

Court No. - 82

Case :- MATTERS UNDER ARTICLE 227 No. - 3046 of 2023

Petitioner :- Naimullah Sheikh And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Khurshed Alam

Counsel for Respondent :- G.A.,Mohd. Warish Khan

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Khurshed Alam, learned counsel for the petitioners, Sri Mohd. Warish Khan, learned counsel for the respondent nos. 2, 3 and 4 and learned AGA for the State.

2. This petition under Article 227 of the Constitution of India has been filed by parents of three daughters who are respondent nos. 2, 3 and 4, challenging the order dated 30.05.2022 passed by the Judicial Magistrate, F.T.C., Court No. 2, Deoria in Case no. 4782 of 2020 (Hina and Others vs. Naimullah and Another) filed under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as '*the DV Act*') and further to challenge the order dated 08.12.2022 passed in Criminal Appeal No. 40 of 2022, by which the order of the trial court was affirmed.

3. The facts relevant for the purpose of this petition are as below:-

(i) *Km. Hina, Km. Tabassum and Km. Tarannum filed a case under section 12 of the DV Act, claiming maintenance with the submissions in brief that their real mother Naseema Khatun died in February 2015 and that their father married another woman during the life time of their deceased mother and that now their father and step-mother have been mistreating, physically assaulting them and have also stopped them from pursuing their education;*

(ii) *The applicants filed an application for grant of interim maintenance. The opposite side gave written objection, in which in essence, it was submitted that the O.Ps has been facing financial difficulties and that his daughters are healthy and have been earning independently and that they have been staying with him also and he has been bearing all their expenses;*

(iii) *The learned trial court heard both the sides and directed the O.Ps to pay Rs. 3,000/- per head, every month as interim maintenance allowance;*

(iv) *Aggrieved by the aforesaid order, O.Ps preferred an appeal in which, besides other averments, it was submitted that his daughters are major, aged about 25 years, 22 years and 20 years respectively and this fact was completely ignored by the trial court, while granting interim maintenance;*

(v) *The appellate court passed a detailed order, dismissing the appeal.*

4. It is submitted on behalf of the petitioners that the learned court below failed to consider the fact that their father is an old and infirm person, having no source of income and that he has already been maintaining the respondents and that the application for grant of maintenance under the Protection of Women from Domestic Violence Act, was filed at the behest of their maternal uncle. Since the death of his wife, his daughters were staying with him and the expenses were being borne by him only and that they are educated and have been earning by taking tuitions. The most important contention from the petitioners is that his daughters are major and therefore they cannot claim any maintenance.

5. The Protection of Women from Domestic Violence Act, 2005 has been enacted with an object to provide for 'more effective protection to women', guaranteed under the Constitution, who are the victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The use of the word 'more' before the phrase 'effective protection of rights of woman' is not an insignificant addition. The matter shall be further elaborated at appropriate places in the judgment.

6. Under the aforesaid Act of 2005, any aggrieved person may apply to the Magistrate for seeking one or more relief under the Act. Broadly the reliefs available under the Act are titled as "Right to reside in a shared household under section 17, Protection orders under section 18, Residence orders under section 19, Monetary reliefs under section 20, Custody orders under section 21 and Compensation orders under section 22."

Section 20 under which monetary relief may be granted to an aggrieved person has been worded as below:-

(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 is 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 (2 of 1974) 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.”

7. Perusal of the above provision demonstrates that any aggrieved person including any child of the aggrieved person, who has been subjected to domestic violence, may claim monetary relief to meet the expenses incurred and losses suffered as a result of domestic violence and also monetary relief for such incidental matters like monetary relief for loss of earnings, medical expenses, loss of any property and also for maintenance. This provision of law further provides that such reliefs of monetary nature can also be claimed which do not fall under the categories enumerated above as the provisions clearly lay down that reliefs need not be limited to reliefs as described under section 20(1), 20(1)(a), 20(1)(b), 20(1)(c) and 20(1)(d). Section 20(1)(d) of the DV Act further expands the scope of monetary relief for maintenance. For better understanding I am reproducing section 20(1)(d) again as below:-

“(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 (2 of 1974) or any other law for the time being in force.”

