

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1631 OF 2020

Prashant s/o Rangnath Dhakane
Age : 32 Years, Occu: Milk Seller,
R/o: Plot No. 202, Near Sai Dattadham Temple
Gauri Hrudaya Apartment, Gayatrinagar,
Dindori Road, Nashik, Tq. and Dist. Nashik ...Petitioner

Versus

1. Mrs. Kalyani Prashant Dhakane
Age :- 28 years, Occu:- Household
 2. Yash Prashant Dhakane
Age :- 7 years (minor) Occu:- Education,
 3. Trupti Prashant Dhakane
Age :- 4 years (minor), Occu:- Education,
- Respondent no. 2 and 3 under guardian of
Respondent no.1
All respondents R/o C/o Sunil Rajaram Kute
Subhash Nagar, Paatbajar, Galli No.1,
Dabipura, Dhule tq. and Dist. Dhule ...Respondents

Mr Chetan T. Jadhav, Advocate for the petitioner
Mr V.C. Patil, Advocate for Respondent Nos. 1 to 3

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 05.09.2022

DELIVERED ON : 23.09.2022

JUDGMENT :

1. Heard finally with consent of both the sides at admission stage.
2. The petitioner has challenged the order of interim maintenance granted by the learned Judicial Magistrate First Class, Dhule under the provisions of The Protection of Women from Domestic Violence Act, 2005

(hereinafter referred to as 'the D.V. Act' for the sake of convenience) in Criminal M.A. No. 689/2019 dated 08.01.2020 and interim maintenance granted by the Judge, Family Court, Dhule in Petition E No.111/2019 dated 27.01.2020.

3. Heard Mr Chetan Jadhav, learned counsel for the petitioner and Mr V.C. Patil, learned counsel for respondent Nos. 1 to 3.

4. Mr Chetan Jadhav, learned counsel for the petitioner submitted that respondent No.1/wife has filed various proceedings in different courts and succeeded in getting favourable orders of interim maintenance. The learned J.M.F.C., Dhule in proceedings under the D.V. Act in Criminal M.A. No. 689/2019 was pleased to grant interim maintenance @ Rs.1,000/- per month each to the wife, son and daughter (respondent Nos. 1 to 3) vide order dated 08.01.2020. The wife/respondent No.1 filed petition E No. E-111/2019 before the Judge, Family Court, Dhule under section 125 of Cr.PC and succeeded in getting order of interim maintenance vide order dated 27.01.2020. The learned Judge, Family Court, Dhule was pleased to grant interim maintenance to the wife/respondent No.1 @ Rs. 5,000/- per month and Rs. 4,000/- p.m. each to the son and daughter (respondent Nos. 2 and 3) respectively, total interim maintenance amount of Rs.13,000/- per month.

5. The wife filed one more proceedings under section 9 of the Hindu Marriage Act, 1955 for conjugal rights vide Petition A No. 128/2019 in Family Court, Dhule and prayed for interim maintenance under section 24 of the said Act. The petitioner has brought the fact of granting of earlier

maintenance by two different courts to the notice of the Judge, Family Court, Dhule when that application for interim maintenance came to be dismissed, but costs of Rs.8,000/- unnecessarily imposed on the petitioner though he was not at fault.

6. Mr Chetan Jadhav, learned counsel for the petitioner vehemently submitted that because of passing of two different orders for interim maintenance in two different proceedings, the petitioner cannot afford to pay interim maintenance to the wife and children total @ Rs.16,000/- per month. He submitted that the petitioner is ready to pay reasonable interim maintenance to his wife and his children. If wife goes on in filing various proceedings before different courts and succeeds in obtaining favourable orders of interim maintenance which are overlapping, it would be practically impossible to pay such huge amount of interim maintenance. He submitted that wife is also doing sari business and earning good income. That fact is not considered while granting interim maintenance by both the courts. He submitted that in view of the landmark decision in case of ***Rajnesh Vs. Neha and another reported in AIR 2021 SC 569***, if order of maintenance is passed by way of overlapping jurisdiction under different enactments, it is mandatory for the wife to disclose previous maintenance proceedings and orders passed therein in subsequent proceedings. The court may take into consideration maintenance already awarded in previous proceedings and grant adjustment or set-off of said amount in subsequent proceedings.

7. By taking help of the above said decision of the Hon'ble Supreme Court in case of ***Rajnish Vs. Neha and another*** (*supra*), the learned counsel for the petitioner Mr Chetan Jadhav prayed to quash and set aside both the orders of interim maintenance passed by the respective courts.

