

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

**CRIMINAL WRIT PETITION NO. 111 OF 2020
WITH
CRIMINAL WRIT PETITION NO. 09 OF 2023
WITH
CRIMINAL WRIT PETITION NO. 10 OF 2023
WITH
CRIMINAL APPLICATION NO.787 OF 2023
IN
CRIMINAL WRIT PETITION NO. 10 OF 2023**

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CRIMINAL WRIT PETITION NO. 111 OF 2020

Sachin s/o. Shantilal Parhe .. Petitioner
Age. 38 years, Occ. Doctor,
R/o. Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

Versus

Sow. Rani w/o. Sachin Parhe .. Respondent
Age. 30 years, Occ. Doctor,
R/o. Shahu Nagar, Beed,
Tq. & Dist. Beed.

**WITH
CRIMINAL WRIT PETITION NO. 09 OF 2023**

Sachin s/o. Shantilal Parhe .. Petitioner
Age. 41 years, Occ. Doctor,
R/o. Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

Versus

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| 1. | State of Maharashtra | .. | Respondents |
| 2. | Sow. Rani w/o. Sachin Parhe,
Age. 35 years, Occ. Doctor,
R/o. Shahunagar, Beed,
Tq. & Dist. Beed. | | |
| 3. | Shantilal s/o. Sakharam Parhe,
Age.70 years, Occ. Pensioner
R/o. Shantikamal Zirange Vasti,
Gondhwani Road, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar. | | |
| 4. | Sow. Kamal w/o. Shantilal Parhe,
Age. 65 years, Occ. Household,
R/o. Shantikamal Zirange Vasti,
Gondhwani Road, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar. | | |
| 5. | Shekhar s/o. Shantilal Parhe,
Age. 45 years, Occ. Service,
R/o. Sanjay Nagar, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar. | | |
| 6. | Sow. Sonali w/o. Shekhar Parhe,
Age. 40 years, Occ. Household,
Age. 40 years, Occ. Household,
R/o. Sanjay Nagar, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar. | | |
| 7. | Narayan s/o. Bansi Pandure (died) | | |
| 8. | Sow. Jyostna w/o. Narayan Pandure,
Age. 43 years, Occ. Household,
R/o. D3, Green Quarter,
Vidyapeeth Parisar,
Dr. Babasaheb Ambedkar Marathwada | | |

Vidyapeeth, Aurangabad.

9. Balasaheb @ Vijay s/o. Bhagirath Katte,
Age. 64 years, Occ. Service,
R/o. Shri Bhavani Moulding Works, 1515,
New Shukrawar Peth, In front of Bhutkar Houd,
Pune, Tq. & Dist. Pune 411 002.
10. Shrirang s/o. Bhagirath Katte,
Age. 61 years, Occ. Service,
R/o. In front of Mahila Vastigruha,
New Prozone Mall, Cidco, Aurangabad,
Tq. & Dist. Aurangabad.

**WITH
CRIMINAL WRIT PETITION NO. 10 OF 2023**

Sachin s/o. Shantilal Parhe
Age. 41 years, Occ. Doctor,
R/o. Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

.. Petitioner

Versus

1. Sow. Rani w/o. Sachin Parhe,
Age. 35 years, Occ. Doctor,
R/o. Shahunagar, Beed,
Tq. & Dist. Beed.
2. State of Maharashtra
3. Shantilal s/o. Sakharam Parhe,
Age. 70 years, Occ. Pensioner
R/o. Shantikamal Zirange Vasti,
Gondhwani Road, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.
4. Sow. Kamal w/o. Shantilal Parhe,

.. Respondents

Age. 65 years, Occ. Household,
R/o. Shantikamal Zirange Vasti,
Gondhwani Road, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.

5. Shekhar s/o. Shantilal Parhe,
Age. 45 years, Occ. Service,
R/o. Sanjay Nagar, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.
6. Sow. Sonali w/o. Shekhar Parhe,
Age. 40 years, Occ. Household,
Age. 40 years, Occ. Household,
R/o. Sanjay Nagar, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.
7. Narayan s/o. Bansi Pandure (died)
8. Sow. Jyostna w/o. Narayan Pandure,
Age. 43 years, Occ. Household,
R/o. D3, Green Quarter,
Vidyapeeth Parisar,
Dr. Babasaheb Ambedkar Marathwada
Vidyapeeth, Aurangabad.
9. Balasaheb @ Vijay s/o. Bhagirath Katte,
Age. 64 years, Occ. Service,
R/o. Shri Bhavani Moulding Works, 1515,
New Shukrawar Peth, In front of Bhutkar Houd,
Pune, Tq. & Dist. Pune 411 002.
10. Shrirang s/o. Bhagirath Katte,
Age. 61 years, Occ. Service,
R/o. In front of Mahila Vastigruha,
New Prozone Mall, Cidco, Aurangabad,
Tq. & Dist. Aurangabad.

