

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1613 OF 2019
(ARISING OUT OF SLP(CRL.) NO.6997 OF 2015)

P. RAJKUMAR & ANR.

APPELLANT(S)

VERSUS

YOGA @ YOGALAKSHMI

RESPONDENT(S)

O R D E R

Leave granted.

The appellants assail order dated 06.03.2015 passed by the High Court dismissing the criminal revision, declining to interfere with the order dated 20.01.2015 affirming order dated 28.09.2012 for grant of Rs.10,000/- as maintenance to the respondent in proceedings under section 20 of the Protection of Women from Domestic Violence Act, 2005 (for short, the 'Act').

Learned counsel for the appellants makes a short submission that the claim for maintenance under section 20 of the Act was specifically negatived by the judicial magistrate. The learned Magistrate therefore could not have simultaneously ordered for maintenance in a pending proceeding under section 125 of Code of Criminal Procedure (for short, the 'Cr.P.C.') over which he had no jurisdiction. It was lastly submitted that the respondent has since remarried.

Learned counsel for the respondent invited our attention to the interim order dated 12.10.2018 for payment of all arrears of maintenance. He however did not dispute the fact that the respondent has since remarried on 10.02.2019.

We are of the considered opinion that the present appeal can be disposed of on a very short point. Admittedly, the respondent was denied any monetary compensation under section 20 of the Act by the learned Magistrate.

Once the learned Magistrate declined to grant maintenance for reasons specified, it was not open for him to assume jurisdiction in a proceeding under section 125 of the Cr.P.C. which was not pending before him and was a completely independent proceeding to direct grant of maintenance under the same. The two being independent proceedings, the learned Magistrate wrongly assumed jurisdiction under Section 125 Cr.P.C in a proceeding under the Act. In effect, what the magistrate directly declined to the respondent, he granted indirectly by observing that till the proceedings under section 125 of Cr.P.C. is not decided, the appellants shall pay maintenance at a rate of Rs.2,000/- per month to the respondent. The order is without jurisdiction and therefore wholly unjustified and unsustainable. The respondent never challenged the order of the learned Magistrate declining monetary relief under section 20 of

the Act.

The parties are however agreed that the amount of maintenance which has already been paid under the impugned orders shall not be recovered and also that any amount lying in deposit in the family court may be withdrawn by the respondent.

The impugned orders, with the aforesaid exception, are set aside. The appeal is allowed.

.....J
[NAVIN SINHA]

.....J
[B.R. GAVAI]

NEW DELHI;
OCTOBER 23, 2019.

Petition(s) for Special Leave to Appeal (Crl.) No(s). 6997/2015

(Arising out of impugned final judgment and order dated 06-03-2015 in CRLRC No. 179/2015 passed by the High Court Of Judicature At Madras)

P. RAJKUMAR & ANR. **Petitioner(s)**
VERSUS

YOGA @ YOGALAKSHMI **Respondent(s)**

Date : 23-10-2019 This petition was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE B.R. GAVAI**

For Petitioner(s) Mr. B. Karunakaran, Adv.
Mr. S. Gowthaman, AOR

For Respondent(s) Mr. Mayil Samy. K., Adv.
Mr. G. Ananda Selvam, Adv.
Ms. Kavita Bharadwaj, Adv.
Mr. P. Soma Sundaram, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

Leave granted.

The appeal is allowed in terms of the signed order.

Pending interlocutory applications, if any, stand disposed of.

(SANJAY KUMAR-II) **(DIPTI KHURANA)**
COURT MASTER (SH) **COURT MASTER (NSH)**
(Signed Order is placed on the file)