total of Rs.11,000/- per month, it is not sufficient having regard to the standard of living of both the sides. He submitted that the petitioner is earning lacs of rupees per month. In view of income tax return of the petitioner placed on record by the respondent, the learned Magistrate has accordingly fixed the interim maintenance amount. He submitted that the learned Magistrate having regard to the facts of the case and documentary evidence on record, was pleased to determine the amount of interim maintenance, which is also upheld by the appellate Court. There is no perversity in the findings. No error on the face of it in the

impugned orders. He, therefore, submitted that the petition is devoid of merit and liable to be dismissed.

9 Having regard to the submissions of both the sides, I have gone through the impugned order passed by the learned Magistrate under the DV Act, order under Section 125 of the Code of Criminal Procedure as well as order under the provisions of the Hindu Adoption and Maintenance Act and reply affidavit filed by the respondent as well as other documents and papers produced by the parties.

10 It is undisputed position that the respondent had applied for interim maintenance under Section 125 of the Code of Criminal Procedure. The learned Magistrate after taking into consideration facts of the case and considering the argument advanced on behalf of both the sides, was pleased to determine the quantum of interim maintenance at the rate of Rs.5,000/- per month under Section 125 of the Code of Criminal Procedure. Admittedly, that order of interim maintenance is not challenged by the respondent before the higher Court. However, the petitioner seems to have challenged that order of interim maintenance passed under Section 125 of the Code of Criminal Procedure. Meaning thereby, the respondent has accepted

that amount of interim maintenance passed by the learned Magistrate under Section 125 of the Code of Criminal Procedure. That order of interim maintenance under Section 125 of the Code of Criminal Procedure came to be passed on 29th January, 2018.

11 The respondent filed proceedings under the DV Act and also sought interim maintenance. It is an admitted position that the respondent while filing an application for interim maintenance under the DV Act proceedings, has not disclosed the fact of getting interim maintenance allowance at the rate of Rs.5,000/- per month as per the order passed by the learned Magistrate. It is a material suppression of fact from the side of the respondent while moving an application for interim maintenance under the provisions of the DV Act. Had she disclosed such fact, probably the learned Magistrate would not have proceeded to award such interim maintenance allowance under the DV Act proceedings.

12 The respondent has filed her statement on affidavit in the proceedings under the DV Act wherein she has disclosed about her previous employment on contractual basis. But she has stated on oath that as on the date, she had no job and she had no source of income for livelihood, which is again found to be a suppression of

material fact from the Court. On perusing the contractual orders in respect of employment of respondent (page Nos.163, 165, 167, 169 and 174), one would find that contractual employment of the respondent is renewed per year and the salary of the respondent is increased gradually. While issuing the employment on contractual basis, the Civil Surgeon, General Hospital, Ahmednagar vide order dated 3rd March, 2022, was pleased to appoint the present respondent on contractual basis from 9th November, 2021 to 29th June, 2022 on the monthly honorarium of Rs.19,635/- (page No.178). These aspects seem to have not considered by the appellate authority as well as the learned Magistrate while determining the amount of interim maintenance and the need of present respondent to get such interim maintenance in the background of her monthly income.

13 The landmark decision of the Honourable Supreme Court in case of ***Rajnish Vs. Neha and another*** (supra) was not holding the field when the learned Magistrate decided the proceedings for interim maintenance under the DV Act, but the said cited decision of the Honourable Supreme Court was holding the field when the appellate authority decided the appeal vide judgment and order dated 16th December, 2021. The decision in case of

Rajnish Vs. Neha and another (supra) came to be delivered by the Honourable Supreme Court on 4th November, 2020. In the said decision, several guidelines have been issued by the Honourable Supreme Court by taking into consideration that in various proceedings the orders of maintenance used to be passed by taking aid of different Acts and enactments and there is overlapping jurisdiction and there is need to have adjustment or set-off. By considering various decisions of the different High Courts as well as the Bombay High Court, the Honourable Supreme Court has issued guidelines in paragraph No.98, which reads thus:

“98. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that :

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the Applicant to

disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.”

14 Having regard to the guidelines laid down by the Honourable Supreme Court in case of *Rajnesh Vs. Neha and another* (supra), the order of interim maintenance passed by the learned Magistrate is bad in law and liable to be quashed and set aside. Equally, the order passed by the appellate authority also needs to be quashed and set side since the decision of the Honourable Supreme Court though holding the field, not brought to the notice of the appellate Court by either of the party. It was incumbent on the part of the appellate authority to consider that the order of interim maintenance was passed by the learned Magistrate in favour of the respondent and the same was accepted by the respondent, which was quantified at Rs.5,000/- per month. In a subsequent proceedings under the DV Act, again interim maintenance came to be granted at the rate of Rs.6,000/- per month i.e. total maintenance of Rs.11,000/- per month by way of overlapping of the jurisdiction. There is need to make adjustment and set-off in view of the guidelines laid down by the Honourable Supreme Court in case of

Rajnish Vs. Neha and another (supra).

15 In the above scenario, it would be just and proper to quash and set aside the orders passed by both the Courts below with a direction to the learned Magistrate to take a decision afresh on the application filed by the respondent for interim maintenance after affidavits filed by both the sides and production of necessary documents and papers. If that exercise is made, it would meet the ends of justice. Hence, the following order is passed:

ORDER

- I. The criminal writ petition stands allowed.
- II. The order passed by the learned Judicial Magistrate First Class, 7th Court, Ahmednagar in DV Act proceedings i.e. PWDV No.1008 of 2016 below Exhibit-20 dated 26th March, 2019 as well as the order passed by the appellate authority in Criminal Appeal No.97 of 2019, are hereby quashed and set aside.
- III. The application for interim maintenance moved by the respondent vide Exhibit-7 is restored to the file of learned Judicial Magistrate First Class, Court No.7, Ahmednagar to its original position.

- IV. The learned Magistrate is requested to extend an opportunity of hearing to both the sides and allow both the sides to place on record documentary evidence in support of their stand. He shall decide the application for interim maintenance afresh within a period of three months from the date of receipt of writ of this Court.
- V. With the above directions, the criminal writ petition stands disposed of.
- VI. No order as to costs.

[SHRIKANT D. KULKARNI, J.]

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