AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FAM No. 03 of 2017

Chandrabhushan S/o Krishna Kumar, aged about 32 years, R/o village Prakashpur, Tehsil and Police Station Khairagarh, District Rajnandgaon, Chhattisgarh.

---- Appellant(s)

Versus

Smt. Savita Bai W/o Chandrabhushan, aged about 28 years, at present R/o Village Kahjri, Tehsil Khairagarh, District Rajnandgaon, Chhattisgarh.

---Respondent(s)

For Appellant	:	Shri Rakesh Pandey, Advocate.
For Respondent	:	Shri G.P. Kurre, Advocate.

Hon'ble Shri Justice P. Sam Koshy
Hon'ble Smt. Justice Rajani Dubey, JJ.

Judgment on Board

Per, P. Sam Koshy, Judge

11.11.2021

1. Aggrieved by the judgment dated 08.12.2016 passed by the Family Court, Rajnandgaon, in Civil Suit No.26-A/2010, the present appeal under Section 19(1) of the Family Courts Act, 1984 (in short, The Act, 1984) has been filed. Vide the impugned judgment, the court below has allowed an application under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (in short, The Act, 1956) to the extent of directing the appellant-Defendant to pay an amount of Rs.3000/- per month to the respondent-Plaintiff in this case.

2. The substantial ground which the appellant has raised principally is that the said order is ignoring the fact that on an earlier occasion the application under Section 125 CrPC moved by the respondent-Plainitff before the Family Court at Rajnandgaon stood rejected vide order dated 22.08.2008 in Misc. Criminal Case No.1/2008 and since her application under Section

125 CrPC was already rejected, the subsequent application under another enactment for the same relief should not had been entertained.

3. The principal ground of challenge in the present appeal is as to whether the subsequent application for maintenance under a different statute would had been entertained and allowed by the court below.

4. There is a recent judgment of the Hon'ble Supreme Court in this regard in case of Rajnesh Vs. Neha and Another, 2021(2)SCC 324 wherein after considering all the provisions of law which provides for claiming maintenance under different different statutes, the Supreme Court deciding on the question of overlapping jurisdiction in paragraphs 52 to 61 has held as under:

> "52. Some High Courts have taken the view that since each proceeding is distinct and independent of the other, maintenance granted in one proceeding cannot be adjusted or set-off in the other. For instance, in Ashok Singh Pal v Manjulata, the Madhya Pradesh High Court held that the remedies available to an aggrieved person under S. 24 of the HMA is independent of S. 125 of the Cr.P.C. In an application filed by the husband for adjustment of the amounts awarded in the two proceedings, it was held that the question as to whether adjustment is to be granted, is a matter of judicial discretion to be exercised by the Court. There is nothing to suggest as a thumb rule which lays down as a mandatory requirement that adjustment or deduction of maintenance awarded u/S. 125 Cr.P.C. must be off-set from the amount awarded under S.24 of the HMA, or vice versa. A similar view was taken by another single judge of the Madhya Pradesh High Court in Mohan Swaroop Chauhan v Mohini. Similarly, the Calcutta High Court in Sujit Adhikari v Tulika Adhikari held that adjustment is not a rule. It was held that the quantum of maintenance determined by the Court under HMA is required to be added to the quantum of maintenance u/S. 125 Cr.P.C.
>
> 53. A similar view has been taken in Chandra Mohan Das v Tapati Das, wherein a challenge was made on the point that the Court ought to have adjusted the amount awarded in a proceeding under S.125 Cr.P.C., while determining the maintenance to be awarded under S.24 of the HMA, 1955. It was held that the quantum of maintenance determined under S.24 of HMA was to be paid in addition to the maintenance awarded in a proceeding under S.125 Cr.P.C.
>
> 54. On the other hand, the Bombay and Delhi High Courts, have held that in case of parallel proceedings, adjustment or set-off must take place. The Bombay High Court in a well-reasoned judgment delivered in Vishal v Aparna has taken the correct view. The Court was considering the issue whether interim monthly maintenance

