

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL REVISION No. 527 of 2022

BETWEEN:-

1. BHUPENDRA SINGH RAJAWAT

2. JABAR SINGH RAJAWAT

3. SMT. BHAGWATI RAJAWAT

.....PETITIONERS

(BY SHRI VINAY PURANIK, ADVOCATE)

AND

SMT. RANJEETA RAJAWAT

.....RESPONDENTS

(BY SHRI DEVENDRA SINGH, ADVOCATE)

Reserved on : 09.10.2023

Pronounced on : 02.11.2023

*This criminal revision having been heard and reserved for judgment, coming on for pronouncement this day, **Hon'ble Shri Justice Prem Narayan Singh** passed the following:*

ORDER

This criminal revision has been filed by the petitioner under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 being crestfallen by the order dated 04.12.2021 passed by the learned VI Additional Sessions Judge, Indore in Cr.A. No. 11/2020, whereby the learned Appellate Court has affirmed the order of the learned Judicial Magistrate First Class, Indore wherein the application filed under Section 23 of Prevention of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act') was allowed and the petitioner No. 1 was directed to pay Rs.5,000/- as interim maintenance to the respondent.

2. With regard to this revision petition, it is undisputed fact that the marriage between the petitioner No. 1/husband and

respondent/wife was solemnized on 07.02.2004. It is also undisputed that the application filed by the respondent under Section 125 of Cr.P.C. for maintenance was dismissed by the learned II Additional Principal Judge, Family Court, Indore vide order dated 19.07.2018.

3. Succinctly, the case of the respondent is that after marriage, the in-laws of the respondent have started demand of dowry and harassed the respondent while she was residing in her matrimonial house for a year. The petitioner No. 1/husband was posted at Hisar at that time and meanwhile, petitioner Nos. 2 and 3 kicked out the respondent due to not fulfilling the demand of dowry. Thereafter, the petitioner No. 1/husband took the respondent/wife to Pune, where petitioner No. 1/ husband assaulted respondent/wife due to which operation of respondent was conducted. Further, the beating continued and one day, petitioner No. 1/husband choked the neck of respondent. Even after this incident, the respondent only used to live in matrimonial house while her husband i.e. petitioner No. 1 used to stay at his home.

4. The petitioners controverted the aforesaid pleadings of respondent and submitted that the respondent used to live in her paternal home and when petitioner No. 1/husband resided in Indore, she came to her matrimonial home in Indore. However, she has not made any complaint regarding any incident. The allegations made by respondent are false and baseless. She lived at her paternal home without any sufficient reason. Hence, she is not entitled for maintenance.

5. Learned trial Court after considering the evidence available on record and submissions of both parties, adjudicated in favour of respondent that the petitioner would pay of Rs.5,000/- per month as interim maintenance. The order was challenged by the petitioners before the Appellate Court and the Appellate Court, VI Additional Sessions Judge, Indore after considering the submissions of both parties rejected the appeal and affirmed the order of interim maintenance passed by the Judicial Magistrate First Class, Indore.

6. The petitioners, impugning the order of learned Appellate Court as well as trial Court, mainly submitted that the contentions made in the application under Section 12 of the DV Act are same as raised in the application filed under Section 125 of Cr.P.C. before the Principal Judge, Family Court, Indore and after considering the facts mentioned in the application, learned Family Court has dismissed the petition on 19.07.2018 with the findings that the petitioners had never refused to respondent from returning back to her marital house and she was living separately from the petitioner No. 1/husband on her own sweet will. Since the respondent did not wish to live with the petitioner No. 1/husband anymore, her application filed under Section 125 of Cr.P.C. for maintenance was dismissed. It is further contended that the learned trial Court has mis-interpreted the law laid down by the Hon'ble High Court of Rajasthan in the case of ***Gyan Chand Vs. Smt. Rekha, 2010 (2) Cri.L.R. (Raj.) 1544***, wherein it is held that the proceedings under Section 12 of DV Act and Section 125 of Cr.P.C. are similar in nature. Once the

findings are given under Section 12 of DV Act, the same issue cannot be agitated between the same parties before another forum. It is also contended that the learned Family Court has adjudicated that the respondent was living separately from her husband/ petitioner No. 1 without any reason, the same issue cannot be adjudicated by trial Court as well as Appellate Court. It is further contended that the respondent has malafidely suppressed the vital fact from the Court that the petitioner No. 1/husband is now retired from the Army and is now living simply as pensioner and also having liability of his parents and little sister. Under these circumstances, the order of both Courts are suffering from infirmity and illegality, hence, they are liable to be struck down.

