



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

904 CRIMINAL WRIT PETITION NO. 121 OF 2024

**ARUNKUMAR AMRUTRAO BHADRE
VERSUS
USHA W/O ARUNKUMAR BHADRE AND ANOTHER**

Mr. C. V. Thombre, Advocate for the Petitioner,

CORAM : Y. G. KHOBRADE, J.

Dated : 11th October, 2024

PER COURT :-

1. Heard Mr. C. V. Thombre, the learned counsel for the Petitioner at length.
2. The Petitioner has invoked jurisdiction of this Court Under Article 227 of Constitution of India r/w Sec. 482 of Cri.PC., and impugned the Judgment dated 21.08.2023 passed by the learned Session Court, in Criminal Revision No. 12 of 2018 arising out Judgment and Order dated 28.03.2018 passed by the learned Judicial Magistrate First Class, Umri, in Misc. Cri. Appln. No. 5 of 2017.
3. Needless to say that, the respondent wife filed a Misc. Cri. Appln. No. 5 of 2017 under Section 125 of the Criminal Procedure Code before the learned Judicial Magistrate First Class, Umri, District Nanded and prayed for maintenance for herself and minor son. The present

petitioner/husband duly participated in trial. After conclusion of the trial, on 28.03.2018, the learned Judicial Magistrate allowed said application and directed the present Petitioner/husband to pay maintenance @ Rs.5000/- per month each to the respondents from the date of application. Being dissatisfied, the Petitioner assailed said Judgment and order in Cri. Revision Appln. No. 12 of 2018 before the Sessions Court. On 21.08.2023, the learned Sessions Court dismissed the said revision.

4. The learned counsel for the petitioner canvass in vehemence that the Respondent had also filed a Special Civil Suit No. 3 of 2017 under the provisions of the Hindu Adoption and Maintenance Act, 1956 before the learned Civil Judge, Senior Division, Bhokar, which was allowed on 21.02.2019. The learned Civil Court already granted maintenance @ Rs.3000/- per month in favour of Respondent No.1 wife. Though the petitioner brought said fact of grant of maintenance by the learned Civil Court in favour of the Respondent (wife) but the learned Session Court failed to consider the maintenance amount granted in earlier proceeding filed under the Hindu Adoption and Maintenance Act. Therefore, impugned Judgment and Order is illegal and bad in law.

5. To buttress these submissions, the learned counsel appearing for the petitioner relied on case of **Rajnesh Vs. Neha, (2021) 2 SCC 324**.

6. In the case in hand, the Petitioner/husband has not disputed the relationship with the Respondent Nos. 1 and 2. It is a matter of record that, the Respondent No.1 filed Misc. Cri. Appln. No. 5 of 2017 under section 125 of the Cr.P. C. before the Judicial Magistrate, First Class, Umri Dist. Nanded and prayed for grant of maintenance for herself and for minor son-Respondent No.2. After conclusion of trial, on 28.03.2023, the learned Judicial Magistrate passed the judgment & order and granted maintenance to the tune of Rs.5000/- in favour of respondent No.1 and Rs. 5000/ in favour of Respondent No.2 till he attains the age of majority. The said order assailed by the present Petitioner in Criminal Revision No. 12 of 2018. On 21.08.2023, however, the learned Session Court dismissed said Revision.

7. On face of record it depict that the Respondent wife had filed a Special Civil Suit No. 3 of 2017 under the provisions of the Hindu Adoption and Maintenance Act and prayed for decree of maintenance to the tune of Rs.20,000/ per month. It is a matter of record that, after full fledged trial, on 21.02.2019, the learned Civil Judge, Senior Division Bhokar, passed the Judgment & decree and directed the Petitioner (original defendant) to pay Rs.3000/- per month to present respondent No.1 wife. Needless to say that, the present Petitioner filed HMP No. 13 of 2020 before the learned Civil Judge, Senior Division, Bhokar and prayed

for decree of dissolution of marriage, which is pending as on today.

8. In case of ***Rajnish Vs. Neha*** cited supra, the Hon'ble Apex Court held as under:

“(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.

(b) Payment of Interim Maintenance

The Affidavit of Disclosure of Assets and Liabilities annexed as

Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B – III of the judgment.

The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B – IV above.

(e) Enforcement / Execution of orders of maintenance

For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI."

9. On 24.11.2022, the Karnataka High Court passed the Judgment in Writ Petition No. 22006/2022 in case of **Uday Nayak Vs. Anita Nayak** considering case of **Rajnesh Vs. Neha, (2021) 2 SCC 324** and held that, in the light of overlapping of jurisdiction, the grant of maintenance under Section 20(1)(d) of the D.V. Act would be in addition to the maintenance granted under section 125 of the Cr.P.C. and also further held that there is no bar to seek maintenance both under the DV Act and under Section 125 of the Cr.P.C., or under the Hindu Marriage Act or even under the Hindu Adoptions and Maintenance Act, 1956. The only rider would be that the amount would not overlap and it would be inclusive of maintenance under each jurisdiction and not exclusive. Therefore, there is no additional payment of overlapping payment made. The Hon'ble Apex Court, in paragraph 60 and 61, observed as under:

"60. It is well settled that a wife can make a claim for maintenance under different status. 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 the 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 other enactment. while deciding the quantum of maintenance in the subsequent proceeding, the civil court/Family court shall take into account toe 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."*

10. On perusal of impugned judgment, it appears that, the learned Session Court as well as the trial court has not taken into consideration of Judgment and Decree passed in Special Civil Suit No. 3 of 2017 under the provisions of the Hindu Adoption and Maintenance Act. However, said fact can be brought to notice of competent Court in which subsequent proceeding is pending and said Court can consider the law laid in the case of **Rajnish Vs. Neha**, (supra) and can seek set off, if it is permissible. Therefore, I do not find any substantial ground to interfere with the impugned order.

11. In view of above discussion, this Petition is hereby dismissed.
No order as to costs.

(Y. G. KHOBRAGADE, J.)

JPChavan