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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2950/2023 and CRL.M.A. 11061/2023

ARNOB MUKHERJEE

.....Petitioner

Through: Mr. Lohit Ganguly and Mr. Ajay
Kukmar, Advocates

versus

ANANDITA MUKHERJEE

.....Respondent

Through: Mr. Shagun Mehta, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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10.09.2024

1. By way of present petition, the petitioner seeks to assail order dated 03.03.2023 passed by learned ASJ, West- Distt., Tis Hazari Court, Delhi in C.A. No. 135/2022 whereby the order dated 12.05.2022 passed by the learned Judicial Magistrate First Class, Mahila Court- 05, Distt. West, Tis Hazari Court, Delhi in MC No.554/2019 was modified to the extent that the petitioner was directed to pay Rs 13,500/- per month instead of Rs 15,000/- per month to the respondent from the date of filing of the application for interim relief under Section 23 of the Protection of Women from Domestic Violence Act, 2005 ('PWDV Act').

2. Learned counsel for the petitioner submits that the impugned order is erroneous for the reason that it failed to consider that a consent order dated 24.03.2018 was passed in the divorce proceedings whereby the maintenance payable by the petitioner to the respondent had been fixed at Rs 8,000/- per month. He further submits that the respondent with the intention to circumvent the consent order and extracting more money out of the petitioner, has moved subsequent applications for maintenance under Section 125 Cr.P.C. and PWDV Act. He further contends that the impugned

CRL.M.C. 2950/2023

Page 1 of 6



order fails to note that the salary of petitioner has been wrongly assessed to be Rs 40,000/- per month by merely considering the educational qualifications and last drawn salary of the petitioner and that no document has been exhibited to prove that he is drawing such salary.

3. *Per contra*, learned counsel for the respondent has opposed the present petition on the ground that the consent order which was passed in the proceedings under the Hindu Marriage Act, 1955 ('HMA') whereas the impugned order relates to proceedings under the PWDV Act. He further submits that the two proceedings are independent of each other and the learned Trial Court had taken into account the maintenance awarded in previous proceedings while passing the impugned order. Lastly, he submits that even the amount of maintenance which has been awarded in the PWDV Act proceedings, are not sufficient for the respondent to sustain herself and she is in the process of challenging the same.

4. I have heard learned counsel for the parties and gone through the records

5. The Supreme Court while dealing with the aspect of overlapping jurisdictions of different statutes when it comes to grant of maintenance, in the case of Rajnesh v. Neha, reported as **(2021) 2 SCC 324** held as under :-

16. Maintenance may be claimed under one or more of the aforementioned statutes, since each of these enactments provides an independent and distinct remedy framed with a specific object and purpose. For instance, a Hindu wife may claim maintenance under the Hindu Adoptions and Maintenance Act, 1956 ("HAMA"), and also in a substantive proceeding for either dissolution of marriage, or restitution of conjugal rights, etc. under the Hindu Marriage Act, 1955 ("HMA") by invoking Sections 24 and 25 of the said Act.



17. In *Nanak Chand v. Chandra Kishore Aggarwal* [*Nanak Chand v. Chandra Kishore Aggarwal*, (1969) 3 SCC 802 : 1970 SCC (Cri) 127] , the Supreme Court held that there was no inconsistency between the CrPC and HAMA. Section 4(b) of the HAMA would not repeal or affect the provisions of Section 488 of the old CrPC. It was held that : (SCC pp. 804-05, para 4)

“4. ... Both can stand together. The Maintenance Act is an act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, insofar as it dealt with the maintenance of children, was in any way inconsistent with Section 488 CrPC. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. Recently the question came before the Allahabad High Court in *Ram Singh v. State* [*Ram Singh v. State*, 1962 SCC OnLine All 191 : AIR 1963 All 355] , before the Calcutta High Court in *Mahabir Agarwalla v. Gita Roy* [*Mahabir Agarwalla v. Gita Roy*, (1962) 2 Cri LJ 528 (Cal)] and before the Patna High Court in *Nalini Ranjan Chakravarty v. Kiran Rani Chakravarty* [*Nalini Ranjan Chakravarty v. Kiran Rani Chakravarty*, 1964 SCC OnLine Pat 160 : AIR 1965 Pat 442] . The three High Courts have, in our view, correctly come to the conclusion that Section 4(b) of the Maintenance Act does not repeal or affect in any manner the provisions contained in Section 488 CrPC.”