This part of the provision of law says that not only the aggrieved persons but also her children, if any, may claim maintenance ‘**under**’ and ‘**in addition**’ to order of maintenance under section 125 Cr.P.C. And further that the maintenance can be claimed under or in addition to any other law for the time being in force. The way provision has been worded, gives a clear indication that section 12 of the DV Act is essentially a procedural law, which can be resorted to by any aggrieved person, who draws a substantive right for maintenance from any other law, whether under section 125 Cr.P.C. or personal law applicable to the parties or any other law for the time being in force. Thus law is quite clear to the extent that maintenance can be claimed under any law which provides for the same. Further that even if maintenance has already been granted under one law, the aggrieved person can ask for monetary relief for maintenance under any other law in addition, under the provisions of the DV Act. Thus this law seeks to avoid multiplicity of proceedings. Now a question may arise that when rights have been provided for elsewhere, why such enactment was needed at all? In my opinion the legislature has, keeping up with the objective of this enactment, has cut down the procedural formalities and facilitated grant of quicker reliefs.

Section 20(2) of the DV Act says that the monetary relief granted under this section shall be adequate, fair, reasonable and consistent with the standard of living to which the aggrieved person is accustomed. The scope for grant of particular kind of monetary relief that is “maintenance” is further widened in section 20(3) of the DV Act which says that an appropriate lump-sum may be ordered to be paid as maintenance in the nature of circumstances of a particular case. **In my opinion, if the**

provisions of section 20(1)(d) of the DV Act are interpreted in harmony with rights given to an aggrieved person under any other law, it appears that the substantive right to receive maintenance may emanate from other laws, however quick and shorter procedure to obtain the same, has been provided in the the DV Act, 2005. The rights which the parties may have under other laws whether civil or criminal, have been given a cutting edge by the Act. In my view, this explains the use of words “more effective protection to women” in the foreword which described the reasons behind this enactment.

8. Having said that, now I come to some other provisions in the DV Act which strengthen and fortify the above view regarding giving more effective protection to women. Section 2(a) of the DV Act defines “aggrieved person” as any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The woman who has been in domestic relationship with the respondent and who has been subjected to any domestic violence, is entitled for relief under the Act, irrespective of her minority or majority. The rights of an aggrieved person flow from the fact that she has been subjected to violence which may be of physical, mental, sexual, verbal and emotional nature and may even in the nature of the economic abuse. The other essential requirement is that the aggrieved person has been living in a shared household or had, at any point of time lived together in a shared household with the respondent, who is related to her by marriage, adoption, consanguinity or living together, in a joint family as a family member.

9. Now an important question is whether an independent substantive right for monetary relief flows from section 20 of the DV Act or whether section 20 read with section 12 of the DV Act, 2005 merely provides for procedure and no more?

10. I examined the provisions as given under section 20 of the DV Act. Section 20(1) of the DV Act (first part) speaks of expenses incurred and losses suffered consequent upon domestic violence. From reading this part, this impression gains ground that irrespective of other factors like dependency, age or marital status etc (which may be relevant in or under any other law) the aggrieved person has an independent right to obtain monetary relief for expenses incurred and losses suffered because of domestic violence. In my view principles of law of torts have found a statutory recognition here. All monetary reliefs under section 20 of the DV Act are in the nature of expenses or losses suffered as a result of domestic violence. However, the grant of maintenance forms altogether a different branch of law though domestic violence remains the triggering factor here as well. The law as regard grant of maintenance even, if it is to be granted under the DV Act has to be seen in a different perspective.

11. With the above perspective in mind, lets go through some of the judgments of the Supreme Court and the High Court as below:-

In *Noor Saba Khatoon vs. Mohd. Quasim; (1997) 6 SCC 233*, before the Supreme Court, a Muslim woman claimed maintenance from her

husband for herself and her three minor children under section 125 Cr.P.C. The trial court allowed the application and directed the OP (her husband) to pay maintenance to his wife as well as his children till attaining the age of majority. The respondent divorced her wife and thereafter filed an application seeking modification of the order dated 19.01.1993 in view of the provisions of the Muslim Women (protection of Rights on Divorce) Act, 1986 (hereinafter referred to as '*the Act of 1986*'). The trial court modified the order on the ground that after divorce, she was entitled for maintenance for 3 months only i.e. period of '*iddat*', as per the provisions of the aforesaid Act of 1986, while maintaining the maintenance order for children. The respondent thereupon filed a petition before the High Court and the High Court, accepting his plea held that the Muslim woman was entitled to claim maintenance from her previous husband, for her minor children only up to the period of 2 years. However the Supreme Court held that the children of Muslim parents have an independent right to claim maintenance under section 125 Cr.P.C. and that the right cannot be allowed to be defeated except through clear provisions of a statutes. The Muslim father's obligation, like a Hindu father to maintain his minor children, as contained in section 125 Cr.P.C. is absolute and is not at all affected by section 3(1)(b) of the Act of 1986.

