



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

CRIMINAL REVISION APPLICATION NO. 169 OF 2020

Hitesh Prakashmalji Mehta

.Applicant

Vs.

Mrs. Aashika Hitesh Mehta & anr.

.Respondents

Mr. Abhijit Sarwate a/w. Ms Hardev K. Aidhen & Mr. Ajinkya Udane, Advocate, for the Applicant

Mr. Kamlesh S. Mishra, Advocate, for Respondent No. 1

CORAM : MADHAV J. JAMDAR, J.

DATE : 08.09.2023

ORAL JUDGMENT

1. Heard Mr. Sarwate, learned counsel appearing for the Applicant and Mr. Mishra, learned counsel appearing for Respondent No. 1.

2. The challenge in this Criminal Revision Application filed under Section 397 r/w. Section 401 of the Code of Criminal Procedure, 1973 is to the legality and validity of the order dated 01.01.2020 passed by the learned Additional Sessions Judge, Pune in Criminal Appeal No. 405 of 2019 as well as order dated 24.07.2019 passed by the learned Judicial Magistrate First Class, Court No. 4, Pune below Exh. 5 in Cri. M. A. No. 5223 of 2017. By the said order dated 24.07.2019, learned JMFC, Pune granted

monthly interim maintenance of Rs. 20,000/- collectively for Respondent No. 1 - wife and for two children under Section 20 r/w Section 23 of the Protection of Women from Domestic Violence Act, 2005 (for short "**D. V. Act**") from 28.11.2017 till the final disposal of the said proceedings. By the impugned order dated 01.01.2020 passed in Appeal challenge to the order of learned JMFC is rejected.

3. A learned Single Judge (Coram : Sandeep K. Shinde, J.) by order dated 20.09.2021 passed in this Revision Application set aside the order dated 01.01.2020 in the Appeal and further directed that the order dated 24.07.2019 of the learned JMFC, Pune be modified taking into consideration, the maintenance already awarded by the learned Judge, Family Court, Pune in Petition No. A-371 of 2018. Relying on the decision of this Court in the case of **Vishal v. Aparna**, reported in **2018 SCC OnLine Bom 1207**, the learned Single Judge by order dated 20.09.2021 has held that, sub-section 3 of Section 26 of the D. V. Act enjoins upon the aggrieved person to inform the Magistrate, if she has obtained relief in any proceedings other than the proceedings under the D. V. Act. 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. The learned Single Judge has further observed that the Family Court awarded the maintenance of Rs. 7,000/- each to the wife and two children by order dated 19.06.2019, whereas, a month later, maintenance of Rs. 20,000/- collectively was awarded to the wife and two minor children and with this discussion, passed the following operative order in paragraph 13 as follows :-

“For the foregoing reasons, impugned order dated 1st January, 2021 in Criminal Appeal No. 405 of 2019, passed by the Additional Sessions Judge, Pune is set aside. Consequently, learned Judicial Magistrate First Class, Pune shall suitably modify the order dated 24th July, 2019 in M. A. No. 5223 of 2017, taking into consideration, the maintenance already awarded by Judge, Family Court, Pune in Petition No. A-371 of 2018.”

4. The said order of the learned Single Judge dated 20.09.2021 was challenged in the Hon'ble Supreme Court. As per the order of the learned Single Judge dated 20.09.2021, Rs. 21,000/- collectively granted by the learned Family Court, Pune was required to be taken into consideration by the learned JMFC, Pune and in effect the order granting maintenance of Rs. 20,000/- collectively by the learned JMFC, Pune was set aside, as Rs. 21,000/- granted collectively by the Family Court,

Pune was not taken into consideration by the learned JMFC, Pune. It was contended on behalf of learned counsel for Respondent No. 1 – wife before the Hon'ble Supreme Court that in fact, learned JMFC and learned Appellate Court have taken into consideration the maintenance amount granted by the learned Judge, Family Court. Therefore, the Hon'ble Supreme Court has observed that this is a factual mistake and therefore, permitted the Respondent – wife to move an Application before the High Court seeking re-call of the order which is based on incorrect fact and to facilitate the High Court to take a view of the matter on the basis of facts existing on record. Accordingly, a learned Single Judge (Coram : Sarang V. Kotwal, J.) re-called the order dated 20.09.2021 passed in this Cri. Revn. Appln. No. 169 of 2020 and thereafter, the said Cri. Revision Application is restored and is listed today before this Court for admission.

