



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

CRIMINAL WRIT PETITION NO. 278 OF 2024

Sunil Narsing Waghmare

... **Petitioner**

VERSUS

Maya Sunil Waghmare and others

... **Respondents**

Mr. G. G. Suryawanshi, Advocate for the Petitioner,

CORAM : Y. G. KHOBRADE, J.

Dated : 8th October, 2024

PER COURT :-

1. Heard Shri G.G. Suryawanshi, the learned counsel for the Petitioner at length. Respondent Nos. 2 and 3, who are minors are duly served and they are represented through Respondent No.1 being natural mother but nobody appeared on their behalf.

2. By the present Petition, the Petitioner invokes jurisdiction of this Court under Article 226 and 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code and prayed to quash and set aside the impugned order dated 20.06.2023 passed below Exh.5 by the learned Family Court, Nanded in Petition No.E-48 of 2021. By the impugned order the learned Family Court directed the Petitioner/ original Non-applicant to pay interim maintenance @ Rs.7000/- per month to

original Petitioner No.1/present Respondent No.1 and Rs.3500/- each to original Petitioner Nos. 2 and 3/present Respondent Nos. 2 and 3 from the date of application i.e. 16.03.2021 till disposal of the main petition.

3. The learned counsel appearing for the Petitioner canvassed in vehemence that, the marriage between the Petitioner and Respondent No.1 was solemnized on 05.06.2024 at Andheri (W), Mumbai as per their religion and customs. After marriage, the relations between the petitioner and Respondent No.1 wife were cordial for quite some time. However, subsequently Respondent No.1 changed her behaviour and shown her inability to get up early in the morning for preparing tiffin for the Petitioner. Out of the said wedlock, the petitioner and Respondent no. 1 blessed with two issues i.e. present Respondent Nos. 2 and 3 minors. The Respondent No.1 filed the proceeding under section 125 of the Criminal Procedure Code on various grounds. So also, the Respondent no. 1 filed Petition No. E48 of 2021 before the Family Court Nanded with application for grant interim maintenance to the tune of Rs.10,000/- for herself and Rs.5000/- each for Respondent nos. 2 and 3.

4. It is further canvassed that the Respondent no. 1 suppressed fact of filing of proceeding under section 125 Cr.PC., before the Judicial Magistrate in a proceeding filed under the provisions of D. V. Act, vide PWDVA No. 47 of 2020 with the malafide intention. The Respondent no. 1

filed an application for interim maintenance at Rs.15,000/- per month for herself and Rs.10,000/- per month each for Respondent Nos. 2 and 3 by concealing the fact of grant of interim maintenance in another proceeding. Therefore, on 12.05.2023, the learned JMFC, Nanded passed an order and granted maintenance to the tune of Rs.2000/- per month to Respondent No.1 and Rs.1000/- per month each to Respondent Nos. 2 and 3 by considering the income of the Petitioner. Subsequently, on 20.06.2023, the learned Family Court passed the impugned order below Exh. 5 in Petition No. E-48 of 2021 and directed the present Petitioner to pay interim maintenance @ Rs.7,000/- per month to Respondent No.1 and Rs.3500/- per month each to Respondent Nos. 2 and 3, which is illegal, bad in law and without considering the order passed by the learned JMFC on 12.05.2023 below Exh.19 in PWDVA No.47 of 2020.

5. The learned counsel further canvassed that, the Petitioner is working with a private establishment and drawing very meager income. So also, the Petitioner is required to incur expenses for his ailing father. However, while passing the impugned order dated 20.06.2023, the learned Family Court failed to consider the interim maintenance granted under order dated 12.05.2023 by the learned JMFC. Therefore, it is not sustainable in the eyes of law, hence, prayed for quash and set aside the same.

6. In support of his submission, the learned counsel for the Petitioner placed reliance on the judgment dated 24th November, 2022 passed by the Karnataka High Court in Writ Petition No. 22006 of 2022 in case of **Uday Nayak Vs. Anita Nayak**.

7. It is not in dispute that the marriage of the Petitioner and Respondent No.1 solemnized on 05.06.2020 at Vidya Vikas Bhavan College, Mumbai at Andheri (West), Mumbai. Out of their marital relations, they blessed with two children i.e. Respondent Nos. 2 and 3. However, due to some matrimonial dispute, Respondent No.1 wife initiated two independent proceedings i.e. proceedings under the Protection of Women from Domestic Violence Act bearing PWDVA No. 47 of 2020 before the JMFC, Nanded and Petition No. E-48 of 2021 before the Family Court. In both the proceedings, the Respondent no. 1 filed the applications for grant of interim maintenance.

8. Indeed, on 12.02.2023, the learned JMFC, Court No.3, Nanded passed an order below Exh. 19 in PWDVA No. 47 of 2020 and granted interim maintenance to the tune of Rs.2000/- per month to Respondent No.1 and Rs.1000/- per month each to Respondent Nos 2 and 3 from the date of application. It is a matter of record that, on 20.06.2023, learned Family Court, Nanded passed the impugned order below Exh. 5 in Petition No.E-48 of 2021 by invoking section 125 (1)

Cr.P.C. and directed the original Respondent/Petitioner to pay interim maintenance @ Rs.7000/- per month to original Petitioner No.1/present Respondent No.1 and Rs.3500/- each to original Petitioner Nos. 2 and 3/present Respondent Nos. 2 and 3 from the date of application i.e. 16.03.2021 till disposal of the main petition.

9. In view of the above, issue arises that whether the wife and children can seek maintenance only one enactment either by invoking section 125 Cr. P.C. or under the provisions of Section 20 (1) (d) of the DV Act or under the Hindu Marriage and Maintenance Act?

10. The learned counsel appearing for the Petitioner canvassed that when Respondent wife succeeded to obtain the order for interim maintenance by invoking provisions under the D.V. Act, therefore, she could have disclosed said fact in subsequent proceeding wherein she prayed for interim maintenance and if the Respondent no. 1 could have disclosed said fact, the quantum of maintenance amount would have been considered by the Court while passing the impugned order under Section 125 (1) Cr.P.C. However, the Respondent suppressed the material fact from the Court and obtained the impugned order of maintenance. Therefore, prayed for quash and set aside the same.

11. In case of **Uday Nayak** cited supra on behalf of the Petitioner, the

Karnataka High Court considered the case of **Rajnesh Vs. Neha, (2021) 2 SCC 324** and observed 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."

12. Therefore, though the learned counsel for the Petitioner canvassed that the Respondent wife could have seek interim maintenance either under the provisions of the DV Act or under the provisions of section 125 of the Cr.P.C., it does not appear to be bonafide and substantial in view of the law laid down by the Hon'ble Supreme Court in the case of **Rajnesh Vs. Neha**, (supra). Therefore, I do not find any substantial ground to interfere with the impugned order. However, the Petitioner will be at liberty to seek set off on the conclusion of the trial, if it is permissible in law.

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

(Y. G. KHOBRAGADE, J.)

JPChavan