WITH

**CRIMINAL APPLICATION NO.787 OF 2023
IN
CRIMINAL WRIT PETITION NO. 10 OF 2023**

Sow. Rani s/o. Sachin Parhe .. Applicant
Age.35 years, Occ. Household,
R/o. Shahunagar, in front of BSNL Office,
Beed, Tq. & Dist. Beed.

Versus

1. Sachin s/o. Shantilal Parhe .. Respondents
Age. 41 years, Occ. Doctor,
R/o. Siddhivinayak Diagnostic Center,
Eknath Towers, in front of Kishor Talkies,
Shivaji Chowk, Shrirampur,
Dist. Ahmednagar.

2. The State of Maharashtra

Mr.R.R. Deshpande h/f. Ms. Priyanka R. Deshpande, Advocate for the petitioner.

Mr.B.A. Darak, Advocate for the respondent.

Mrs. P.V. Diggikar, APP for the respondent/State.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	14.03.2023
PRONOUNCED ON	:	25.04.2023

JUDGMENT :-

01. Rule. Rule made returnable forthwith by consent of the parties.

02. Instead of referring the parties as the petitioner and the respondent, they are referred to as the husband and wife for the purpose of

convenience.

03. These petitions are between the same parties i.e. husband and wife arising out of the proceedings under the Protection of Women From Domestic Violence Act and under section 125 of the Criminal Procedure Code and therefore are taken together. Criminal Application No.787 of 2023 is filed by the wife for vacating interim relief granted in Criminal Writ Petition No. 10 of 2023.

04. Criminal Writ Petition No. 111 of 2020 is filed by the husband for setting aside judgment and order passed by the learned Sessions Judge, Beed in Criminal Revision Application No.11 of 2019 thereby confirming order dated 31.12.2018 passed by the learned JMFC, Beed in Criminal Application No. 1246 of 2014. By way of the judgment and order in Criminal Application No.1246 of 2014, the learned JMFC, Beed directed the husband to pay an amount of Rs.10,000/- per month towards maintenance to the wife and Rs.3000/- towards expenses of the application. The Revisional Court dismissed the revision by order dated 26.11.2019.

05. Criminal Writ Petition No.9 of 2023 and Criminal Writ Petition No.10 of 2023 are filed by the husband challenging common judgment and order passed by the learned Sessions Judge, Beed in Criminal Appeal No.21 of 2019 and Criminal Appeal No.26 of 2019, whereby the Criminal Appeal No. 21 of 2019 of the husband came to be dismissed and Criminal Appeal No.26 of 2019 filed by wife came to be partly allowed by modifying order passed by the learned JMFC, Beed in Criminal Application No.890 of 2013. By way of the judgment and order in Criminal Application No.890 of 2013, the learned Magistrate had directed the husband to pay amount of Rs.5000/- per month towards maintenance to wife. The respondent Nos. 1 to 9 were directed not to commit act of domestic violence. All the respondents therein were further directed to pay Rs.2000/- towards compensation and Rs.2000/- towards expenses of litigation.

06. The learned Sessions Judge by the impugned order modified the order passed by the learned JMFC in DV proceeding. The amount towards maintenance was enhanced from Rs.5000/- to Rs.7000/-. The amount of damages/compensation was enhanced to Rs.25,000/- to the wife. Remaining part of the order passed by the learned JMFC was maintained as it is. This

Court in Criminal Writ Petition No. 10 of 2023 initially had granted stay and therefore Criminal Application No.787 of 2023 was moved for vacating interim relief granted by this Court by order dated 07.03.2022 in Criminal Writ Petition No.10 of 2010.

07. The common facts of the petitions are that the husband and wife married on 25.02.2008 at Beed. The husband is M.D. (Pathology) having his Pathology Lab at Shrirampur, Dist. Ahmednagar. The wife is also having a degree of BHMS. After marriage the wife had desire to complete internship at Sangamner or at Ahmednagar. However, the husband compelled her to take admission in the college at Beed. He started demanding money from the parents of the wife for starting a dispensary at Shrirampur. Since the amount was not paid, he started physical and mental abuse of the wife. The father of the wife therefore gave amount of Rs.3,80,000/- to the husband to start dispensary. Because of the harassment and illtreatment the wife though had conceived, later-on aborted. The wife even filed application under section 9 of the Hindu Marriage Act bearing HMP No.93 of 2011. She prayed for maintenance of Rs.10,000/- per month from the husband. The learned JMFC, Beed allowed this application by judgment and order dated 31.12.2018

directing the husband to pay Rs.10,000/- per month from the date of application. The husband was further directed to pay Rs.3000/- towards expenses of litigation.