5. Mr. Sarwate, learned counsel appearing for the Applicant on the basis of the decision of the Hon'ble Supreme Court in *Rajnesh Vs. Neha and Anr.*, reported in (2021) 2 SCC 324 submitted that maintenance can be awarded only in one proceeding and not in multiple proceedings. He submitted that as the Family Court has already granted maintenance, the

proceedings filed under the D. V. Act seeking maintenance are not maintainable to that extent. He submitted that both the courts i. e. Family Court and Court exercising jurisdiction under the D. V. Act have the jurisdiction which overlaps with other. Lastly, he submitted that in any case, the quantum of Rs. 20,000/- collectively granted to the Respondent and two children in addition to Rs. 21,000/- is excessive and granted without considering the income of the Applicant.

6. On the other hand, it is the contention of Mr. Kamlesh Mishra, learned counsel appearing for Respondent No.1 that the granting maintenance in two different proceedings is permissible, only requirement is that the subsequent Court i. e. D. V. Court in this case, should take into consideration the maintenance granted in earlier proceedings by the Family Court. He further submitted that maintenance granted by the D. V. Court is by considering the income of the Petitioner and also additional maintenance is granted by considering the maintenance granted by the Family Court. He, therefore, submitted that the interference in the impugned orders is not warranted.

7. To appreciate the rival contentions raised regarding overlapping jurisdiction, it is necessary to set out the relevant discussion in paragraphs 59 and 60 and final directions given in *Rajnesh (Supra)*.

“59. In Sudeep Chaudhary v. Radha Chaudhary [Sudeep Chaudhary v. Radha Chaudhary, (1997) 11 SCC 286 : 1998 SCC (Cri) 160] the Supreme Court directed adjustment in a case where the wife had filed an application under Section 125 CrPC, and under HMA. In the Section 125 proceedings, she had obtained an order of maintenance. Subsequently, in proceedings under the HMA, the wife sought alimony. Since the husband failed to pay maintenance awarded, the wife initiated recovery proceedings. The Supreme Court held that the maintenance awarded under Section 125 CrPC must be adjusted against the amount awarded in the matrimonial proceedings under HMA, and was not to be given over and above the same.

3. Directions on overlapping jurisdictions

60. 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 DV Act and Section 125 CrPC, or under HMA. 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.

61. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we 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 court concerned in the previous proceeding.”

(Emphasis supplied)

The Supreme Court issued the following final directions concerning overlapping jurisdiction

“(a) Issue of overlapping jurisdiction

128. 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:

128.1. (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.

128.2. (ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

128.3. (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.”

8. The issue of overlapping of jurisdiction is taken into consideration by the Hon’ble Supreme Court. The Hon’ble Supreme Court held that to overcome the issue of overlapping jurisdiction, and to avoid conflicting orders being passed in different proceedings 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 proceedings/s, while determining whether any further amount is to be awarded in the subsequent proceeding. The Hon’ble Supreme Court has further directed that it is made mandatory for the applicant to disclose the previous proceeding and the orders passed in the subsequent proceeding. It has been

further held that 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.

9. For appreciating the rival submissions regarding overlapping jurisdiction and quantum of maintenance, it is necessary to set out certain factual aspects.

(i) The marriage of the Applicant and Respondent No. 1 was solemnized on 22.02.2008. One son was born out of the said wedlock on 20.03.2012 and another son was born on 11.01.2016.

(ii) On 28.11.2017, Respondent No. 1 - wife filed D. V. proceedings alongwith Interim Application bearing Cri. M. A. No. 5223 of 2017 before the learned JMFC, Pune inter alia seeking interim maintenance of Rs. 1,50,000/- for herself and two sons. It was the claim of the Respondent No. 1 - wife that the Applicant is a very big businessman having six own buildings in a posh locality of Pune and he is having huge investments apart from metal business and his income is about Rs. Ten lacs per month.

(iii) It appears that after the D. V. proceedings are served on the Applicant - husband immediately divorce proceedings bearing P. A. No. 371 of 2018 were filed before the Family Court, Pune on 14.03.20218 by the Applicant.

(iv) In the Family Court proceedings, Respondent No. 1 appeared and filed her written statement on 09.05.2018.

(v) Thereafter, Respondent No. 1 - wife filed an Application under Sections 24 & 26 of the Hindu Marriage Act, 1955 on 19.03.2019 seeking interim maintenance of Rs. 1,50,000/- per month. It is significant to note paragraphs 5 and 6 of the said Interim Application filed before the Family Court which reads as under :-

“5. I say that alongwith my D. V. Application, I have filed an Interim

Maintenance application in the month of Nov 2017 but the Petitioner on one or other ground has not filed reply nor paid any amount to me till date.

6. I say that I have also filed Interim Application in Mumbai, which is also pending but so far no any maintenance is paid by the Petitioner to me, till date.”

