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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.245 OF 2017

Petitioner : Mamta Gautam Wankhede,
Aged 48 years, Occ. Household.
R/o 17, Income Tax Colony,
Ranapratap Nagar, Nagpur : 440 022.

-- **Versus** --

Respondent : Gautam Sukhdev Wankhede
Aged 50 years, Occ : Retired Judge,
R/o 304, Jagat Towers, Tilak Nagar,
Amravati Road, Nagpur.

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Shri B.B. Meshram, Advocate for the Petitioner.
Shri D.V. Chauhan, Advocate for the Respondent.
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CORAM : S.B. SHUKRE, J.

DATE : 2nd FEBRUARY, 2018.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally by consent.

02] This petition challenges the order dated 16/01/2017 passed by Additional Sessions Judge, Nagpur in Criminal Appeal No.54/2016 thereby upsetting the order dated 08/02/2016 passed by the Judicial Magistrate First Class, Nagpur in Misc. Cri. Case No.414/2012 granting maintenance of Rs.7,000/- per month to the

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petitioner under Section 20(1)(d) of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act').

03] The admitted facts of the case are that application under Section 12 of the D.V. Act was filed in the year 2012 and that the Family Court had already granted, by passing an order on 11/01/2013, interim maintenance of Rs.5,000/- per month to the petitioner, which was later on by final order enhanced to Rs.7,000/- per month. The final order of maintenance was passed by the Family Court on 02/04/2016 ,and this order not having been challenged by the respondent has attained finality.

04] The power to grant maintenance under Section 20(1)(d) of the D.V. Act conferred upon the Magistrate is in the nature of monetary relief and is directly related to suffering of the losses by the aggrieved person and any child of the aggrieved person as a result of domestic violence. Therefore, unless it is shown that the aggrieved person and/or her child has suffered such a loss, no order of maintenance can be passed under Section 20(1)(d) of the D.V. Act. In a given case, the aggrieved person has in her hand an order of maintenance granted in her favour under Section 125 of Cr.P.C. or any other law for the time being in force, still,

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maintenance can be granted to the aggrieved person or a child or both by invoking power under Section 20(1)(d) of the D.V. Act. But, in such a case, the order of maintenance to be granted would be in addition to the maintenance already granted to the aggrieved person or a child under the other law and that in order to be entitled to receive such additional maintenance, the aggrieved person or a child would have to establish that subsequent to the order of maintenance passed under the other law, there were fresh circumstances amounting to domestic violence leading to suffering of loss by her or her child. If no such circumstances are pleaded and proved, the power of granting maintenance under Section 20(1)(d) of the D.V. Act cannot be exercised by the Magistrate in such a case. This is also the view taken by the learned single Judge of this Court in the case of Koushik s/o Anil Gharami vs. Sau. Sangeeta Koushik Gharami & ors., reported in 2014 All MR(Cri) 2398, when he observed in paragraph 9 thus :

“It is thus, clear that the monetary relief is available for the children of the aggrieved person if the monetary relief is required to meet the expenses incurred by the aggrieved person as a result of domestic violence. The monetary relief is also permissible in case losses are suffered by the aggrieved person, as a result of the domestic violence. The monetary relief is available to

children of the aggrieved person under Section 20 of the Act. However, the aggrieved person is under obligation to establish that she had to meet the expenses incurred and losses suffered due to domestic violence on the part of the respondent. In the present case, since the learned Magistrate has come to a conclusion that the domestic violence could not be proved and since that finding of the learned Magistrate has not been challenged by the aggrieved person, it follows that no relief could have been given to respondent Nos.2 and 3 also.”

05] In another case, which was the case of B. Prakash vs. Deepa & Anr., reported in 2016 All MR(Cri)168, learned Single Judge of Madras High Court taking the same view, has held that the maintenance which could be granted under Section 20(1)(d) of the D.V. Act is in the nature of mandatory relief and such mandatory relief cannot be granted unless two conditions are fulfilled i.e. sufferance of domestic violence by the aggrieved person at the hands of her husband as contemplated under Section 3 of the D.V. Act and incurring of expenses and/or suffering of losses by the aggrieved person or her child as a result of such domestic violence. The learned Single Judge further held that a previous order for maintenance passed by a Magistrate under Section 125 of Cr.P.C. would not be a bar for a Magistrate acting under Section 20 of the