7. On the contrary, the learned counsel for the respondent vehemently opposed the contentions of the petitioners and submitted that since both proceedings are adjudicated on different footings, the order of learned Family Court cannot have binding effect on the Courts dealing with the cases under DV Act.

8. In view of the aforesaid submissions, the conundrum of the case is as to whether the findings of learned Family Court passed in an order of maintenance under Section 125 of Cr.P.C., have any binding effect on the Courts below who have passed the impugned order.

9. Learned counsel for the petitioners have placed reliance in the case of *Gyan Chand Vs. Rekha (Supra)*, in this case, learned Judicial Magistrate, Ajmer had rejected the application filed

under Section 12 read with Section 17 to 23 of D.V. Act by finding that the respondent could not prove sufficient reasons from staying away from the petitioner No. 1/husband and that findings was affirmed by the Appellate Court. Further, the same issue was raised before the Family Court and on this context, High Court of Rajasthan has held in para No. 6 of the judgment, as under :-

The proceedings under Section 12 of the Domestic Violence Act and under Section 125 Cr.P.C. are similar in nature. Both the proceedings are basically civil suit filed for seeking maintenance from the spouse. The burden of proof in both the cases is equally similar and the case has to be established by preponderance of probabilities. In both the proceedings, unlike a criminal trial, the case need not be proved beyond a reasonable doubt. Lastly the issues which arise before the Court are identical namely whether the petitioner was subjected to cruelty and whether the wife has sufficient cause to stay away from the matrimonial home or not. Under the doctrine of issue estoppel, if a judicial finding has been given by a Court, then the same issue cannot be agitated before another forum. Therefore, once the finding has been given under Section 12 of the Domestic Violence Act, the same issue cannot be agitated between the same parties before another forum. Keeping in mind the doctrine of issue estoppel, the learned Judge was certainly unjustified in observing that the finding given by the learned Judicial Magistrate, vide order dated 19th August, 2008, would not affect the proceedings under Section 125 Cr.P.C. Clearly, the learned Judge has ignored the existence of the doctrine of issue estoppel.

10. Now, the question as to whether the aforesaid judgment is applicable in this case. In the aforesaid case, the Court of Magistrate had given its finding under Section 12 of D.V. Act. The finding was affirmed by the Appellate Court. In view of that,

High Court of Rajasthan has held that the same issue cannot be agitated in proceedings under Section 125 of Cr.P.C. In the case at hand, the position is different and vice-versa. The petitioners have relied upon the order of Family Court and requested to apply the findings of the Family Court to the Court dealing with the D.V. Act. It is well settled that the proceedings under Section 125 of Cr.P.C. is of summary nature. Hence, facts of both cases are different. Therefore, the order of High Court of Rajasthan passed in the case of *Gyan Chand Vs. Rekha (Supra)* is distinguishable.

11. On this aspect, learned counsel for the petitioners placed reliance over the judgment of Hon'ble Apex Court passed in the case of *Bhagat Ram Vs. State of Rajasthan, 1972 AIR (SC) 1502*, wherein, Hon'ble the Apex Court relying upon a judgment of another Court, ordained in para 14 which is reproduced below :-

14. In the case of *Sambasivam v. Public Prosecutor, Federal of Malaya, (1950) AC 458*, Lord Mac Dermott observed:

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

The maxim '*res judicata pro veritate accipitur*' is no less applicable, to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and

was precluded from taking any steps to challenge it at the second trial."

"The above observations were quoted with approval by this Court in the case of **Pritam Singh v. State of Punjab, AIR 1956 Supreme Court 415**. We are, therefore, of the opinion that the judgment of Jagat Narayan, J. in so far as he has convicted Bhagat Ram for offenses under sections 120B, 218 and 347 Indian Penal Code cannot be sustained.

12. Virtually, it was a criminal case which pertained to a criminal trial, wherein it is held that if an accused was acquitted or convicted in an earlier trial, he cannot be prosecuted for the same offence. However, since the proceeding of instant case related to maintenance in D.V. Act, it cannot be influenced by the findings of any other Court, which has been given in a finding applying summary procedure. Hence, the aforesaid case law is not applicable in the case at hand and the petitioners cannot be benefited from the aforesaid judgment.