In para no. 10, it was held as below:-

“10. Thus, both under the personal law and the statutory law (Sec. 125 Cr. P. C.) the obligation of a muslim father, having sufficient means, to maintain his minor children, unable to maintain themselves, till they attain majority and in case of females till they get married, is absolute, notwithstanding the fact that the minor children are living with the divorced wife.”

In **Jagdish Jugtawat vs. Manju Lata and Others; (2002) 5 SCC 422**, the Supreme Court applied the law laid down in *Noor Saba Khatoon vs. Mohd. Quasim (supra)* and drawing force from the aforesaid judgments held that the right of a minor girl to obtain maintenance from the appellants even after attaining majority till her marriage, is recognized in Section 20(3) in the Hindu Adoptions and Maintenance Act, 1956 and therefore the order for granting maintenance was right.

The relevant portion is as below:-

*“3. In view of the finding recorded and the observations made by the learned Single Judge of the High Court, the only question that arises for consideration is whether the order calls for interference. A similar question came up for consideration by this Court in the case of *Noor Saba Khatoon v. Mohd. Quasim*, AIR 1997 SC 3280 : 1997 (6) SCC 233 : 1997 SCC (Cri) 924 relating to the claim of a Muslim divorced woman for maintenance from her husband for herself and her minor children. This Court while accepting the position that Section 125, CrPC does not fix liability of parents to maintain children beyond attainment of majority, read the said provision and Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act together and held that under the latter statutory provision liability of providing maintenance extends beyond attainment of majority of a dependent girl.*

4. Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a minor girl for maintenance

from parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125 CrPC and Section 20(3) of the Hindu Adoptions and Maintenance Act. For the reasons aforesaid we are of the view that on facts and in the circumstances of the case no interference with the impugned judgment/order of the High Court is called for.”

The High Court of Andhra Pradesh in *Menti Trinadha Venkata Ramana vs. Menti Lakshmi and Others*; 2021 SCC Online AP 2860, observed in para nos. 4 and 5 as below:-

“4. While dealing with a similar issue in Jagdish Jugtawat v. Manju Lata and others¹, a three Judge Bench of the Hon'ble Apex Court held though a girl, on attaining majority, may not be entitled to maintenance from her parents under Section 125 of Cr.P.C., such right can be traced to Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956 (for short, 'the Act of 1956') and on a combined reading of the two provisions, the Family Court is entitled to grant maintenance to an un-married daughter even after attaining majority, provided she is unable to maintain herself. However, the aforesaid observations in Jagdish Jugtawat (supra) were recently clarified by another three Judge Bench of the Hon'ble Apex Court in Abhilasha v. Parkash and others², wherein the Bench inter alia observed though a Family Court is entitled to grant maintenance to a major un-married girl by combining the liabilities under Section 125 Cr.P.C. and Section 20(3) of the Act of 1956, a Magistrate exercising powers under Section 125 of Cr.P.C. is not authorized to do so.

5. However, it may be apposite to note that the Magistrate is entitled to entertain an application under the Protection of Women from Domestic Violence Act, 2005 (for short, 'the DV Act') and grant monetary relief i.e., to meet the expenses incurred and losses suffered by an aggrieved person under Section 20 of the DV Act, in the event of domestic violence by way of economic abuse is established. A conjoint reading of Section 2(a) and 2(f) of the DV Act would show that a daughter, who is or was living with her father in a domestic relationship by way of consanguinity, is entitled to seek reliefs including monetary relief on her own right as an aggrieved person under Section 2(a) of the DV Act irrespective of the fact whether she is a minor or major. In the present case, the relationship between the parties as father and daughter is admitted and they had stayed together in a shared household. In view of the fact that the petitioner neglected to maintain the 1st respondent-wife and 2nd respondent-daughter, proceedings under section 125 Cr.P.C. came to be instituted and maintenance was awarded to respondents including to the 2nd respondent. As the award was not paid, the learned Magistrate issued the impugned order, dated 14.03.2012, directing recovery of maintenance to the tune of Rs. 22,000/- for a period of 11 months from 17.12.2009 to 16.11.2010. In the aforesaid facts, the order of learned Magistrate may be traced to his powers to grant monetary relief under the DV Act and by a combined reading of the provisions of Section 125 of Cr.P.C. and Section 20 of the DV Act, the said order cannot be said to be illegal on the mere ground that the 2nd respondent had become a major. I am further fortified to arrive at such finding as the relief under the DV Act can be granted in addition to other reliefs available to the aggrieved person as envisaged under Section 26(2) of the DV Act.”

