

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 202 OF 2021

YASMIN NAZ SHAIKH W/O. MOHAMMAD IMRAN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Naseem R. Shaikh
APP for State : Smt. G. L. Deshpande
Advocate for Respondent No.2 : Mr. Patil Vijay Bhalerao

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CORAM : BHARAT P. DESHPANDE, J.

DATE : 2nd AUGUST 2022.

Per Court :

1. By way of present application, the Applicant No.1 and 2 are challenging the order passed by the learned Family Court, Jalgaon in Petition No.E-88-2019 dated 21.09.2021, wherein application of grant of maintenance under Section 129 of Cr.PC. was rejected only on the ground that she is already receiving maintenance granted by the learned Magistrate under the Domestic Violence Act (D.V. Act for short) in Criminal Application No. 220/2016 vide order dated 03.04.2019.

2. Heard. learned Counsel for both the parties.

3. Learned Counsel for the Applicants submitted that observations of the learned Family Court are perverse and the same are against settled principles of law as laid down by the Hon'ble Apex Court in the case of **Rajesh Vs. Neha and Another**, reported in (2021) SCC 324. He submitted that the rejection of her application is only on the ground that Applicant No.1 was granted interim maintenance by another Court under the D.V. Act and therefore if she is not satisfied with such maintenance, she has to approach the said Court for enhancement.

4. Learned Counsel for the Applicants produced a copy of order passed by the Judicial Magistrate First Class, Jalgaon in Criminal Application No. 220/2016, whereby interim maintenance was granted to the Applicants vide order dated 03.04.2019 @ Rs.3500/- per month. He then submitted that this order nowhere shows as to what maintenance is granted to Applicant No.2 that is her child. Therefore, he prayed that the matter needs to be remanded for fresh consideration.

5. Learned Counsel for Respondent No.2 forcefully submitted that

the Applicant suppressed the fact about grant of interim maintenance to her by the Magistrate at Jalgaon under the D.V. Act. He then submitted that the Hon'ble Apex Court in the case of Rajnesh (supra), issued guide-lines so that overlapping jurisdiction of the different Courts should be properly controlled while deciding the proceedings for maintenance under the different Act.

6. Learned APP for the State submitted that necessary order be passed.

7. On perusal of the impugned order passed by the learned Family Court, it is clear that maintenance application has been rejected on the sole ground that the Applicant No.1 is already receiving amount of Rs.3500/- under the D.V. Act and if she is aggrieved by such order or need enhancement, she has to approach the same Court. Learned Family Court further observed that the amount awarded by way of interim maintenance is sufficient enough.

8. The record clearly goes to show that the salary slip issued by

Central Railway dated 08.11.2021 shows that the Respondent No.2 received gross salary in the month of October, 2021 as Rs.35,232/-. This aspect has not been taken into account, while deciding the application.

9. Similarly the entire impugned order is completely silent about the claim of maintenance of minor daughter i.e. Applicant No.2 and therefore the impugned order suffers from patent illegality. The Family Court has clearly missed out, the claim of the Applicant No.2 and whether she is entitled for maintenance, apart from the claim of maintenance raised by her mother/Applicant No.1.

10. The observations of the Family Court in Paragraph No.22 to 24 of the impugned judgment are also not proper as learned Court has failed to consider the ratio laid down in the case of Rajnesh (supra) and more particularly in Paragraph No.54 and 55. Which reads as under;

54. On the other hand, the Bombay and Delhi High Courts, have held that in case of parallel proceedings, adjustment or set-off must take place.

