

Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3791 OF 2016

ALONG WITH

CRIMINAL APPLICATION NO.296 OF 2017

Prakash Babulal Dangi,]
Age : 35 Years, Occ.: Business,]
Having premises at Carpenter Point,]
L.G. - 73½, Opp. Kamgar Nagar,] Petitioner /
Kurla (East), Mumbai 400 024.] Applicant

Versus

1. The State of Maharashtra,]
Through the Public Prosecutor,]
High Court (Cr. A.S.)]
]]
2. Rekha Prakash Dangi,]
Age : 26 Years, Occ.: Housewife,]
At present residing at :]
C/of Roshan Lal Sanghavi,]
A/09, 1st Floor, Daneshkunj Building,]
Nehru Road, Santacruz (E), Mumbai.] Respondents

ALONG WITH

CRIMINAL WRIT PETITION NO.3239 OF 2014

Rekha Prakash Dangi,]
Age : 26 Years, Occ.: Housewife,]
At present residing at :]
C/of Roshan Lal Sanghavi,]
A/09, 1st Floor, Daneshkunj Building,]
Nehru Road, Santacruz (E), Mumbai.] Petitioner

Versus

1. The State of Maharashtra,]
Through the Public Prosecutor,]
High Court (Cr. A.S.)]

2. Prakash Babulal Dangi,]
Age : 35 Years, Occ.: Business,]
Having premises at Carpenter Point,]
L.G. - 73½, Opp. Kamgar Nagar,]
Kurla (East), Mumbai 400 024.] Respondents

Ms. Ratna R. Jaiswal for the Petitioner-Applicant in WP/3791/2016 a/w. Criminal Application No.296 of 2017, and for Respondent No.2 in WP/3239/2014.

Mr. P.H. Gaikwad, A.P.P., for Respondent No.1-State in both the Petitions.

Mr. Ranjit Singh, i/by Mr. Kishore Maru for Respondent No.2 in WP/3791/2016 and for the Petitioner in WP/3239/2014.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH OCTOBER 2017.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, by consent of learned counsel for both the parties.

2. These are two counter Petitions filed by the parties to the matrimonial proceedings. Writ Petition No.3239 of 2014 is filed by the wife; whereas, Writ Petition No.3791 of 2016 is filed by the husband. The only small issue, which appears to be raised by the parties, pertains to the confusion as to which order is to be followed; *'whether the order of maintenance passed in the proceedings filed*

under Section 125 of Cr.P.C. is to be followed, or, whether the order passed in the proceedings filed under Domestic Violence Act, is to be followed ?'

3. It is a matter of record, that the wife has filed a Petition, bearing No.E-253 of 2010, for maintenance under Section 125 of Cr.P.C. and the said Petition, though filed in the year 2010, came to be decided on 20th January 2016. While allowing the said Petition, the husband was directed to pay maintenance @ Rs.6,000/- per month to wife and Rs.4,000/- per month to the minor daughter; in all, Rs.10,000/- per month, from the date of the order.

4. It is also a matter of record, that, meanwhile, the wife has also filed a Petition, under Domestic Violence Act, bearing C.C. No.9/DV/2012. In the said Petition, she has filed an application for interim maintenance to the tune of Rs.20,000/- per month for herself and Rs.15,000/- per month for her daughter. The said application for interim maintenance filed by wife came to be allowed partly on 26th July 2012 and husband was directed to pay an amount of Rs.8,000/- per month to the wife and Rs.5,000/- per month to the daughter.

5. When this order under Section 125 of Cr.P.C. was passed in Petition, bearing No.E-253 of 2010, the order of interim maintenance, passed in the application filed in the Petition, under Domestic Violence Act, bearing C.C. No.9/DV/2012, was brought to the notice of the said Court. Paragraph No.28 of the order dated 20th January 2016, passed in the Petition bearing No.E-253 of 2010, reads as follows :-

“28. It is a matter of record and admitted fact that Petitioner has filed a case under Domestic Violence Act and there was an order of maintenance of Rs.5,000/- p.m. for herself and Rs.3,000/- p.m. for her daughter, in all, Rs.8,000/- p.m. The Petitioner, in her cross-examination, has admitted that the Respondent is paying this amount to her. The order was, admittedly, an interim order.”

