



PWDVA No. 19/2017
Shubhangi / Shivanand

ORDER BELOW EXH.4
(Passed on 21.08.2020)

- 1] The applicant has filed present application seeking interim relief of maintenance during the pendency of present proceeding.
- 2] It is contended by the applicant that she is legally wedded wife of the non applicant. The non applicant did not take her for co-habitation from last since 20 years and also did not make any attempt for co-habitation. On the contrary the non applicant has performed second marriage and residing separately. The applicant fulfills her needs by using maintenance amount. But the non applicant did not deposit the maintenance amount regularly. The non applicant is educated and has a good job. The non applicant is not providing the facilities to her as per his standard of living.
- 3] The maintenance of Rs.4,000/- which is granted by civil court is not sufficient to fulfill her essential needs. The salary of the non applicant is increased. The applicant has filed one civil suit for enhancement in the maintenance. She has also filed R.D. No. 1/2016 which is pending before the court. But the non applicant did not deposit the maintenance amount from last one year. The applicant is unable to maintain herself. The non applicant intentionally did not deposit the maintenance amount in order to harass her. Therefore, she prayed for interim relief of maintenance during the pendency of main application (Exh.1).
- 4] The non applicant has filed his reply cum say at Exh. 10

and thereby denied all the allegations in respect of domestic violence and entitlement of applicant to get interim relief of maintenance. He admitted the relationship with the applicant. He also admitted that he has performed second marriage. He further admitted that he is in service. Except that he denied all other contention of the applicant. According to him the applicant herself left the house of the non applicant in the year 1997-98. Now she is residing at her parental house at Naigaon. The applicant has lodged complaint against him under the section 498 (A) of the Indian Penal Code, in which he was acquitted by the court. It is his further contention that whatever the maintenance amount is granted to the applicant by the civil court and maintenance amount is granted under section 125 of the Code of Criminal Procedure is sufficient to her.

5] On the contrary the applicant takes coaching class and earns Rs. 5000/- per month. The applicant also runs floor-mill and get the income. Her father is also in service. Therefore, she is having sufficient income to maintain herself. The civil court at the time of passing the order of maintenance of Rs.4000/- considered all the fact of the income and needs of the applicant. Therefore, the said maintenance amount is sufficient to her. He was trying to take back the applicant for co- habitation but the applicant denied. The applicant has been residing separately at Naigaon from the non applicant since 20 to 22 years. Therefore, she has no any right to claim the reliefs under the said Act. Hence, he prayed to reject the application.

6] Perused the application, say and record. Heard Ld. counsel for the applicant and non applicant.

7] It is not disputed that the applicant is legally wedded wife of non applicant and marital tie between them is still in subsistence. At this stage, the only question before this court to decide whether the

applicant is entitled to get interim relief of maintenance as prayed. The non applicant himself admitted that he has performed second marriage. Therefore, the said fact is sufficient to prima facie consider that the non applicant has committed domestic violence against the applicant by performing second marriage. Though according to the non applicant he has not committed any domestic violence as alleged by the applicant, but it is a matter to be decided on merits after recording evidence of both parties. As per the contention of the applicant, non applicant is in service and he gets handsome salary. It is admitted that the civil court has granted maintenance of Rs. 4000/- per month to the applicant. It is also admitted that the amount of Rs.1100/- is granted to the applicant in the proceeding under section 125 of the Code of Criminal Procedure.

8] Section 20 (1) (d) of the D.V. Act makes it clear that the maintenance which can be granted under the said Act, can be in addition to an order of maintenance under section 125 of the Code of Criminal Procedure and or any other law for the time being in force. Whereas, sub section (3) of section 26 of the said Act enjoins the duty on the aggrieved person to inform the magistrate, if she has obtained any relief available under section 18, 19, 20, 21 and 22 in any other legal proceeding filed by her before the civil court, family court or criminal. It is discernible that the object behind incorporating the aforesaid specific provision is that while granting any of the reliefs sought under section 18, 19, 20, 21 and 22 of the D.V. Act, the magistrate shall take into account and consider, if any similar relief is already obtained by the aggrieved person.

9] The purpose underlying the said provision is explicit that the magistrate must be in a position to take reasonable decision while awarding the maintenance, if any under the provision of the D.V. Act.

It is thus evident that though the proceeding under the D.V. Act may be an independent proceeding, the magistrate can not ignore the maintenance awarded if any, in any other legal proceeding before the civil court or criminal court and has to take into account the maintenance already awarded, if any while taking a decision whether in addition to maintenance already awarded any more amount is required to be awarded.

10] It is the contention of the applicant that the salary of the non applicant is increased. But the applicant did not place on record any document to show the increased salary of the non applicant. It is also contention of the applicant that the non applicant did not deposit maintenance amount regularly. But she herself stated that she has filed recovery proceedings against non applicant. Therefore, she has remedy in that proceeding for non depositing maintenance amount. Considering the above discussion, I am of the view that the maintenance amount of Rs. 4000/- which is granted by the civil court and the maintenance amount of Rs.1100/- which is granted under section 125 of the Cr.P.C. is sufficient for survival of the applicant. Therefore, there is no need to grant additional interim maintenance to the applicant.

11] In view of the above discussion, the application liable to be rejected. In the result, I pass the following order :

O R D E R

- 1) The application (Exh.4) is rejected.
- 2) Copy of the order be provided to the parties free of cost.

Date : 21/08/2020
Naigaon Bz.

(Smt R.B.Sorekar)
Jt. Judicial Magistrate First Class,
Naigaon Bz.