8. Per contra, Mr V.C. Patil, learned counsel for the respondents supported the orders of interim maintenance passed by the two different courts. He submitted that the petitioner/husband is doing milk business and earning more than Rs.10,000/- per day. The courts below have considered the status of both the sides, their standard of living, earning capacity of both the sides, dependency factor, education of both the children, and accordingly, passed the order of interim maintenance. He submitted that total amount of interim maintenance comes to Rs.16,000/- per month which is payable by the petitioner is not huge amount. It is very much reasonable. He submitted that the order of interim maintenance passed under the D.V. Act is not challenged by the petitioner before the appellate authority/District Court and reached finality. Now, it cannot be challenged by way of writ petition. He submitted that so far as the order of interim maintenance passed by the Judge, Family Court, Dhule under section 125 of Cr.PC is concerned, no need to interfere therein. The Judge, Family Court has considered all the aspects and recorded sound reasons while awarding interim maintenance. Mr Patil submitted that there is no merit in the petition and liable to be dismissed.

9. Following are the proceedings filed by respondent No.1/wife against the petitioner/husband and *inter alia* prayed for interim maintenance.

Sr.No.	Name of the proceedings	Order of interim maintenance	Date of order
1	Cri.M.A. No. 689/2019 under the D.V. Act	Rs.1,000/- p.m. each to wife, son and daughter (Rs.3,000/- p.m. in all)	08.01.2020
2	Petition-E-No.111/2019 Order below Exh.6 U/s.125 of Cr.PC	Wife Rs.5,000/- p.m. and Son and daughter Rs.4,000/-p.m.each (Rs.13,000/- p.m. in all)	27.01.2020
3	Petition-A-No.128/2021 Petition for conjugal rights and sought interim maintenance u/s 24 of the Hindu Marriage Act, 1955.	Interim maintenance refused.	27.01.2020

10. Having regard to the above factual scenario and orders passed by the various courts in different proceedings, it is quite clear that respondent No.1/wife has filed various proceedings against her husband under different acts before different courts and *inter alia* prayed for interim maintenance for herself and her children and succeeded in getting favourable orders except in one proceedings as stated above in the chart.

11. Let me examine whether respondent No.1/wife has disclosed in her application for interim maintenance filed before the Family Court vide Exh. 6 under section 125 of Cr.PC., about order of interim maintenance granted by the J.M.F.C. in a proceedings under D.V. Act.

12. On careful examination of copy of application vide Petition IA No. 2/2019 (main petition E No. 111/2019) Exh. 6 (Page No. 56), respondent No.1/wife has not disclosed about the order of interim

maintenance passed by the learned Magistrate in a D.V. Act proceedings dated 08.01.2020. It is a suppression of material fact by respondent No.1. The learned counsel for the petitioner in that proceedings has pointed out about such order of interim maintenance passed in the D.V. Act proceedings. The learned Judge of the Family Court seems to have not considered that aspect. It was very much necessary on the part of respondent No.1 to disclose in her application for interim maintenance before the Judge, Family Court regarding grant of maintenance in a D.V. proceedings by the Judicial Magistrate First Class.

13. As on today, the petitioner is slapped with two orders to pay interim maintenance and total of interim maintenance comes to Rs.16,000/- per month. It seems that the learned Judge of the Family Court, Dhule has passed the order of interim maintenance under the proceedings of 125 of Cr.P.C. without having statements from both the sides on affidavit regarding their income, assets and liabilities, which is now, made mandatory in view of the decision in case of ***Rajnish Vs. Neha (supra)***.

14. In view of the decision in case of ***Rajnish Vs. Neha (supra)***, the learned Judge is required to consider previous order of maintenance if any, and grant adjustment or set-off of the said amount in subsequent proceedings. The following guidelines have been laid down by the Hon'ble Supreme Court in case of ***Rajnish Vs. Neha (supra)***.

"....Appropriate guidelines need to be framed on issue of maintenance to cover overlapping jurisdiction under different enactments for payment of maintenance, Interim

Maintenance, criteria for determining quantum of maintenance, date from which maintenance is to be awarded, and enforcement of orders of maintenance. While it is true that a party is not precluded from approaching the Court under one or more enactments, since the nature and purpose of the relief under each Act is distinct and independent, it is equally true that the simultaneous operation of these Acts, would lead to multiplicity of proceedings and conflicting orders. This would have the inevitable effect of overlapping jurisdiction. 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 S. 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, Supreme Court 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...." **(Para 7-I).**

15. Mr Patil, learned counsel for the respondent invited my attention to the copy of reply-affidavit filed by respondent No.1 along with the copy of rent agreement. He submitted that as on today, respondent No.1/wife is required to spend Rs.23,300/- per month and Rs.16,000/- per month towards interim maintenance is even inadequate.