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D.V. Act to pass yet another order granting monetary relief under Section 20 of the D.V. Act. But, the learned Judge qualified his such view by observing that before an order of maintenance under Section 20 of the D.V. Act is passed, the wife must plead and prove that subsequent to the order made under Section 125 of Cr.P.C., the husband caused the domestic violence and on account of the same, she suffered loss entitling her to receive additional maintenance. The relevant observations of the learned Judge appearing in paragraph 18 are reproduced thus :

“18. If the wife wants to modify an order made under Section 125 of the Code, seeking enhancement of the maintenance amount, the only option available for her is to file a petition under Section 127 of the Code before the same Magistrate, who passed the order. In other words, the order made under Section 125 of the Code can be modified or varied only by the same Magistrate, who passed the earlier order. An order made under Section 125 of the Code for maintenance by one Magistrate cannot be varied or modified by a Magistrate acting under Section 20 of the Act. Therefore, it should be noted that a monetary relief granted towards maintenance under Section 20 of the Act may be not in modification of the previous order for maintenance passed under Section 125 of the Code, but it may be in addition to the said order for maintenance passed under

Section 125 of the Code. If an order has already been made under Section 125 of the Code for maintenance, there can be no doubt that the wife had proved either neglect or refusal on the part of the husband. If the wife wants an order under Section 20 of the Act, in addition to the order under Section 125 of the Code, she has to prove fresh acts of the husband constituting the domestic violence subsequent to the passing of the earlier order under Section 125 of the Code. She cannot rely on the acts of the husband constituting domestic violence, which happened prior to the passing of the order under Section 125 of the Code. For getting an order under Section 20 of the Act, in addition to the earlier order under Section 125 of the Code, the wife should plead and prove that subsequent to the said order made under Section 125 of the Code, the husband had caused domestic violence and on account of the same, she had suffered loss and thus, she is entitled for additional amount as maintenance. Thus, it is manifestly clear that a previous order made under Section 125 of the Code is not a bar for an aggrieved wife to approach a Magistrate under Section 20 of the Act, for monetary relief as an additional relief of maintenance, provided subsequent to the passing of the earlier order under under Section 125 of the Code, the husband has committed domestic violence resulting loss to the wife.”

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06] In the circumstances referred to above, it was necessary for the petitioner to have shown sufficient cause in terms of what has been discussed in the earlier paragraphs as to why she was entitled to receive more maintenance amount in the proceedings initiated under the D.V. Act, in addition to what was already granted to her by the Family Court. In particular, It was necessary for her to bring on record some evidence establishing the change of circumstances warranting grant of further maintenance amount to her by taking recourse to the power of the Court under Section 20 of the D.V. Act.

07] However, it is seen that the petitioner miserably failed to bring on record any such additional circumstances justifying her claim to receive more maintenance amount. The learned Magistrate, while granting the additional maintenance amount, did not take into consideration the relevant facts and applicable principles of law. His order also does not show any reason worth the name as to why it was necessary for him to grant additional maintenance under Section 20 of the D.V. Act. The only reason, if it could be called so, stated by him appears on the face of it, to be queer and has no place in law.

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08] The learned Magistrate has gone on record saying that filing of divorce petition by the respondent against the petitioner after 23 years of marriage itself amounted to domestic violence. The remark is outlandish and, if I may say so, is alien to the known jurisprudential concepts. If this is the way how the applications filed under Section 12 of the D.V. Act are decided, as has been done in the present case by the learned Magistrate, as rightly submitted by the learned Counsel for the respondents, all the provisions of law, be they be from Hindu Code Bill or Family Courts Act or D.V. Act, creating rights and obligations of parties while maintaining a fine balance between the competing interests of both sides, would be rendered nugatory and a party would dither to initiate a proceeding for assertion of his right, for the fear of being labelled as merchant of domestic violence. The learned Magistrate shall do well to avoid making such remarks without giving any thought to rights and obligations of parties under the law.

09] What has not been done by the learned Magistrate, however, has been done by the appellant Court, when it appropriately considered the material available on record and law applicable to it. Therefore, I do not think that the findings recorded by the learned Additional Sessions Judge-3, Nagpur in his order

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dated 16/01/2017, which is impugned in the present petition, would be termed as illegal or perverse or arbitrary. As stated earlier, because the respondent did not place on record any justifiable material entitling her to receive more maintenance amount in addition to what was already granted to her by the Family Court, she could not have been held as entitled to receive the same by the learned Magistrate. This was a manifest illegality committed by the learned Magistrate, which has been cured by the impugned order.

10] There is no merit in this petition. It deserves to be dismissed. The writ petition stands dismissed. Rule is discharged.

(S.B. Shukre, J.)

**sdw*