awarded under Section 23 r.w. Section 20 (1)(d) of the D.V. Act could be adjusted against the maintenance awarded under Section 125 Cr.P.C. The Family Court held that the order passed under the D.V. Act and the Cr.P.C. were both independent proceedings, and adjustment was not permissible. The Bombay High Court set aside the judgment of the Family Court, and held that Section 20(1)(d) of the D.V. Act makes it clear that the maintenance granted under this Act, would be in addition to an order of maintenance under Section 125 Cr.P.C., and any other law for the time being in force. Sub-section (3) of Section 26 of the D.V. Act enjoins upon the aggrieved person to inform the Magistrate, if she has obtained any relief available under Sections 18, 19, 20, 21 and 22, in any other legal proceeding filed by her, whether before a Civil Court, Family Court, or Criminal Court. 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 proceedings under the D.V. Act may be an 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 reasons to be recorded in writing. The Court observed :

> "18. What I intend to emphasize is the fact that the adjustment is permissible and the adjustment can be allowed of the lower amount against the higher amount. Though the wife can simultaneously claim maintenance under the different enactments, it does not in any way mean that the husband can be made liable to pay the maintenance awarded in each of the said proceedings."

It was held that while determining the quantum of maintenance awarded u/S.125 Cr.P.C., the Magistrate would take into consideration the interim maintenance awarded to the aggrieved woman under the D.V. Act.

55. The issue of overlapping jurisdictions under the HMA and D.V. Act or Cr.P.C. came up for consideration before a division bench of the Delhi High Court in RD v BD wherein the Court held that maintenance granted to an aggrieved person under the D.V. Act, would be in addition to an order of maintenance u/S. 125 Cr.P.C., or under the HMA. The legislative mandate envisages grant of maintenance to the wife under various statutes. It was not the intention of the legislature that once an order is passed in either of the maintenance proceedings, the order would debar re-adjudication of the issue of maintenance in any other proceeding. In paragraphs 16 and 17 of the judgment, it was observed that :

> "16. A conjoint reading of the aforesaid Sections 20, 26 and 36 of DV Act would clearly establish that the provisions of DV Act dealing with maintenance are supplementary to the provisions of other laws and therefore maintenance can be granted to the aggrieved person (s) under the DV Act which would also be in addition to any order of maintenance arising out of Section 125 of Cr.P.C.
>
> 17. On the converse, if any order is passed by the Family Court under Section 24 of HMA, the same would not debar the Court in the proceedings arising out of DV Act or

> proceedings under Section 125 of Cr.P.C. instituted by the wife/aggrieved person claiming maintenance. However, it cannot be laid down as a proposition of law that once an order of maintenance has been passed by any Court then the same cannot be re-adjudicated upon by any other Court. The legislative mandate envisages grant of maintenance to the wife under various statutes such as HMA, Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'HAMA'), Section 125 of Cr.P.C. as well as Section 20 of DV Act. As such various statutes have been enacted to provide for the maintenance to the wife and it is nowhere the intention of the legislature that once any order is passed in either of the proceedings, the said order would debar re adjudication of the issue of maintenance in any other Court."

The Court held that u/S. 20(1)(d) of the D.V. Act, maintenance awarded to the aggrieved woman under the D.V. is in addition to an order of maintenance provided u/S. 125 Cr.P.C. The grant of maintenance under the D.V. Act would not be a bar to seek maintenance u/S. 24 of HMA.