Thus, it is clear that filing of the D. V. proceedings and filing application seeking interim maintenance in said proceedings is specifically disclosed before the Family Court which is subsequent proceeding.

(vi) On 19.06.2019, learned Judge, Family Court No. 2, Pune passed an order awarding monthly interim maintenance of Rs.7,000/- each i. e. to wife and two sons i. e. in aggregate Rs. 21,000/- to the wife and two children till the disposal of the main Petition.

(vii) On 24.07.2019, learned JMFC, Court No. 4, Pune passed an order below Exh. 5 in Cri. M. A. No. 5223 of 2017 thereby awarding monthly maintenance of Rs. 20,000/- collectively to the wife and two children. The relevant discussion is to be found in paragraph Nos. 28 to 35, which reads as under :-

“28. The applicant contended that she is unable to maintain herself and her children as respondent No. 1 has deserted them since 20 October 2015 and respondent No. 1 inspite of earning Rs. 10 lakh per month from his metal business and his other earning from rental income of other immovable property of the family, respondent No. 1 has not been maintaining them.

29. Respondents have contended that respondent No. 1 earns only Rs. 25,000/- and he has to pay property tax, EMI

Vardhamanpura house, he has to contribute PPF account which is for his children. Moreover, he has other liabilities. Therefore, they resist maintenance prayer.

30. The respondents have annexed certain documents at Exh. 26 list which include the **ledger account of respondent No. 1**, LIC receipts, property tax receipts, home loan papers, etc.

31. Although, the ledger account of the respondent No. 1 denote his income Rs. 25,000/- for certain period. However, these documents also reveals that the respondent No. 1 runs business of metal which has not been denied by him and other money transactions of him and respondent No. 2.

32. Moreover, the written arguments of both counsels reveal that applicant has already been granted Rs. 21,000/- as a maintenance by family court.

33. However, applicant has enumerated list of her liabilities for which money is required to the applicant such as medical expenses of the children, educational expenses of children who study in Hutching School, Pune, society maintenance expenses, telephone bill, electricity bill, maid salary and maintenance expenses of applicant and both children etc.

34. Therefore, it is apparent from the above that the applicants need more money for their maintenance. Moreover, it is settled position of the law that the relief of maintenance under D. V. Act is additional relief. Therefore, cited case laws of the respondents which factually also differs, is also not applicable to the present case.

35. However, the prayer of the applicant for

grant of collective maintenance of Rs. 1,50,000/- is too much to fasten liability on the respondent No. 1. Moreover, the applicant has also not filed any documentary evidence of monthly income of respondent No. 1 to the tune of Rs. 10 lakhs per month.”

(Emphasis added)

10. The decision of the Hon’ble Supreme Court in *Rajnesh (Supra)* is dated 04.11.2020. Both the orders passed by the learned Family Court as well as learned JMFC have been passed before the decision in *Rajnesh (Supra)*. The D. V. proceedings were filed by the Respondent No. 1 – wife on 28.11.2017 and thereafter, the Applicant filed the proceedings seeking divorce before the learned Family Court on 14.03.2018.

11. When Cri. M. A. No. 5223 of 2017 was filed under the provisions of the D. V. Act, no proceedings were filed in the Family Court and therefore, there was no occasion for Respondent No. 1 – wife to disclose the same in her D. V. proceedings. However, it is to be noted that in the application seeking maintenance before the Family Court, pendency of D. V. proceedings and maintenance application filed therein is specifically disclosed. It is further significant to note that before the order was passed by the learned JMFC, the learned Family

Court passed the order awarding maintenance of Rs. 21,000/- in aggregate per month to the wife and two children and the same has been brought to the notice of the learned JMFC by Respondent No. 1 i. e. wife as well as the Applicant i. e. husband.

12. Mr. Mishra, learned counsel appearing for Respondent No. 1 - wife submitted that immediately, after the said D. V. proceedings were served on the Applicant, divorce proceedings were filed. As per the final directions issued by the Hon'ble Supreme Court in *Rajnesh (Supra)*, the Hon'ble Supreme Court directed that 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 proceedings. Therefore, the submission of Mr. Sarwate, learned counsel appearing for the Applicant that Respondent No. 1 - wife can file only one proceeding seeking maintenance and no other proceedings can be filed and that there is a complete bar, is not the correct position in law and is contrary to the decision in *Rajnesh (Supra)*.

