

IN THE HIGH COURT OF MADHYA PRADESH :
BENCH AT INDORE

S.B.:- Hon'ble Smt. Justice S.R. Waghmare
Cr.R. No.589/2015

Vishal Rathor S/o. Shri Narayan Ji Rathor
vs.
Smt. Rakhi @ Priti Rathor

Shri Amit Panchal, learned Counsel for the applicant.
Shri Romil Malpani, learned Counsel for the respondent.

JUDGMENT

(Delivered on 29/03/2016)

This revision petition has been filed under Section 19(4) of the Family Court Act by the petitioner Vishal Rathor being aggrieved the order dated 29/04/2015 passed in Miscellaneous Criminal Case No.85/2014 by the Principal Judge of the Family Court at Dhar awarding a sum of Rs.8,000/- to the respondent-wife.

02. Briefly stated the facts of the case are that the petitioner Vishal was married to the respondent Rakhi according to the Hindu rites on 23/04/2004 and one son Soumya Rathor was born out of the said wedlock. However, after sometime there was marital discord and it was alleged by the wife that the husband used to beat her and hence she left her matrimonial home. However she was pregnant and on giving birth to a child namely Soumya, she was taken back but she was being physically as well as

mentally tortured and on being pregnant again there was a forced abortion. They did not allow the child Soumya to study and in the month of April 2012 as well as on 15.07.2012 she was pushed out of the matrimonial home. The house was locked and the wife was thrown out. Thereafter she was living in her parental home and hence the wife filed an application under Section 125 of the Cr.P.C. before the trial Court. She claimed that the husband had a kirana shop at Khachrod in the name of Shrikrishna Kirana Bhandar and there was two storeys of pakka house in Khachrod and near Railway colony and Kabadipura there was one house each. The father of the applicant is a moneylender and the husband was a partner in the firm and earned about Rs.40,000/- per month. The wife claimed maintenance of Rs.20,000/- per month. The trial Court, however, on considering the submissions of the petitioner husband in the present case that the wife was not behaving properly with the in-laws and had refused to come home and prayed that the application be dismissed. However, the Judicial Magistrate by order dated 29.08.2012 ordered maintenance of Rs.3,000/- per month to the wife and in retaliation the wife had also filed a complaint through her brother for offence under Section 498-A IPC and Section 31 of the Domestic

violence Act.

03. Counsel for the petitioner in the present case has also alleged that there was lot of manipulation and false cases had been filed against the petitioner husband and he had to seek bail since the offences aforesaid were registered. Similarly the mother and father of the petitioner husband were also involved in the litigation and had to seek bail and it was not possible for the applicant to forgive the respondent wife. Besides he stated that he did not own any such kirana shop and neither he was owner of any immovable property, plot, nor any agricultural field, house etc in his name. Whereas the wife herself was a B.Sc. Graduate and used to give tuitions to students from home.

04. Counsel for the petitioner also argued that the husband did not have any source of livelihood and was not capable of paying any maintenance to the wife. Besides which the Judge of the lower Court in the case for Domestic Violence had awarded Rs.3,000/- be paid to the respondent wife. Moreover the respondent-wife had agreed to give the divorce subsequent to the payment of Rs.3,000/- as maintenance. Whereas in the trial Court; for maintenance under Section 125 of Cr.P.C., it was stated by the wife that she needed Rs.20,000/-;

whereas she was herself working as a Teacher and the register of the School was produced and it was established that she was earning Rs.5,000/- per month and in these circumstances, Counsel submitted that the impugned order directing payment of Rs.8,000/- was unnecessarily harsh under the circumstances. The provisions of law require that the wife should be unable to her livelihood, whereas she was a graduate in Science (B.Sc.) and had the capacity to earn and the sum awarded by the trial Court was unduly inflated and on the higher side and require to be set aside. Counsel prayed that the impugned order be set aside and the appropriate maintenance be awarded to be paid by the husband.

05. Counsel for the respondent-wife per contra has opposed the submissions and submitted that both the remedies under the Domestic Violence Act as well as Section 125 of Cr.P.C. are maintainable simultaneously. An award of maintenance in one is not a bar on the other. He relied on Piyushkant Sharma v. Smt. Pragati Sharma & anor. [2010(I) MPWN 41] whereby the Court had held that under Section 125 of Cr.P.C. any amount of maintenance thought fit that it may be fixed and there is no bar to fix the amount. It may be fixed looking to the social and economic status of parties. Counsel further relied

on Rajesh Kurre Vs. Safurabai and others [2009(1) M.P.H.T. 37 (CG)] whereby the Chhattisgarh High Court held that under Sections 21 & 26 of Cr.P.C., Protection of Women from Domestic Violence Act (43 of 2005), while awarding monetary relief under Section 20 of the Act, 2005, the Court is not required to take into consideration the liability and entitlement for maintenance under Section 125 of the Code, and provisions of the Act are independent and are in addition to any other remedy available to aggrieved and provisions of the Act are not dependent upon Section 125 of the Cr.P.C. Counsel prayed for dismissal of the present petition.

06. On considering the above submissions and considering the impugned order, I find that the petition is bereft of merit since appropriate amount has been awarded considering the earning of the husband. Besides education in modern times is very expensive in these days and the child Soumya has to be looked after. Besides as stated in the matter of Piyushkant Sharma (supra) and Rajesh Kurre (supra) there is no bar for both the proceedings for maintenance awarding monetary relief simultaneously and the provision under Section 125 of the Cr.P.C. and Section 12 of the Domestic Violence Act are exclusive and independent of each

other and hence the petition is dismissed as being bereft of merit.

Cc as per rules.

(Mrs. S.R. Waghmare)
Judge

soumya