

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

CRIMINAL WRIT PETITION NO. 5963 OF 2021

Lalit S/o. Bachcha Jha	...Petitioner
Versus	
The State of Maharashtra and Anr.	...Respondents

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Mr.Anand Mishra i/by Mr.Ashok M. Saraogi, Advocate for the
Petitioner.

Mr.Ratneshwar Jha, Advocate for Respondent No.2.

Mr. A.R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 29th AUGUST 2022.

PC :

1. The Petitioner is challenging the order dated 19th January 2016 passed by learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai and order dated 27th July 2016 passed by the Sessions Court at Dindoshi, Goregaon, Mumbai dismissing the Appeal preferred by Petitioner.

2. The Petitioner and Respondent No.2 had performed marriage on 17th April 2009. First Information Report was registered at the instance of Respondent No.2 on 13th April 2015 with Samatanagar Police Station, Mumbai vide C.R. No. 172 of 2015 for offences punishable under Sections 498-A, 406, 323, 504 read with 34 of the

Indian Penal Code against the Petitioner and others.

3. The Respondent No.2 filed an application under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter referred to as D.V. Act) on 13th March 2015 before the Court of learned Metropolitan Magistrate, 17th Court at Bandra, Mumbai. The Respondent No.2 had sought relief under Sections 18, 19, 20, 22 and 23 of the D.V. Act. The Respondent No.2 also filed Petition before the Family Court viz. M.J. Petition No.E-207 of 2015 seeking maintenance under Section 125 of Cr.P.C. on 15th May 2015.

4. The Respondent No.2 preferred an application for interim relief under Section 23 of the D.V. Act before the Court of learned Metropolitan Magistrate, 17th Court Borivali, Mumbai in C.C. No.56/DV/2015. Vide order dated 19th January 2016, the petitioner was directed to pay Rs.4,000/- per month to the Respondent No.2 as interim maintenance from the date of application till disposal of the original application. The Petitioner was also directed to pay Rs. 2,000/- each to his children as monthly maintenance from the date of application till disposal of the original application.

5. The Respondent No. 2 preferred Interim Application No.188 of 2016 in M.J. Petition No.E-207 of 2015 for interim maintenance. Vide order dated 20th September 2016, the Family Court No.7, Bandra, Mumbai partly allowed the application and the Petitioner

husband was directed to pay interim maintenance of Rs. 3,000/- per months to the Respondent No.2 wife and Rs.2,000/- per month to each children from the date of application till decision of the main petition.

6. The Petitioner challenged the order dated 19th January 2016 by preferring Appeal before the Court of Sessions. Vide order dated 27th July 2016, the Appeal was dismissed.

7. Learned Advocate for the Petitioner submitted that, the order dated 19th January 2016 and 27th July 2016 are bad in law. The Respondent No.2 had not made out any ground for grant of maintenance. The Respondent No.2 has sought similar relief in the proceedings initiated under the D.V. Act and Section 125 of Cr.PC. As per order dated 19th January 2016, the petitioner is required to pay maintenance of Rs.8,000/- per months and vide order dated 20th September 2016 the petitioner to pay Rs.7,000/- per months towards maintenance to his wife and children. Order dated 20th September 2016 was obtained by suppressing the fact that the petitioner has been granted maintenance by the Court of learned Magistrate in the proceedings initiated under the D.V. Act. Same relief cannot be urged in two different proceedings. Appeal was mechanically dismissed.

8. Respondent No.2 has filed affidavit in reply and opposed the relief sought in the Petition. Learned Advocate for the Respondent

No.2 submitted that, the Petition is devoid of merits. The court had granted interim maintenance. There is no legal bar in claiming the maintenance in two different proceedings. The Petitioner has sufficient income to pay maintenance. The Respondent No.2 has mentioned that she had filed an application under the D.V. Act before the Court of learned Magistrate. The Petitioner had filed reply in the maintenance Petition before the Family Court in which it is mentioned that the proceedings under the D.V. Act are pending before the Court of learned Magistrate. Hence the contention of Petitioner that there was suppression of fact in initiating similar proceedings is false. The respondent No.2 is paying school fees of children and all the responsibility her shoulder. The Petitioner has never inquired about the health of children or their education. The contention of the Petitioner that, he paid Rs.30,000/- cash per months as per consent terms filed before the Family Court. The cheques issued by him were dishonoured. Respondent No.2 was thrown out of matrimonial home. There is no legal impediment in initiating parallel proceedings for maintenance under the separate provisions of law. Reliance is placed on the decision in the case of *Anita Dashrath Dolare Vs. Dashrath Mahadev Dolare and Anr.*¹ in which it is held that, the scope of Section 20 of the D.V. Act is much wider than section 125 of Cr.P.C. and Section 20 (1) (d) of D.V. Act

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empowers the Magistrate to grant maintenance to the wife as well as children. In addition to order of maintenance passed under Section 125 of the Cr.PC.

9. I have perused the impugned orders and the documents on record. The Respondent No.2 is looking after the children. There is no suppression of fact by Respondent No.2. Merely on the ground that parallel proceedings were initiated for maintenance, relief of maintenance cannot be refused. Grant of maintenance by the Court of learned Metropolitan Magistrate under the D.V. Act is no impediment to grant similar relief under Section 125 of Cr.PC. The Courts were justified in granting the relief of maintenance. There is no infirmity in the impugned orders passed by Courts below. Hence, Petition is required to be dismissed.

ORDER

(i) Criminal Writ Petition No. 5963 of 2021 is rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)