

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY**  
**SUBORDINATE COURT) NO. 25 of 2014**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE S.G.SHAH**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

HARESH NARAYAN JAGUJA & 1....Applicant(s)  
Versus  
NAMRATA HARESH JAGUJA JYOTI D.O. JETHANAND ASWANI &  
2....Respondent(s)

Appearance:

MR VAIBHAV A VYAS, ADVOCATE for the Applicant(s) No. 1 - 2

MR. P. P. MAJMUDAR FOR R M VAISHNAV, ADVOCATE for the Applicant(s)  
No. 1 - 2

MR. VIJAY N TILOKANI, ADVOCATE for the Respondent(s) No. 1 - 2

MR NJ SHAH, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 3

**CORAM: HONOURABLE MR.JUSTICE S.G.SHAH**

**Date : 28/04/2015**

**CAV JUDGMENT**

1. Petitioner No.1 herein is husband of respondent No.1 and father of respondent No.2, whereas petitioner No.2 is mother – in – law of respondent No.1 and grand mother of respondent No.2., respondent No.3 is State being formal party.

2. Petitioners have challenged the judgment and order dated 17.12.2013 by the learned 2<sup>nd</sup> Additional Sessions Judge, Vadodara in Criminal Appeal No. 64 of 2013, whereby Judgment and order dated 07.06.2013 in Criminal Misc. Application No. 111 of 2011 by the JMFC, Vadodara is confirmed.

3. The result of both the judgments referred herein above is to the effect that pursuant to an application under Section 18, 19, 20, 21 and 22 of the Domestic Violence Act (herein after referred to as 'the Act') by the respondent Nos. 1 and 2 as wife and minor son of the petitioner No.1, the lower Court has restrained the petitioners from committing any act of cruelty against the minor petitioner No.2. It is further directed that petitioner shall manage to allow the respondents to stay in the house No. 132, Damodar Haridas Building, 2<sup>nd</sup> Floor, R-7, T. H. Kataria Road, Matunga – Mahim West, Mumbai during the month from such order (07.06.2013) or to pay Rs.5000/- per month towards rent for residential accommodation from the date of application (08.12.2011). It is further directed under Section 19(8) of the Act that petitioner shall return all the ornaments and other stridhan, properties and articles

of the respondents within 10 days with all other relevant documents, which are otherwise documents viz. Bank Passbook, Election Card, Ration Card, Passport etc. It is further directed that if some documents are required by the petitioners, then as and when necessary, it would be provided to the respondents which shall be returned back to the petitioners on completion of work. For execution of such direction a liberty is granted to the respondents that if petitioner fails to comply with such directions, respondent – wife can approach Kishanwadi Police Station, who has to remain present for execution of above said direction. It is also further directed under Section 20(3) of the Act that petitioner No.1 shall pay a monthly maintenance of Rs.4000/- to the wife and Rs.1000/- to the minor child from the date of application (08.12.2011) per month. The amount of Rs.25,000/- is also directed to be paid by the petitioners to the respondents for mental pain and agony and suffering. Cost of such application was also awarded as Rs.5000/-. All such directions by the trial Court have been confirmed by the Sessions Court also. Hence, this revision application.

4. I have heard learned advocate Ms. R. M. Vaishnav with learned advocate Mr. Vaibhav A. Vyas for the petitioners and learned advocate Mr. Vijay N. Trilokani for the respondents. Perused the bulky record, wherein both the sides have produced all relevant documents, which are necessary for deciding the present revision application. It mainly contains the pleadings and deposition before the trial Court and both impugned judgments.

5. The sum and substance of the petitioners' case is to the effect that the amount of maintenance is too high, the nature and attitude of the respondent – wife is nothing but to harass the petitioners and

that when petitioner is getting the maintenance under Section 125 of Code of Criminal Procedure, she is not entitled to additional maintenance under provisions of Domestic Violence Act.

5.1 In support of their submissions the petitioners are relying upon following un-reported judgments; (1) judgment and order dated 21.10.2010 between Hemlataben Maheshbhai Chauhan vs. State of Gujarat in Special Criminal Application No. 2080 of 2010 by the Single Judge of this High Court, (2) judgment and order dated 30.08.2010 in Criminal Misc. Case No.130 of 2010 with Criminal Misc. Application No. 504 of 2010 between Rachana Kathuria vs. Ramesh Kathuria by Single Judge of Delhi High Court, (3) the judgment and order dated 21.05.2012 in Criminal Misc. Case No.3329 of 2011 between Manoj Sharma vs. Reena Sharma by the Single Judge of Delhi High Court.