08. The husband carried this order in revision by filing Criminal Revision Application No.11 of 2019 in Sessions Court, Beed. The learned Sessions Judge dismissed the Revision application by holding that the husband willfully neglected to maintain wife. So far as inability of the wife to maintain herself, it is considered from the evidence of the wife that because of harassment at the hands of in-laws, she is mentally disturbed and therefore is not in a position to practice. It is further held that the husband is having Pathology lab having 4-5 employees. Thus, his income is considered Rs.75,000/- to Rs.80,000/- per month.

09. Criminal Writ Petition Nos. 9 of 2023 and 10 of 2023 are arising out of common judgment. The wife had filed proceeding under the DV Act bearing Cri. M.A. No.90 of 2013 against in-laws. It is alleged in the said application that her sister-in-law Jyotsna-respondent No.7 in the application used to stay in her parental house. She used to interfere in the domestic

affairs of the husband and wife. She used to taunt and insult the wife. She instigated other in-laws and made them to hate the wife. Because of this, even other in-laws started harassing wife. She was even beaten by the in-laws. The in-laws did not allow her to practice. She was made to do household work. She was not even provided sufficient food. She was even not allowed to take food with her husband. There were always quarrels between the in-laws and wife. On some occasion the wife was made to walk bare feet in hot atmosphere on road. The allegations that was made in 125 Cr.PC. proceedings are again reiterated about conceiving a fetus and abortion.

10. In the said application, the husband and in-laws appeared. The husband and in-laws did not even file say in the application and therefore initially order was passed to proceed without say. Later-on, said order was set aside on application by in-laws. By filing say, allegations levelled by the applicant are denied. It is alleged that it is the wife who does not want to practice though she is qualified. The allegations about domestic violence are denied. It is stated that the wife on her own wanted to complete internship at Beed. Therefore, she stayed with her parents. In spite of several requests, she did not come for co-habitation. The respondent even stated that he could not

establish physical relationship with the wife. Her parents expected husband to stay with them at Beed.

11. The learned JMFC after considering the evidence that was laid held that the wife has proved instance of domestic violence. However, no particulars were proved for compensation, as she could not prove injuries or mental torture. The husband, therefore, filed Criminal Appeal No.21 of 2019 challenging the order. The wife filed Criminal Appeal No.26 of 2019 for enhancement of maintenance amount. The common order in both the Criminal Appeals is challenged by filing two writ petitions.

12. The learned Advocate for the respondent submits that it is wife who is not mentally sound as per her own case. It is for this reason she was not practicing as Homeopathy Doctor. He submits that in the HMP filed by the wife, it is clearly seen that wife on her own has stated that her occupation is medical practitioner. Thus, it is clear that she is able to maintain herself and there is no case made out showing that wife is unable to maintain herself. He submits that during the pendency of 125 Cr.P.C. proceedings, wife had filed proceedings under the DV Act. That was decided on 02.02.2019. He submits

that in view of provisions of the DV Act, the maintenance is to be paid in addition to the maintenance if already directed to be paid in any other proceeding and, therefore, it is necessary to disclose if the wife is getting maintenance under any other proceeding. In the DV Act proceedings, the wife has suppressed the fact of 125 Cr.P.C. proceedings and therefore she is not entitled to any relief under the DV Act. She was bound to inform this fact in view of section 26(3) of the DV Act.

13. In Criminal Writ Petition No.10 of 2023 he submits that in any case no case was made out to enhance the amount of maintenance to Rs.7000/-. The Court ought to have passed the order considering the amount of maintenance that was directed in the 125 Cr.P.C. proceedings. He further submits that the wife has failed to make out a case for grant of relief under the Act. The Court below has not recorded findings on the aspect of adequacy of the maintenance amount.

14. The learned Advocate for the wife Mr. Darak submits that in 125 Cr.P.C. proceedings, the Court has rightly considered that the income of the husband is Rs.75,000/- to Rs.80,000/- per month. He submits that it is

admitted that the husband is running a Pathology lab and there are five persons working in the said lab. He thus justified the order passed in 125 Cr.P.C. proceedings and prays for dismissal of Criminal Writ Petition No.111 of 2020.

