

Ashwini V

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9914 OF 2022**

Pushkar Balkrishna Borkar ...Petitioner
Versus
Pallavi Pushkar Borkar through Kashinath
Namdeo Birari & Anr ...Respondents

Mr Pawar Nikhil Narendra, *for the Petitioner.*
Ms Ankita R Hajare, *i/b JD Khairnar, for the Respondents.*

CORAM: Neela Gokhale, J.
DATED: 2nd May 2023

PC:-

1. The short point that arises for consideration in the present matter is whether grant of interim maintenance under provision of 125 of Criminal Procedure Code (“Cr.P.C.”) to the wife is a bar to the grant of interim maintenance in a subsequent application under Section 24 of the Hindu Marriage Act 1955 (“**the Act**”).
2. The facts giving rise to the present proceeding are that the Respondent wife had filed a petition seeking Restitution of Conjugal Rights under Section 9 of the Act before learned Civil Judge Senior Division (“**CJSD**”) at Malegaon. She also made an application

under Section 24 of the Act seeking an interim alimony and expenses of litigation.

3. Mr. Nikhil Pawar the learned Advocate for the Petitioner husband draws to the attention of the Court, the following dates of various proceedings filed by the Respondent wife.

4. An application under Section 125 of the Cr.P.C. was filed by the Respondent wife before learned Judicial Magistrate First Class (“JMFC”) Malegaon on 8th April 2019. An order of grant of interim maintenance to the Respondent wife was passed by the JMFC Malegaon on 13th January 2020. On 8th July 2019 the Respondent wife made an application under Section 24 of the Act in the Restitution of Conjugal Rights proceedings, which were pending since September, 2018. The judgement and order passed by the learned CJSD Malegaon on the application for interim maintenance under Section 24 of the Act was passed on 29th November 2021. By this order the learned CJSD was pleased to direct the Petitioner husband to pay an amount of Rs. 2,000/- per month to his wife. It is this order dated 29th November 2021 which is assailed in the present Petition.

5. Mr. Nikhil Pawar learned Counsel for the Petitioner husband contends that the said order is erroneous and deserves to be set aside for the reasons that *firstly* he was not given an opportunity to address his case before the learned trial judge ‘properly’. *Secondly* the impugned order was passed without any adjudication or enquiry in the assets and liabilities of the parties and *thirdly* the learned trial

judge has failed to consider that the Petitioner's wife was already in receipt of an amount of Rs. 2,000/- per month awarded to her as interim maintenance in the proceeding under Section 125 of the Cr.P.C.

6. Ms. Ankita Hajare holding for Mr. JD Khairnar Advocate on record for the Respondent No.1 wife submits that there was no concealment on the part of the wife before the learned CJSD and that the learned CJSD has considered the quantum of maintenance awarded to her in the earlier proceeding under Section 125 of the Cr.P.C. before deciding the quantum under Section 24 of the Act. She further contends that her husband had failed to file an affidavit of income and expenditure and hence he can not be permitted to say that no opportunity was given to him to advance his arguments 'properly'.

7. It is evident from the record that the learned CJSD has taken note of the quantum of interim maintenance awarded to the Respondent No.1 wife in the prior orders passed under Section 125 of Cr.P.C. Counsel for the Petitioner husband places reliance upon the precedent laid down by the Supreme Court in the matter of *Rajnish v Neha & Anr*¹ to contend that when maintenance has already been granted by the learned JMFC to the Respondent No.1 wife, the learned CJSD ought not to have granted further alimony to her. The precedent relied upon by the Petitioner husband does not advance his case at all for the simple reason that the Hon'ble Supreme Court in paragraph 60 and 61 of the said case has clearly

1 (2012) 2 SCC 324

issued directions in respect of overlapping of jurisdictions of Courts competent to award maintenance. The Apex Court has held that in order to overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, 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. Thus the Apex Court has clearly held that maintenance can be granted in two proceedings. The only rider is that the Applicant must disclose the existence of the previous orders of the Court may adjust or set off the amount already granted in previous proceeding.

8. The impugned order granting maintenance under Section 24 of the Act 1955 has specifically considered the amount of interim maintenance granted in earlier proceedings under Section 125 of the Cr.P.C. The learned CJSD has considered the quantum amount already being received by the Respondent No.1 wife and has thereafter determined the amount to be awarded in the Section 24 of the Act. Further more it has been recorded in the impugned order that the husband has failed to file an affidavit of income and expenditure despite opportunity of doing so and now he can not complain that he was not given an opportunity to be heard 'properly'.

9. In view of the forgoing, the Writ Petition is dismissed. However, in the interest of justice the Petitioner husband is

permitted to place on record before the learned CJSD his affidavit of income and expenditure and any other further documents that he may so desire to file.

10. The Writ Petition is disposed of in these terms. There will be no order as to costs.

(Neela Gokhale, J)