The Allahabad High Court in *Mustakim vs. State of U.P. and Another*; 2015 (3) ADJ 693, has observed in para nos. 10, 11 and 12 as below:-

“10. Now a look at the judgment of this Court in the case of Amod Kumar Srivastava v. State of U.P. and others, 2008 (62) ACC 591. This judgment takes a view that upon attaining majority an illegitimate/legitimate child including an unmarried daughter, is not entitled to claim maintenance, but it does not take into consideration the judgments of the Apex Court in the cases of Noor Saba Khatoon and Jagdish Jugtawat (both supra), wherein it has been held that notwithstanding the ineligibility of a major unmarried daughter to claim maintenance under Section 125 Cr.P.C, yet an order granting maintenance to such a daughter is not liable to be interfered with a view to avoid multiplicity of proceedings provided she has a right to claim maintenance from her father under the personal law.

11. The Apex Court in the case of Noor Saba Khatoon (supra), after examining the personal law of muslims, has already held that a muslim father is liable to maintain his major daughter till such time she is not married. It is not disputed that O.P. No.2 is major and that she is not yet married.

12. It is held that notwithstanding the ineligibility of a muslim major unmarried daughter to claim maintenance under Section 125 Cr.P.C, yet an order granting maintenance to her is not liable to be interfered, with a view to avoid the multiplicity of proceedings, as such a daughter, who is unable to maintain herself can claim maintenance from her father under the personal law.”

The Supreme Court in ***Ajay Kumar vs. Lata @ Sharuti & Others; 2019 0 Supreme (SC) 612***, in the light of the provisions of section 12 and section 20(1) of the DV Act held that the monetary relief may include but is not limited to an order of maintenance of the aggrieved persons as well as his children, if any, including an order under or in addition to order of maintenance under section 125 Cr.P.C. or any other law for the time being in force. The Supreme Court thereafter alluded to the definition of ‘respondent’ as given in section 2(q) of the DV Act, definition of ‘domestic relationship’ as given in section 2(f) of the DV Act and definition of ‘shared household’ as given in section 2(s) of the DV Act and went on to observe in para no. 15 as below:-

“15. All these definitions indicate the width and amplitude of the intent of Parliament in creating both an obligation and a remedy in the terms of the enactment.”

12. In my opinion, in the above words, the Supreme Court has recognized that the scope of DV Act, 2005 is quite wide. The statement of object and reasons which finds place at the top of any particular enactment may be of utility while interpreting the provisions of law. The objective of enacting this Act has been worded as below:-

“An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matter connected therewith or incidental thereto.”

13. In my view the legislature, while enacting this Act had this realisation in mind that though existing provision of law provide for rights of maintenance to eligible persons, however the procedural delays defeat the very purpose. The enactment seeks to grant a quicker relief where the aggrieved woman has been subjected to domestic violence and was in a domestic relationship with the respondent. This explains the use of words “more effective protection to women”, hence it is being held that where a sufferer has a right to obtain maintenance as provided in criminal law or

in civil law or personal law and that she has been subjected to domestic violence from a person who stood in domestic relationship, she may resort to quicker method of obtaining reliefs under section 12 of the Protection of Women from Domestic Violence Act, 2005.

14. From perusal of the judgments as have been referred to earlier, there remains no doubt that unmarried daughter, whether Hindu or Muslim has a right to obtain maintenance, irrespective of her age. This is made clear again that the courts have to look for other laws applicable when the question pertains to right to be maintained. However, where issue does not pertain to mere maintenance, the independent rights are available to an aggrieved under section 20 of the DV Act itself.

15. Hence, I do not find any good ground to interfere in the impugned orders in exercise of powers under Article 227 of the Constitution of India, therefore, this revision is **dismissed**.

16. Let a copy of the order be immediately transmitted to the court concerned.

Order Date :- 10.01.2024

#Vikram/-