

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 237 OF 2022
WITH
INTERIM APPLICATION NO. 1754 OF 2022
IN
CRIMINAL APPLICATION NO. 237 OF 2022**

Pooja Sanjay Phagnekar ...Applicant
Versus
Sanjay Jagannath Phagnekar & Anr. ...Respondents

Ms. Pooja S. Phagnekar Applicant in person.
Mr. Pritam P. Runwal for the respondents.
Ms. Sharmila S. Kaushik, APP for the respondent-state.

CORAM : NITIN W. SAMBRE, J.

DATED : 30th NOVEMBER, 2022

P.C.:

1. The challenge in the present proceedings is to the order dated 15/02/2022 delivered in Criminal Revision Application No. 39 of 2021 passed by District Judge, Kalyan. In the revisional jurisdiction, the learned District Judge has quashed and set aside the order of the Magistrate delivered in Criminal MA No. 108 of 2009 with a direction to adjust the amount of maintenance granted by CJSD in Marriage Petition No. 451 of 2005. As far as M.A. No. 108 of 2009 is concerned, the same was preferred by the present applicant/daughter and her mother seeking maintenance

u/s. 125(1)(a)(b) of the Code of Criminal Procedure.

2. In the said proceedings, the Magistrate vide its order dated 22/04/2021 directed the payment of maintenance of Rs.4,000/- per month to the present applicant/daughter who was applicant no. 2 from the date of application i.e. 06/05/2009 till she attends majority i.e. 04/09/2016. The amount of Rs.1,33,000/- which was paid to the applicant was directed to be adjusted.

3. It is not in dispute that the amount of Rs.3,000/- which was awarded u/s 24 of the Hindu Marriage Act proceedings towards maintenance to the applicant has been increased to Rs.10,000/- and I am informed that against the order of award of maintenance of Rs.10,000/-, respective appeals of the parties are pending adjudication before learned District Judge, Kalyan.

4. The impugned order is assailed by the applicant who appears in-person on the ground that the amount of Rs.4,000/- which is awarded by the Magistrate is over and above the amount of Rs.3,000/-, which was awarded u/s. 24 of the Hindu Marriage Act.

5. So as to substantiate her contentions, she has drawn support from the judgment of the Apex Court in the matter of **Sudeep Chaudhary vs Radha Chaudhary** reported in **AIR 1999 SC 536**

particularly paragraph nos. 6 & 7, which reads as under:

"6. We are of the view that the High Court was in error. The amount awarded under section 125 of the Cr.P.C. for maintenance was adjustable against the amount awarded in the matrimonial proceedings and was not to be given over and above the same. In the absence of the wife, we are, however not inclined to go into any detailed discussion of the law

7. At the same time, we feel that the claims of the husband and the wife are to be balanced. We, therefore, direct that the husband shall pay to the wife towards maintenance (which now comprehends both the amount awarded under section 125 of the Cr.P.C. and the amount awarded in the matrimonial proceedings) the sum of Rs. 1,000/- p.m. commencing from 3rd July, 1990. The arrears, if any, shall be paid within 8 weeks."

6. As such, the party in-person, a lawyer by profession submits that considering the very object of the provisions of section 125 of Cr.PC, the award of maintenance of Rs.4,000/- ordered by the Magistrate has to be considered to be over and above the amount of maintenance awarded by the Court u/s. 24 of the Hindu Marriage Act. So as to substantiate the aforesaid contentions, she has drawn support from the judgment of Apex Court in the matter of ***Savitaben Somabhai Bhatiya vs. State of Gujarat & Ors.*** reported in ***(2005) 3 SCC 636.***

7. Learned counsel for the respondents would oppose the

prayer.

8. According to him, the judgment of the Apex Court in the matter of **Sudeep** (supra) which is relied by the applicant is diluted in a subsequent judgment in the matter of **Rajnish vs. Neha & Another** reported in **2020 SCC OnLine SC 903**.

9. He would urge that in paragraph no. 81, the Apex Court has dealt with the issue of over lapping of jurisdiction. While dealing with the said, the Court has made following observations:

"VI Final Directions

81. In view of the foregoing discussion as contained in Part B – I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article of the Constitution of India :

(a) Issue of overlapping jurisdiction

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."

10. He would further urge that the respective appeals against the order of award of maintenance of Rs.10,000/- per month under the Hindu Marriage Act is already pending and as such, the issue of adjustment can be looked into in the said proceedings. He would claim that the maintenance as is payable is already deposited.

11. I have appreciated the said submissions.

12. The fact remains that learned Magistrate while dealing with the claim of the applicant in the proceeding in M.A. No. 108 of 2009 was sensitive to the provisions of section 125 of Cr.PC and considering the earnings of the respondent-father awarded the maintenance of Rs.4,000/- per month in favour of the present applicant. The amount of maintenance was to be paid till the applicant attends the majority i.e. 04/09/2016. The aforesaid judgment of the Magistrate was subject matter of the challenge in the revision taken out by the respondent-father. The Revisional Court set aside the same by observing that the Magistrate is in error as, he should not have awarded the maintenance.

13. The fact remains that the Apex Court in the aforesaid latest

judgment in the matter of **Rajnesh (supra)** has specifically dealt with the issue of over lapping of the jurisdiction. The Apex Court has also dealt with the contingency as has been cropped up in the case in hand. The applicant has taken out successive proceedings u/s. 125 of the Cr.PC after the proceedings u/s. 24 of the Hindu Marriage Act were initiated. In the successive proceedings what was awarded is Rs.4,000/- per month u/s. 125 of Cr.PC and in an earlier proceedings u/s 24 of Hindu Marriage Act the amount of interim maintenance was of Rs.3,000/- and was informed to have been finalized at Rs.10,000/- which is subject matter of the appeal.

14. As such, in view of the law laid down in the aforesaid judgment of the Apex Court, the amount awarded in the previous proceedings while determining whether further amount is to be awarded in the subsequent proceedings, the adjustment or set off is to be granted. As such, in case if the proceedings in the form of appeal which are pending before the District Judge, Kalyan against the order for grant of maintenance of Rs.10,000/- are decided either way and in case if the said amount comes down to less than Rs.4,000/-, it shall always be open for the applicant to claim adjustment of an amount of Rs.4,000/-.

15. With the aforesaid modification in the order impugned, I hardly see any reasons, which warrants interference.

16. The Petition as such stands disposed of.

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17. The Interim Application is not pressed in view of disposal of the petition.

18. The Interim Application stands disposed of.

ANANT
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NAIK

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by ANANT
KRISHNA NAIK
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(NITIN W. SAMBRE, J.)