

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 169/2020

Mr. Hitesh Prakashmalji Mehta

...Applicant

V/s.

Mrs. Aashika Hitesh Mehta & anr.

...Respondents

* * * * *

Mr. Abhijit Sarwate a/w. Mr. Ajinkya Udane a/w. Ms. Ria
Lohade a/w. Mr. Hardev Kaur for the applicant.

Mr. Kamesh Mishra a/w. Mr. Jeetendra Ranawat, Advocate
for respondent no.1.

Mr. S.S. Hulke, APP for State-respondent no.2.

Coram : Sandeep K. Shinde, J.

Closed for Judgment on : 13th September, 2021.

Judgment Pronounced On : 20th September, 2021.

JUDGMENT :

1. Rule. By consent of the parties, Revision taken up
for hearing at the admission stage.

2. In two independent (maintenance) proceedings, following orders were passed ;

(i) On 19th June, 2019 Judge, Family Court, Pune, granted maintenance @ Rs.7,000/- per month, each, to respondent-wife and two children i.e. Rs.21,000/- from the date of the application till the disposal of the main petition.

(ii) On 24th July, 2019 the learned Judicial Magistrate First Class, Pune awarded interim maintenance at the rate of Rs.20,000/- collectively to the respondent-wife and two minor children under Section 20 read with Section 23 of the Protection of Women from Domestic Violence Act (“D.V. Act” for short).

3. Aggrieved by the order dated 24th July, 2019, applicant preferred Criminal Appeal No.405/2019, under

Section 29 of the D.V. Act. On 1st January, 2020 the Appeal was dismissed by the Additional Sessions Judge, Pune. Feeling aggrieved by this order, applicant has preferred subject Revision, under Section 397 read with Section 401 of the Criminal Procedure Code, 1908.

4. Heard learned Counsel for the parties. Perused the proceedings and maintenance orders passed in the two proceedings as referred to hereinabove.

5. Following two questions have fallen for determination:

(i) Whether the maintenance granted under Section 20(1)(d) of the D.V. Act is in addition to an order under Section 125 of the Code of Criminal Procedure or any other law for the time being in force ? (emphasis supplied)

AND

(ii) Whether, while deciding the quantum of maintenance under Section 12 of the D.V. Act, Court shall take into account, maintenance awarded in the previous proceedings instituted between the parties.

6. In the context of questions, the learned Appellate Court in para-29 of its order, held that; “power to award maintenance under the D.V.Act is in addition to order of maintenance under Section 125 of the Cr.P.C. or any other law for the time being in force.” Thus, apparently Appellate Court relied on Section 36 of the D.V. Act, and held that the maintenance under the D.V. Act, being awarded, in distinct proceedings, it is neither in lieu of maintenance awarded in other/previous proceedings and therefore it is not subject to any adjustment or set-off. (emphasis supplied)

7. It may be stated that the respondent has not challenged the quantum of maintenance, Rs.20,000/- per month, granted under the D.V. Act.

8. Mr. Sarwate, learned Counsel for the applicant, would submit that the learned Sessions Judge has committed an error, while declining, to adjust the maintenance awarded under Section 24 of the Hindu Marriage Act, against the maintenance granted under the D.V. Act. Mr. Sarwate submitted, the Apex Court in the case of **Sudeep Chaudhary Versus. Radha Chaudhary, (1997) 11 SCC 286**, has held, that the amount awarded under Section 125 of the Cr.P.C. for maintenance was adjustable against the amount awarded in matrimonial proceedings. The other two authorities relied on by Mr. Sarwate are; (i) **Sanjay Pundilkrao Niranjane Versus. Swati Sanjay Niranjane BCR (Cri.) 2005-2-905**; and (ii) **Rajnish Versus Neha & Anr. 2020 (0) Supreme (SC) 648**. Mr. Sarwate, learned

Counsel, submitted that in *Rajnish* (supra), Hon'ble Apex Court, has issued direction on over-lapping jurisdiction in maintenance proceedings and held, thus;

“Court, in the subsequent proceedings would take into consideration, the maintenance already awarded in the previous proceedings and grant adjustment of set-off of the said amount.”

. Thus, Mr. Sarwate contended, that the impugned order in Criminal Appeal No.405/2019 be set aside and the learned Judicial Magistrate First Class be directed to pass an, order of adjustment/set-off, and accordingly, the order passed in M.A. No. 5223/2017 be directed to be appropriately modified.

9. Per-contra, Mr. Mishra learned Counsel for the respondent would contend that, conjoint reading of Section 20(1)(d) with Section 36 of the D.V. Act implies that, maintenance granted to the aggrieved person under the D.V. Act is in addition to maintenance granted under any other law

for the time being in force and therefore adjustment as suggested by the applicants, would defeat the object and purpose of Section 36 of the Act. His next submission is that, in the case in hand, Appeal was dismissed on 1st January, 2020, whereas the judgment of the Apex Court in *Rajnesh* (supra) was delivered on 4th November, 2020 and therefore the law laid down in *Rajnesh* (supra) cannot be applied to the facts of the case in hand.

10. I have carefully considered the submissions of the respective Counsel and the facts of the case. It may be noted that in the case of **Vishal V/s. Aparna, 2018 SCC Online 1207**, this Court has held that, sub-section 3 of Section 26 of the D.V. Act enjoins upon the aggrieved person to inform the Magistrate, if she has obtained relief in any proceedings other than the proceedings under the D.V. Act. The object being that, while granting relief under the D.V. Act, the Magistrate shall take into account and consider if any similar relief has

been obtained by the aggrieved person. Even though the proceedings under the D.V. Act may be independent proceeding, the Magistrate cannot ignore the maintenance awarded in any other legal proceedings, while determining whether over and above the maintenance already awarded, any further amount was required to be granted for the reasons to be recorded in writing.

11. The Hon'ble Apex Court in the case of *Rajnesh* (supra) has settled the controversy as regards the maintenance awarded under different Acts and as to whether maintenance awarded in subsequent proceedings is subject to maintenance awarded in previous proceedings.

12. In the case in hand, the Family Court awarded the maintenance of Rs.7,000/- each, to the respondent and two children on 19th June, 2019; whereas, a month after, maintenance of Rs.20,000/- collectively was awarded to the respondent and two minor children. Infact, the law laid down

by this Court in the case of **Vishal V/s. Aparna** (supra), was holding the field as to the adjustment of maintenance awarded in previous proceedings against maintenance awarded in subsequent proceedings, however, it seems the judgment in the case of *Vishal* (supra) was not brought to the notice of the Appellate Court. Be that as it may, the law is, 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.

13. For the foregoing reasons, impugned order dated 1st January, 2021 in Criminal Appeal No.405/2019, passed by the Additional Sessions Judge, Pune is set-aside. Consequently, learned Judicial Magistrate First Class, Pune shall suitable modify the order dated 24th July, 2019 in M.A. No.5223/2017,

taking into consideration, the maintenance already awarded by Judge, Family Court, Pune in Petition No.A-371 of 2018.

14. Revision is allowed. Rule is made absolute in the aforesaid terms.

(SANDEEP K. SHINDE, J.)