15. So far as proceedings under the DV Act are concerned, he submits that there was no suppression of fact of filing 125 Cr.P.C. proceedings, as the Court has considered the said fact in para 37 of the judgment in Criminal Application No.890 of 2013. In the discussion the Court has observed that the right to get maintenance under the maintenance Act is in addition to provisions in view of Section 36 of the DV Act and it is not in derogation. The discussion in judgment clearly shows that there was no suppression of fact. He further submits that there is no denial of the fact that now the husband has remarried and is having two children from the second marriage. He thus prays for rejection of Criminal Writ Petition Nos.9 and 10 of 2023.

16. The learned Advocate Mr. Deshpande, in support of his submission relied upon the the judgment passed by this Court in **Criminal Revision Application No. 203 of 2017 in the case of Vishal s/o. Rajesaheb Gore**

Vs. Sow. Aparna w/o. Vishal Gore & Anr., wherein this Court has held in para 24 that when the amount was already granted for maintenance under section 125 of the Cr.P.C. is sufficient, no interference is warranted. It was discussed that the fact that interim maintenance was awarded under the DV Act was not brought to the notice of the learned Magistrate while deciding application under section 125 of the Cr.P.C. In that case maintenance was granted at the rate of Rs.3000/- per month to wife and Rs.2000/- to daughter. It was held that since the said order was not challenged by the wife, it was held to be adequate and sufficient amount to meet her requirements. In that case the amount was directed to be adjusted with the amount awarded in the DV Act proceeding.

17. He further relied upon the judgment of the Madhya Pradesh High Court in the case of **Smt. Mamta Jaiswal Vs. Rajesh Jaiswal reported in II (2000) DMC 170**, wherein it was expected that a well qualified spouse who does not make efforts for finding out a source of livelihood, needs to be discouraged, if society wants to progress. The spouses who are quarrelling and coming to the Court in respect of matrimonial dispute, have to be guided for the purpose of amicable settlement. This Court finds that no any ratio as

such is laid down in the said judgment.

18. Next judgment is of Delhi High Court in the case of **Renu Mittal Vs. Anil Mittal & Ors., passed in CRL.R.P No.633 of 2010 and CRL M.A. No.15451/2010.** In the said judgment, it is held that a party can either approach the Court or Metropolitan Magistrate under DV Act soon after commission of domestic violence or under section 125 of the Cr.PC. claiming maintenance, as both the provisions are parallel. This Court finds that when the law provides different remedies, a party cannot be prevented from approaching the Courts, provided under different statute as purpose is different, though in some cases it appears one and same.

19. The last judgment relied upon by learned Advocate Mr. Deshpande is reported in **AIR 2005 KARNATAKA 417 in the case of E. Shanthi Vs. Vasudev H.K.** It was a case of interim maintenance, where the wife was working as a Doctor prior to marriage. It was held that when she was capable of earning and was having required qualification could continue said profession, it was held that therefore she was not entitled for separate maintenance during pendency of divorce proceeding.

20. This Court finds that the learned Sessions Court in Criminal Revision Application No.11 of 2019 has considered all the aspects and has rightly passed the order. Therefore, no interference is called for.

21. So far as common judgment in Criminal Appeal No.21 of 2019 and Criminal Appeal No.26 of 2019 is concerned, this Court finds that the Sessions Court has rightly appreciated the facts of the case. When the Trial Court has considered about the maintenance under section 125 of the Cr.P.C., it cannot be said that there was suppression to hold that the wife was not entitled in view of section 26 of the DV Act to get maintenance. Other aspects need to be seen that the income of the husband is rightly considered by the Sessions Court in revision. It has already come on record that the husband is running Pathology Lab and the said fact is not disputed. It is also not disputed that in the Pathology Lab, there are 4-5 employees working under the husband. The husband has not produced any proof to show that his income is not that much. It was open for the husband to produce on record income-tax return etc. to show his earning. Considering that the income and considering the standard of living of the parties, the maintenance granted of Rs.5000/-

under section 125 of the Cr.PC. and Rs.7000/- under the DV Act proceedings cannot be said to be exorbitant or disproportionate. Thus, in total the wife is getting maintenance of only Rs.12000/- and there is no need to adjust the maintenance amount against each other. The facts about the instances of domestic violence are the questions of fact. Both the Courts are concurrent in the findings. The learned Sessions Judge has only enhanced the amount of maintenance and the compensation based upon material before the Court. So far as other findings and observations of the Trial Court are maintained as it is. This Court finds that nothing is brought on record to disturb the said findings. No perversity is pointed out. So far as section 125 of the Cr.PC. proceedings is concerned, this Court finds that there is no substance in the petitions. The petitions are, therefore, dismissed. Rule discharged.

22. In view of dismissal of Cri.W.P. No.10 of 2023, connected Cri. Application No.787 of 2023 does not survive and disposed off accordingly. Needless to say that all the interim orders shall stand vacated.

[KISHORE C. SANT, J.]