The Bombay High Court in a well-reasoned judgment delivered in Vishal v Aparna & Anr.,²⁰ has taken the correct view. The Court was considering the issue

whether interim monthly maintenance awarded under [Section 23](#) r.w. [Section 20](#) (1)(d) of the [D.V. Act](#) could be adjusted against the maintenance awarded under [Section 125](#) Cr.P.C. The Family Court held that the order passed under the [D.V. Act](#) and the [Cr.P.C.](#) were both independent proceedings, and adjustment was not permissible. The Bombay High Court set aside the judgment of the Family Court, and held that [Section 20\(1\)\(d\)](#) of the D.V. Act makes it clear that the maintenance granted under this Act, would be in addition to an order of maintenance under [Section 125](#) Cr.P.C., and any other law for the time being in force. Sub-section (3) of [Section 26](#) of the D.V. Act enjoins upon the aggrieved person to inform the Magistrate, if she has obtained any relief available under [Sections 18, 19, 20, 21](#) and [22](#), in any other legal proceeding filed by her, whether before a Civil Court, Family Court, or Criminal Court. The object being that while granting relief under the [D.V. Act](#), the Magistrate shall take into account and consider if any similar relief has been obtained by the aggrieved person. Even though proceedings under the [D.V. Act](#) may be an independent proceeding, the Magistrate cannot ignore the maintenance awarded in any other legal proceedings, while determining whether over and above the maintenance already awarded, any further amount was required to be granted for reasons to be recorded in writing. The Court observed :

"18. What I intend to emphasize is the fact that the adjustment is permissible and the adjustment can be allowed of the lower amount against the higher amount. 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." (emphasis supplied).

It was held that while determining the quantum of maintenance awarded u/S.125 [Cr.P.C.](#), the Magistrate would take into consideration the interim maintenance awarded to the aggrieved woman under the [D.V. Act](#).

55. The issue of overlapping jurisdictions under the HMA

and [D.V. Act](#) or [Cr.P.C.](#) came up for consideration before a division bench of the Delhi High Court in RD v BD 21 wherein the Court held that maintenance granted to an aggrieved person under the [D.V. Act](#), would be in addition to an order of maintenance u/S. 125 [Cr.P.C.](#), or under the HMA. The legislative mandate envisages grant of maintenance to the wife under various statutes. It was not the intention of the legislature that once an order is passed in either of the maintenance proceedings, the order would debar re-adjudication of the issue of maintenance in any other proceeding. In paragraphs 16 and 17 of the judgment, it was observed that :

“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.” (emphasis supplied).

The Court held that u/S. 20(1)(d) of the [D.V. Act](#),

maintenance awarded to the aggrieved woman under the D.V. is in addition to an order of maintenance provided u/S. 125 [Cr.P.C.](#) The grant of maintenance under the [D.V. Act](#) would not be a bar to seek maintenance u/S. 24 of HMA.

11. There is no dispute that proceedings under different provision of different acts are maintainable. However, the Court while granting maintenance has to consider the quantum of maintenance granted earlier in favour of the party seeking such relief.

12. In the present matter, the present proceedings were filed initially before the CJM Court on 26.12.2016. Later on such proceedings were transferred to Family Court, Jalgaon and it was re-registered as Petition No. E-88/2019. Therefore, learned Counsel for the Applicants is right in submitting that at the time of filing petition under Section 125 of Cr.P.C., proceedings under D.V. Act were not pending and no maintenance was granted. Therefore, such averments were not found in the original petition. Hence it is clear that there is no suppression of material on the part of Applicants. It is no doubt true that the learned Family Court passed judgment on 21.09.2021 and by that time, the

Applicant was already receiving maintenance amount by way of ad-interim order passed by the Magistrate under D.V. Act.

13. Having said so, the findings of the learned Family Court at Jalgaon needs interference as the same are clearly against settled propositions of law. Therefore, only option is to quash and set aside the said order and remand it for fresh consideration. Hence the following order.

ORDER

- (i) The Revision Application is partly allowed.
- (ii) The impugned order dated 21.09.2021 in Petition No. E-88/2019 is hereby quashed and set aside.
- (iii) The matter is remanded to the Family Court, Jalgaon with direction to decide afresh.
- (iv) It is made clear that all points are kept open.
- (v) Learned Family Court to give opportunity to the parties to argue the matter and decide it within a period of three months from today.
- (vi) The parties are directed to appear before Family Court on 26.08.2022.

- (vii) The Revision Application stands disposed of accordingly.

[BHARAT P DESHPANDE, J.]

Najeeb.