5.2 The sum and substance of all above referred decisions by the Single Judges are to the effect that, if wife is getting maintenance under Section 125 of Code of Criminal Procedure (herein after referred to as 'the Code'), she is not entitled to any claim under the provisions of Domestic Violence Act. However, with due regard and respect of all such decisions, I not only defer but could not agree to such preposition of such judgments for several reasons. The bare perusal of cited cases makes it clear that in case of Hemlataben (supra) the competent Court has while dealing with applications under Section 125 of the Code probably held that wife was serving and earning Rs.2500/- and, thereby, she was able to maintain herself and, therefore, maintenance for minor son was awarded, which maintenance to the wife was denied. In such background, the learned single Judge has held that once maintenance has been refused under Section 125 of the Code in the event of change in

circumstances the wife has to seek maintenance order under Section 127 of the Code, but she is not entitled to claim maintenance under the provisions of the Act. Though I do not agree with such preposition the factual details are certainly different, in as much as, it is held by the trial Court that wife was able to maintain herself.

5.3 So far as case of Rachana Kathuria (supra) is concerned again it is altogether a different situation when Single Judge of the Delhi High Court has observed that the Protection of Woman from Domestic Violence Act 2005 does not create any additional right to claim maintenance, but it only puts the enforcement of existing right available on fast track. It is further held that, if a woman living separately from husband has already filed a suit claiming maintenance and after adjudication, maintenance has been decided by a competent Court either in Civil Suit or in an application under Section 125 of the Code, she does not have any right to claim an additional maintenance under the Act, since the Magistrate has power to grant maintenance and monetary reliefs on interim basis in a fast track manner when woman has not exercised her right either before Civil Court or under Section 125 of the Code. If the woman has already moved the Court and her right of maintenance has been adjudicated by competent Civil Court or Magistrate, she will have to move the same Court and she could not approach the Court under the Domestic Violence Act. This seems to be not a good preposition of law, for which I have assigned reasons herein after.

5.4 The decision in case of Manoj Sharma (supra) is some what different and logical, whenever Single Judge of the Delhi High Court has held that the order of maintenance passed by the two

forums is not very material but what is material is to see that the person could not be made to pay twice and that wife can get maintenance only from one forum.

6. In light of above legal submissions, we have to examine the facts, circumstances and law applicable to such cases. So far as facts are concerned, there is bulky record of almost 500 pages, wherein several factual details are also narrated so also several documentary evidences are produced on record. It seems that at least some of the documents are not part of the proceedings before the lower Court so far as income tax returns are concerned, which are annexed with affidavit-in-rejoinder filed on 12.02.2015.

7. It is clear and obvious that the impugned judgments are final judgment after full fledged trial and when there are two conclusive judgments against petitioner, jurisdiction of this Court in revision application is limited, so as to examine the irregularity and illegality so far as factual details are concerned and, therefore, I am not inclined to enter into the details of incidents regarding disturbance between the parties, so as to ascertain whether it amounts to domestic violence or not, for the simple reason that when conclusive findings are by two courts below, it would not be appropriate for revisional Court to re-appreciate the evidence, so as to arrive at a different conclusion than conclusion which is arrived at by two Courts below. Thereby, so far as decision regarding presence of domestic violence is concerned, when perusal of record makes it clear that both the lower Courts have taken into account all the factual details and circumstances on record for coming to the conclusion in favour of the respondent – wife, there is no reason to interfere with such conclusion. The trial Court has specifically framed the issue being issue No.1 in para 7(1) of the trial Courts' judgments that whether present petitioners

have dragged the respondent out of their house by physical and mental torture and thereby they have committed domestic violence or not. After full fledged discussion which runs in 63 pages, after discussing the available evidence on record, the trial Court has decided the issue in favour of the wife that she was dragged out of the house with physical and mental torture, which amounts to domestic violence. The minute details of all such domestic incidents are not much material, at this stage. Such conclusion has been affirmed by the lower appellate Court.

8. So far as issue No.2 regarding reliefs under the Act is concerned, the trial Court has reproduced the relevant sections and came to the conclusion that in case of such domestic violence, wife and children are entitled to protection and maintenance. The trial Court has also considered the fact that there is an order of maintenance of Rs.8000/- in favour of the wife under the provisions of Section 125 of Code. However, considering the provisions of the Domestic Violence Act and relying upon the decision of the Delhi High Court in case of **Navneet Singh vs. Prashant Chaudhri reported in (1) 2011 DMC 239**, the trial Court has directed the respondent to pay either rent or to provide residential accommodation as directed and to pay Rs.25,000/- as compensation for physical and mental torture. So far as these two directions are concerned, since they are not part of order under Section 125 of the Code in any other previous litigation between the parties, it is a separate order and direction than an amount of maintenance and, therefore, the cases cited by the petitioners herein would not help in getting rid of such directions. Thereby, there is no substance in such submissions by the petitioners so far as directions regarding providing residential accommodation or in alternative to pay Rs.5000/- as rent is concerned. So also the direction to pay Rs.25,000/- as compensation and, therefore, to that extent there is

no substance in the revision application, so as to interfere or modify such directions.