13. In any case, this is a case where Respondent No. 1 - wife had filed a D. V. proceedings and an Interim Application seeking maintenance earlier and thereafter, the Applicant - husband had filed a divorce proceeding wherein, Respondent No. 1 - wife had filed an Application under Sections 24 & 26 of the Hindu Marriage Act, 1955 by disclosing about D. V. proceedings and filing of Interim Application therein. At that time, as there was no order passed in D. V. proceedings regarding maintenance, there was no question of disclosing the same. It is an admitted position that after the order passed by the Family Court granting maintenance, the same has been brought to the notice of the D. V. Court by both the parties in their written submissions. Thus, it is clear that the Respondent No. 1 - wife has complied with her obligations, as per the directions in the decision of *Rajnesh (Supra)* regarding overlapping jurisdiction.

14. Mr. Sarwate, learned counsel also raised contention that the quantum of maintenance awarded is not in consonance with the income of the Petitioner and the same is not arrived at by taking into consideration the maintenance granted by the Family Court. In this behalf, the main controversy is whether the learned JMFC had taken into consideration the order passed by

the learned Family Court of granting maintenance of Rs. 21,000/-. Paragraphs 32 to 34 of the order dated 24.07.2019 passed by the learned JMFC, Pune quoted earlier in this order clearly shows that the said factor has been taken into consideration by the learned JMFC. It is the contention of Mr. Sarwate, learned counsel appearing for the Applicant that the quantum awarded is not in consonance with the income of the Applicant. Learned Family Court has granted maintenance of Rs. 7,000/- each to Respondent No. 1 - wife and two children. Thus, in fact, the Family Court had granted maintenance of Rs. 21,000/- in aggregate. The learned JMFC by order dated 24.07.2019 has granted additional maintenance of Rs. 20,000/- collectively to Respondent No. 1 - wife and two children. A perusal of the record shows that the Applicant - husband has produced income tax returns for the assessment years 2016-17, 2017-18 and 2018-19. In the income tax returns, for the assessment year 2016-17, gross total income of the Applicant is shown as Rs. 2,40,777/-, for the assessment year 2017-18, his gross total income was shown as Rs. 2,04,809/- whereas for the assessment year 2018-19, gross income of the Applicant was shown as Rs. 2,40,295/-. In the income tax returns, for the assessment year 2016-17, income from other sources of the

Applicant is shown as Rs. 3,23,242/- and after the deductions, his income was shown as Rs. 2,40,777/-.

15. It is the case of the Applicant that he is a salaried employee. The learned Family Court has observed that the Applicant has not placed on record the document of his employment and salary details and that the Applicant has not made the disclosure. The learned Family Court granted maintenance of Rs. 7,000/- each to the Respondent No. 1 - wife and two children by making some guess work as specifically recorded in the said order.

16. The learned JMFC has observed that although, the ledger account of the Applicant denotes his income to be Rs. 25,000/- for a certain period, however, these documents also reveal that the Applicant - husband also runs a business of metal which has not been denied by him and other money transactions which are also not denied. Learned JMFC has also taken into consideration the money which is required by way of medical and educational expenses of the children, who attend the Hutchings School in Pune, expenses towards society maintenance, telephone bill, electricity bill, domestic help salary

and maintenance expenses of the wife and two children. It is significant to note that in paragraph 32, it is specifically stated that Family Court has granted maintenance of Rs. 21,000/- per month and in paragraph 34 of the order dated 24.07.2019 passed by the learned JMFC, it is specifically mentioned that it is apparent from the above that the wife and two children need more money for their maintenance. Thus, it is clear that the said finding is recorded after taking into consideration the fact that a sum of Rs. 21,000/- per month has been granted by the learned Family Court. In paragraph 33 of the aforesaid order, various aspects for which enhanced maintenance is required for Respondent No. 1 – wife and two children are set out. Thereafter, in paragraph 34, it is mentioned that Respondent No. 1 – wife and two children need more money for their maintenance. Thus, it is clear that the learned JMFC has duly considered the maintenance granted by the learned Family Court, Pune and recorded reasons for granting additional maintenance. Nothing has been pointed out to reach the conclusion that the findings recorded by the learned JMFC which have been confirmed by the learned Appellate Court, are not in accordance with the material on record. In fact, this is a case where the Applicant has come up with a totally false case that he is a salaried employee and has

also not disclosed particulars about his metal business. Therefore, this is not a case where interference by this Court is warranted.

17. Accordingly, the Revision Application is dismissed with costs of Rs. 10,000/- to be paid to the Respondent No. 1 - wife by the Applicant within a period of three months from today.

18. At this stage, Mr. Sarwate, learned counsel appearing for the Applicant seeks stay of this order. However, the maintenance awarded by the learned JMFC is by order dated 24.07.2019. It is an admitted position that nothing has been paid till date as per the order of the learned JMFC. The Applicant has neither approached this Court with clean hands nor has declared his entire income. Therefore, request for stay is rejected.

(MADHAV J. JAMDAR, J.)