(emphasis supplied)

18. While it is true that a party is not precluded from approaching the Court under one or more enactments, since the nature and purpose of the relief under each Act is distinct and independent, it is equally true that the simultaneous operation of these Acts, would lead to multiplicity of proceedings and conflicting orders. This would have the inevitable effect of



overlapping jurisdiction. This process requires to be streamlined, so that the respondent husband is not obligated to comply with successive orders of maintenance passed under different enactments. For instance, if in a previous proceeding under Section 125 CrPC, an amount is awarded towards maintenance, in the subsequent proceeding filed for dissolution of marriage under the Hindu Marriage Act, where an application for maintenance pendente lite is filed under Section 24 of that Act, or for maintenance under Section 25, the payment awarded in the earlier proceeding must be taken note of, while deciding the amount awarded under HMA.

6. From above, it is abundantly clear that there is no bar to pursuing simultaneous applications for maintenance under the provisions of different Acts, provided that the Court while computing the maintenance to be awarded in a subsequent proceeding takes into account the payment awarded in earlier proceedings, if any. At this stage, learned counsel for the petitioner concedes that there is no bar in the continuance of simultaneous proceedings for claiming maintenance under different laws.

7. Coming to the facts of the present case, the parties got married according to Hindu rites and customs on 29.11.2011. No child was born out of the said wedlock and they have been living separately since 10.03.2016. The petitioner has filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 before Family Courts, West Distt. Tis Hazari Courts, Delhi which remains pending. In the said petition, the respondent moved an application under Section 24 of the Hindu Marriage Act seeking maintenance. On the basis of joint statement of the parties, learned Judge, Family Courts, West Distt., Tis Hazari, Delhi passed a consent order dated 24.03.2018 vide which the respondent was granted a maintenance of Rs 8,000/- per month to be paid by the petitioner. Apart from this, respondent



had also filed a maintenance petition under Section 125 Cr.P.C. before the learned Principal Judge, Family Court, Allahabad, UP and vide order dated 08.07.2019, the learned Family Court, Allahabad granted maintenance of Rs. 10,000/- per month in favour of the respondent and maintenance paid to the respondent in any other proceeding was to be adjusted in this amount. A perusal of this order would show that the Court was cognizant of the fact of the respondent receiving maintenance in lieu of the consent order passed in the HMA proceedings and took it into account while computing the aforesaid amount. The petitioner had challenged the said order in a revision petition before the Allahabad High Court which vide order dated 19.10.2019 stayed the operation of the abovementioned order, subject to payment of Rs 2,000 by the petitioner to the respondent. The said revision is still pending. Thereafter, the respondent filed a complaint under Section 12 of the PWDV Act, 2005 against the petitioner and his mother before the Court of Ld. MM, Mahila Courts, Distt. West, Tis Hazari Courts, Delhi in which she also filed an application under Section 23 of the PWDV Act, 2005 for grant of interim relief. The application for maintenance pursued under the PWDV Act came to be decided by the learned Mahila Court vide order dated 12.05.2022 granting maintenance of Rs. 15,000/- per month w.e.f. 09.09.2019 that was inclusive of food, rent, clothing, household and other necessary expenses to the complainant from date of filing of petition before the Trial Court till disposal of the case. A perusal of this order would also show that the Court was aware of the factum of maintenance being provided to the respondent in two previous proceedings i.e. under the HMA and Section 125 Cr.PC. In fact, the Court specifies that payment received in any other case shall also be adjusted. Although the respondent had sought alternate accommodation,



considering that she lived in another State, Trial Court deemed it fit to include in the maintenance the rent amount since the petitioner refused to go back to the matrimonial home stating she was subject to cruelty at the hands of her mother-in-law. The petitioner had filed an appeal under Section 29 of the PWDV Act, 2005 against the said order which came to be partly allowed vide impugned order dated 03.03.2023, whereby the maintenance amount was reduced from Rs. 15,000/- to Rs. 13,500/-.

8. Considering that the learned Trial Court while computing maintenance in the impugned order had taken into account the maintenance awarded previously under the HMA and Section 125 Cr.P.C. proceedings, the requirements as laid down by the Supreme Court in Rajnish v. Neha (Supra) have been fulfilled. The allegations and counter allegations with respect to desertion and cruelty are subject matter of trial and cannot be looked into at this stage. Since the impugned order relates to grant of interim maintenance and the proceedings are still pending, this Court finds no reason to interfere with the impugned order.

9. In view of the above, the petition is dismissed alongwith the pending application.

10. However, it is clarified that this Court has not expressed any opinion with regard to the quantum of maintenance, and that in case at the time of disposal of the maintenance petition, the Trial Court comes to the conclusion that the respondent is entitled to lesser or higher maintenance, it would be at liberty to grant adjustment of the arrears eitherway.

MANOJ KUMAR OHRI, J

SEPTEMBER 10, 2024

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CRL.M.C. 2950/2023

Page 6 of 6