9. Then the only issue remains is with reference to payment of regular maintenance. The amount of maintenance is already decided by the trial Court in impugned order pursuant to provisions of Section 20 of Domestic Violence Act. If we peruse such provisions of the Act, it becomes clear that it is in clear words talking about the monetary reliefs and in sub-section (1) itself it is extended with the clause that "but is not limited to". Thereafter, four sub-clauses are there, amongst which, sub-clause (d) is material at present, which specifically confirms that the Magistrate may direct the petitioners to pay the maintenance for the aggrieved person as well as her children, **including an order under or in addition to an order of maintenance under Section 125 of the Code or any other law for the time being in force**. Thereafter, Sub-Section 3 confirms such obligation of the Court that the Magistrate shall have power to order an appropriate lumpsum or monthly payment of maintenance as the nature and circumstances of the case may required. Section 20 of the Act reads as under:

**"20. Monetary reliefs**

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to, -

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for 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 the Code of Criminal Procedure, 1973 or any other law for the time being in force.**

- (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.
- (3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.
- (4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.
- (5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).
- (6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

9.1 Therefore, the provisions of law is very much clear that the competent Court under the Protection of Domestic Violence Act 2005 has wide powers to grant loss of earning, medical expenses, loss due to other destruction and damages or removal of any property from the control of aggrieved person, as well as maintenance under Section 125 of Code or even in addition to Section 125 of the Code or in any other law for the time being in force and, therefore, once it is proved before the trial Court that there was domestic violence and trial Court is empowered to grant

monetary benefits, there is no restriction to grant appropriate amount of maintenance even if an order exists under Section 125 of the Code.

10. In view of such facts and circumstances, there is no substance in the revision application, when there is specific evidence by two Courts below that there is domestic violence and thereby respondent Nos.1 and 2 wife and minor are entitled to appropriate monetary reliefs, under Section 20 of the Domestic Violence Act.

11. As already stated herein above, the order for monthly rent or alternative arrangement for residential accommodation are altogether different rights of the respondent Nos. 1 and 2 in addition to amount of maintenance and, therefore, it cannot be questioned that why such amount has been awarded when there is positive findings in favour of the respondent Nos. 1 and 2. In any case, the Act nowhere provides that, if maintenance under any other Act is granted then provisions of this Act regarding maintenance is not applicable. So also order of compensation is as per law. Therefore, it cannot be interfered.

11.1 Above view is in confirmation of the decision by the Honourable Supreme Court in case of **Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori and Anr. reported in (2014) 10 SCC 736**, wherein after considering the provisions of the Protection of Women from Domestic Violence Act, 2005, Honourable the Apex Court has reproduced all relevant provisions and after considering previous observation, held as under:

“20. Chapter IV of the Domestic Violence Act, 2005 deals with “procedure for obtaining the orders of reliefs”. Section 12 relates to the application to Magistrate, which reads as

follow:

“12. Application to Magistrate

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act :

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent :

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.”

23. In the instant case, the appellant sought relief under Section 18 to 23 of the Domestic Violence Act, 2005. It includes protection order under Section 18, monetary relief under Section 20, custody orders under Section 21, compensation under Section 22 and interim relief under

Section 23.

**The monetary relief as stipulated under Section 20 is different from maintenance, which can be in addition to an order of maintenance under Section 125 of the CrPC or any other law.”**

12. Therefore, even if there is no reference of maintenance either under sub-Section 2 of Section 12 or in Section 20 of the Act, the fact remains that there is concurrent jurisdiction the statute provides concurrent jurisdiction and, therefore, it cannot be said that there is over ruling of jurisdiction while granting maintenance in different proceedings. At the most, what is required to be considered while deciding the claim of maintenance is that amount already awarded in a previous litigation may be taken into consideration for arriving at final amount of maintenance and, thereby, if order of only additional amount is there, then there is no overlapping and if award is for maximum amount of maintenance that can be awarded then set off against amount payable under any previous proceedings is to be extended.

13. When petitioner is relying upon citations which are referred herein above and are already considered by the first appellate Court while rejecting the appeal, it would be appropriate for the petitioner herein to go through the legal provision properly. The time has come that litigants restrain themselves from agitating the issue which has already been decided by competent Court, only because they are not comfortable with the same.

14. I have not entered into factual details and merits at this stage considering the provisions of Section 25 of the Domestic Violence Act and Section 127 of the Code, which provides for alteration, modification or revocation of any such order and, therefore, it

would be open for any of the party to apply before the competent Court either for alteration or modification by way of enhancement or revocation of the order, as the case may be. In that case such Court shall decide the same in accordance with law. Thereby if wife is enabled to prove more income of the husband and may apply for more amount of maintenance and if husband is of the view that his income is now reduced, he could apply for rejection of such amount but such modification cannot be considered on such revision application stage, when material evidence is not produced before the trial Court for such modification.

15. In view of above facts and circumstances there is no substance in the revision application and hence dismissed. However, considering the nature of litigation, factual details and plea taken by the petitioner herein, petitioner has to pay Rs.15,000/- to the respondent Nos.1 and 2 towards cost of this petition. Rule is discharged.

(S.G.SHAH, J.)

drashti

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THE HIGH COURT  
OF GUJARAT

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