56. Similarly, in Tanushree & Ors. v A.S.Moorthy, the Delhi High Court was considering a case where the Magistrate's Court had sine die adjourned the proceedings u/S. 125 Cr.P.C. on the ground that parallel proceedings for maintenance under the D.V. Act were pending. In an appeal filed by the wife before the High Court, it was held that a reading of Section 20(1)(d) of the D.V. Act indicates that while considering an application u/S. 12 of the D.V. Act, the Court would take into account an order of maintenance passed u/S. 125 Cr.P.C., or any other law for the time being in force. The mere fact that two proceedings were initiated by a party, would not imply that one would have to be adjourned sine die. There is a distinction in the scope and power exercised by the Magistrate under S.125, Cr.P.C. and the D.V. Act. With respect to the overlap in both statutes, the Court held :

> "5. Reading of Section 20(1)(d) of the D.V. Act further shows that the two proceedings are independent of each other and have different scope, though there is an overlap. Insofar as the overlap is concerned, law has catered for that eventuality and laid down that at the time of consideration of an application for grant of maintenance under Section 12 of the D.V. Act, the maintenance fixed under Section 125 Cr.P.C. shall be taken into account."

57. The issue whether maintenance u/S. 125 Cr.P.C. could be awarded by the Magistrate, after permanent alimony was granted to the wife in the divorce proceedings, came up for consideration before the Supreme Court in Rakesh Malhotra v Krishna Malhotra. The Court held that once an order for permanent alimony was passed, the same could be modified by the same court by exercising its power u/S. 25(2) of HMA. The Court held that :

> "16. Since the Parliament has empowered the Court Under Section 25(2) of the Act and kept a remedy intact and made available to the concerned party seeking modification, the logical sequitur would be that the remedy so prescribed ought

> to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where considering the exigencies of the situation and urgency in the matter, a wife initially prefers an application Under Section 125 of the Code to secure maintenance in order to sustain herself. In such matters the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a Competent Court either under the Act Or similar such enactments. But the reverse cannot be the accepted norm."

The Court directed that the application u/S. 125 Cr.P.C. be treated as an application u/S. 25(2) of HMA and be disposed of accordingly.

58. In Nagendrappa Natikar v Neelamma, this Court considered a case where the wife instituted a suit under Section 18 of HAMA, after signing a consent letter in proceedings u/S. 125 Cr.P.C., stating that she would not make any further claims for maintenance against the husband. It was held that the proceedings u/S. 125 Cr.P.C. were summary in nature, and were intended to provide a speedy remedy to the wife. Any order passed u/S. 125 Cr.P.C. by compromise or otherwise would not foreclose the remedy u/S. 18 of HAMA.

59. In Sudeep Chaudhary v Radha Chaudhary, the Supreme Court directed adjustment in a case where the wife had filed an application under Section 125 of the Cr.P.C., and under HMA. In the S. 125 proceedings, she had obtained an order of maintenance. Subsequently, in proceedings under the HMA, the wife sought alimony. Since the husband failed to pay maintenance awarded, the wife initiated recovery proceedings. The Supreme Court held that the maintenance awarded under Section 125 Cr.P.C. must be adjusted against the amount awarded in the matrimonial proceedings under HMA, and was not to be given over and above the same.

Directions on overlapping jurisdictions-

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 D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. 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 concerned court in the previous proceeding."

5. The Supreme Court vide the said judgment has in a very categorical terms held that maintenance application decided under one statute would not foreclose the claim for maintenance under a different statute. The Supreme Court has also gone to the extent that even in case if maintenance is awarded under one of the statutes that by itself would not preclude the claimant from raising another claim application under a different statute claiming maintenance. The only rider provided by the Supreme Court is disclosure of these facts in the subsequent proceedings and if required the court entertaining the application had to adjust and take into consideration the amount of maintenance already awarded earlier under another statute.

6. Given the authoritative decision by the Supreme Court in the above referred judgment, the ground raised for the appellant in assailing the impugned judgment herein would not stand and the appeal thus deserves to be and is accordingly rejected in the light of the judgment of Supreme Court in case of Rajnesh (Supra).

7. The appeal stands rejected. No order asto costs.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(Rajani Dubey)
Judge

inder