13. In this regard, the respondent has drawn the attention of this Court towards the law laid down by the Hon'ble Apex Court in the case of *Nagendrappa Natikar Vs. Neelamma, (2014) 14 SC 452*, wherein, it is clearly held that any order under Section 125 of Cr.P.C. cannot be foreclosed remedy available under D.V. Act. for which para Nos. 10 and 11 are worth referring here :-

10. Section 125 Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of parties, which is in the nature of a civil proceeding, though are governed by the provisions of the Cr.P.C. and the order made under Section 125 Cr.P.C. is tentative and is subject to final determination of the rights in a civil court.

11. Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a Court of Law and such an agreement is void, since the object is unlawful. Proceeding under Section 125 Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125 Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18(2) of the Act.

14. In upshot of the aforesaid ratio, the law laid down by Hon'ble the Apex Court, it is obviously established that a decision taken in the case under Section 125 of Cr.P.C. and under Section 12 of the D.V. Act, have no binding effect on each other. Now, the question emerges as to whether the judgments and decisions passed in those cases related to D.V. Act or under Section 125 of Cr.P.C., are relevant to another cases between the same party. On this aspect, the provisions of Section 43 of Evidence Act is worth to be considered. The law enshrined in this case clearly mandates that the judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such Judgment, order or decree, is a fact in issue or is relevant under some other provision of this Act. In this regard, I want to quote the illustration No. (b) as under:-

“A prosecutes B for adultery with C, A’s wife.

B denies that C is A’s wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A’s lifetime. C says that she never was A’s wife.

The judgment against B is irrelevant as against C. ”

15. In view of the aforesaid discussion, it is clear that the findings, given in the order of the Family Court regarding non-existence of sufficient cause for living separately from husband, is not relevant to the cases related to the D.V. Act. Therefore, the

finding adjudicated by the learned Family Court under Section 125 of Cr.P.C. has no relevancy nor binding effect on the case pertains to D.V. Act between both parties.

16. Learned counsel for the respondent has also placed his reliance upon the case of *Mahesh Kumar and Others Vs. Smt. Pramila, 2017 (III) MPWN 28*. The relevant paragraphs Nos. 6, 7, 8 are here as under :-

6. The nature of proceeding under Section 12 of the Protection of Women from Domestic Violence Act is different from the proceeding under Section 125 of the Cr.P.C.
7. According to Section 12 of the Protection of Women from Domestic Violence Act, an aggrieved person as the respondent, she is entitled to file a petition seeking one or more reliefs provided under the Act. Section 18 provides for protection order, Section 19 for residential order and Section 20 for monetary reliefs.
8. An aggrieved person is defined under clause (a) of Section 2 as any woman who is or has been in domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Domestic relationship is defined under Clause (f) of Section 2 as relationship between two persons, who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage.

17. In this regard, the following excerpt laid down in landmark judgment of Hon'ble the Apex Court in the case of *Rajnesh Vs. Neha & Another, 2021 (2) SCC 324*, is consigned to quote here :-

"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."

18. The law laid down by Hon'ble Apex Court in the aforesaid judgment, it is crystal clear that Hon'ble the Apex Court has in very categorical terms, ordered that maintenance application decided under one statute would not foreclose the claim for maintenance under a different statute. Hon'ble Apex Court has also gone to the extent that even in a 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.

19. In light of the aforesaid legal position, this Court is of the considered opinion that if, in proceeding under Section 125 of Cr.P.C., the application of wife seeking maintenance is rejected by the Family Court, such wife would not be precluded from claiming maintenance or other monetary remedy under the

provisions of the D.V. Act. The reasons assigned by the learned Family Court in rejecting the application under Section 125 of Cr.P.C. have no relevancy to the cases pending before the Courts dealing with the D.V. Act. When the impugned order is tested on the anvil of the legal position stated above, it emerges that the petition of revision seeking dismissal of the impugned order under the D.V. Act passed by learned Additional Sessions Judge is devoid of merits. In conspectus of the aforesaid adjudications and deliberations in entirety, the grounds raised by the petitioner in assailing the impugned judgment herein would not stand and this revision petition deserves to be and is accordingly dismissed in the light of the aforesaid verdicts of Hon'ble Apex Court.

Accordingly, the revision petition is hereby dismissed.

(PREM NARAYAN SINGH)
JUDGE

Vindesh