16. But the fact remains that respondent No.1/wife has not disclosed about the order of grant of interim maintenance passed by the learned Judicial Magistrate First Class in D.V. proceedings while seeking interim maintenance in a proceedings under section 125 of Cr.PC. Moreover, both the parties seem to have not filed their affidavits in order to determine reasonable amount of maintenance.

17. It is well settled position of law that in a matrimonial proceedings, when the question of grant of interim maintenance is to be considered by the court, the quantum of maintenance payable has to be determined by taking into consideration the fact that the party, who is claiming maintenance/ in this case, respondent No.1/wife deserves to be granted such quantum of maintenance that would ensure that said party is able to live the same standard of life style that such a party was enjoying when there were no matrimonial disputes. Equally, the court is required to determine the amount of interim maintenance after taking into consideration various factors -

- (i) paying capacity of the husband,
- (ii) standard of living of both the sides,
- (iii) reasonable expenditure of the wife and children,
- (iv) income of the wife, if any,
- (v) depending family members on the husband,
- (vi) the status of both sides,
- (vii) requirement of educational expenses for children,
- (vii) medical expenses and treatment, etc.

18. Needless to say that some guess work is required to be done to make a balance between the parties while determining amount of interim maintenance/maintenance. It should be reasonable amount so that the husband/party paying would be in a position to pay it. If exorbitant amount of interim maintenance is determined by the court, obviously, it would be difficult for the husband/paying party to pay the same even by sending him behind the bars. No purpose would be served.

19. Having regard to the above reasons and discussion, certainly, the order of interim maintenance passed by the Judge, Family Court, Dhule in a proceedings under section 125 of Cr.PC to the extent of interim maintenance is certainly needs to be quashed and set aside.

20. The learned Judge of the Family Court, Dhule needs to decide the said application for interim maintenance vide Exh. 6 in Petition E No. 111/2019 afresh in the light of above observations made by this Court and in view of the guidelines framed by the Hon'ble Supreme Court in case of **Rajnish Vs Neha** (supra).

21. So far as the order of interim maintenance passed by the

learned Judicial Magistrate First Class, Dhule in D.V. Act proceedings is concerned, neither party has challenged the same by way of appeal before the appellate authority/District Court. As such, the order of interim maintenance passed in Criminal M.A. No. 689/2019 under the D.V. Act by the Judicial Magistrate First Class, Dhule referred above in the chart has reached finality. The petitioner cannot challenge the same by writ petition by surpassing the appellate forum.

22. In view of the above, the criminal writ petition needs to be partly allowed as under :-

ORDER

- (A) Criminal Writ Petition stands partly allowed.
- (B) The order of interim maintenance passed by the learned Judge of the Family Court, Dhule in Petition E No. 111/2019 below Exh.6 dated 27.01.2020 under section 125 (4) of Cr.PC is hereby quashed and set aside.
- (C) The learned Judge of the Family Court, Dhule is requested to decide the said application for interim maintenance filed by wife/respondent No.1 by taking into consideration the guidelines laid down by the Hon'ble Supreme Court in case of **Rajnish Vs. Neha (supra)** directing to both the sides to place on record their statements on affidavits regarding their income, assets and liabilities.
- (D) The Judge, Family Court shall also consider the amount of interim maintenance/maintenance awarded by the learned Judicial Magistrate First Class, Dhule in Criminal M.A. No. 689/2019 under the provisions of The Protection of Women from Domestic Violence Act, 2005.

- (E) Respondent No.1/wife is at liberty to recover the amount of interim maintenance which is determined in Criminal M.A. No. 689/2019 under the D.V. Act by Judicial Magistrate First Class, Dhule vide order dated 08.01.2020.
- (F) The learned Judge of the Family Court, Dhule is hereby requested to decide the application for interim maintenance under section 125 of Cr.PC. Below Exh. 4 in Petition E No. 111/2019 afresh by giving an opportunity to both sides to place on record their documents and by giving an equal opportunity of hearing. That exercise should be completed within a period of three months from the date of receipt of writ of this Court.
- (G) Criminal Writ Petition is accordingly disposed of.
- (H) No order as to costs.

[SHRIKANT D. KULKARNI, J.]

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