

10.06.2026
Sl. No.305
Ct. No. 29
Sws.M

CRR 2795 of 2025
with
CRAN 1 of 2025

In the matter of : Sk. Sarif @ Sk. Sarif Ali

... Petitioner

Ms. Sananda Bhattacharyya

... for the petitioner

Affidavit of service filed by the petitioner is taken on record.

Opposite parties are not represented.

Petitioner herein submits that the opposite party/wife prayed for maintenance in a later proceeding under Section 125 of the Cr.P.C. where she was granted maintenance to the tune of Rs.2,000/- comprising Rs.1,000/- for herself and Rs.1,000/- for her minor child. The opposite party/wife also initiated an earlier proceeding on 4th March, 2019 under the provision of Protection of Women from Domestic Violence Act, 2005 where she was awarded maintenance of Rs.3,000/- per month in connection with Misc. Case No. 347 of 2017 vide order dated March 4, 2019.

Petitioner, therefore, made a prayer before the Court below for a direction upon her to pay the amount of maintenance, i.e., Rs.3,000/- which is higher amount and which was passed in Misc. Case No. 347 of 2017. However, learned Court below rejected such prayer by the impugned order dated 16th December, 2024 on the ground that the maintenance order passed in Misc Case No. 21 of

2018 was on consent and therefore such amount cannot be adjusted with earlier amount granted under the Act of 2005.

Having heard learned counsel for the petitioner it appears that the prayer made by the petitioner is innocuous. Hon'ble Apex Court in **Rajnesh vs. Neha**, reported in **(2021)2 SCC 324** made observation on the point of overlapping jurisdiction and Para 60 and 61 of the Judgment runs as follows:-

"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."

In view of above, the maintenance already granted in the proceeding under section 125 Cr.P.C. shall be set off with the amount of maintenance granted in Misc. Case No. 347 of 2017 and the petitioner is hereby directed to pay the higher amount, i.e., Rs.3,000/- per month to the opposite party/wife and her child towards monthly maintenance from the date of filing of the Application. Accumulated arrear amount of maintenance amount, if any, shall be paid by the petitioner on installments with the monthly

maintenance amount as would be decided by the Court below, within 10th of each succeeding month.

Petitioner's application being CRR 2795 of 2025 along with CRAN 1 of 2025, thus stand disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)