6. Thus, after taking into consideration this order, which was passed in the proceedings filed under Domestic Violence Act, granting interim maintenance @ Rs.8,000/- per month to the wife and her daughter, while deciding the proceedings filed under Section 125 of Cr.P.C., the Family Court, Mumbai, has awarded the maintenance @ Rs.6,000/- per month to the wife and Rs.4,000/- per

month to the minor daughter. It is clear that, while allowing such application, the Family Court has not granted maintenance from the date of application, though the application was filed in the year 2010, but only from the date of the order i.e. 20th January 2016, having regard to the fact that, in the Domestic Violence Act, wife was getting the interim maintenance. It is true that, this order passed by the Family Court in the proceedings filed under Section 125 of Cr.P.C., does not make it clear whether this amount of Rs.10,000/- per month was to be paid in addition to the interim maintenance awarded to the wife in the proceedings filed under the Domestic Violence Act. But, if it was so, that it was not to be paid in addition but it was substituting, then, the Family Court would have stated so, specifically. However, the Family Court has not stated that this order of maintenance passed in the proceedings filed under Section 125 of Cr.P.C. will replace the order passed in the proceedings filed under the Domestic Violence Act.

7. Now both the proceedings being independent, both the orders will stand independently and, hence, husband will have to pay not only the maintenance awarded under the Domestic Violence Act, which was of an interim nature and taking into consideration that

maintenance only, the wife was awarded the maintenance under Section 125 of Cr.P.C. only from the date of the order. It has to be held that this order under Section 125 of Cr.P.C. stands independently and in addition to the maintenance awarded under the Domestic Violence Act.

8. It has to be held so in view of Section 20(1)(d) of the Domestic Violence Act, which clearly provides that, *'in proceedings under the D.V. Act, the Magistrate may direct the Respondent to pay the maintenance to the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of Cr.P.C. or any other law for the time being in force.'* Therefore, the power to award maintenance under D.V. Act is in addition to an order of maintenance under Section 125 of Cr.P.C. or any other law for the time being in force. Section 36 of the D.V. Act makes the things further clear by providing that, *'the provisions of the D.V. Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.'* Therefore, it follows that the amount of maintenance awarded under the D.V. Act cannot be substituted to the order of maintenance under Section 125 of Cr.P.C.

9. This inference can be further strengthened from the fact that Criminal Revision Application No.151 of 2016 preferred by the husband, against the order of interim maintenance passed under Section 125 of Cr.P.C., is dismissed by this Court vide its order dated 25th July 2016. Perusal of the said order reveals that, in the said Revision Application also, the husband has specifically raised a contention that, as he has paid the amount of maintenance, as awarded under the Domestic Violence Act, he is not liable to pay the amount of maintenance, as awarded under Section 125 of Cr.P.C. In the said Writ Petition, the husband has also produced the receipt of payment of the maintenance awarded under the Domestic Violence Act. However, his contention was flatly rejected by this Court and it was held that, the husband has to comply with the order passed in the proceedings filed under Section 125 of Cr.P.C. It was further held that, as the husband has not complied with the order of the Family Court passed in the proceedings filed under Section 125 of Cr.P.C., he cannot be heard in the matter and his Revision Application, therefore, was dismissed.

10. Thus, in view of this order dated 25th July 2016 passed by this

Court in Criminal Revision Application No.151 of 2016, there remains absolutely no scope as to the confusion between the parties as to which order is to be obeyed. It follows that, as both the orders are passed by two different Forums in two different proceedings, both the orders are binding on the Petitioner-husband and Respondent-wife and they have to comply with both the orders, unless they are varied or set aside.

11. In view thereof, with these clarifications that both the orders; the one passed under the provisions of Domestic Violence Act and another passed under Section 125 of Cr.P.C., are required to be complied, both these Writ Petitions stand disposed off.

12. In view of the above, Criminal Application No.296 of 2017, having become infructuous, stands disposed off.

13. Rule is discharged.

14. Parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]