

S. Vijikumari
v.
Mowneshwarachari C

(Criminal Appeal No. 3989 of 2024)

10 September 2024

[B.V. Nagarathna* and Nongmeikapam Kotiswar Singh, JJ.]

Issue for Consideration

Respondent sought refund of the entire maintenance amount which was paid to the appellant (wife of respondent).

Headnotes[†]

Protection of Woman from Domestic Violence Act, 2005 – s.25 – Respondent filed an application u/s. 25 of the Act and sought setting aside of order dated 23.02.2015 by which his appellant-wife was granted Rs.12,000/- per month as maintenance and Rs.1,00,000/- towards compensation – Respondent also sought return of the maintenance amount paid on the ground of fraud:

Held: The Magistrate while exercising his discretion under Section 25(2) of the Act has to be satisfied that a change in the circumstances has occurred, requiring to pass an order of alteration, modification or revocation – The Magistrate has to adjudge the change in the circumstances based on the material put forth by the parties in a case and having regard to the circumstances of the said case – In the instant case, the order dated 23.02.2015 has attained finality – Therefore, there cannot be a setting aside of the order dated 23.02.2015 for the period prior to such an application for revocation being made – The second prayer (for refund of the entire amount of maintenance) was not at all maintainable inasmuch as that any alteration, modification or revocation of an order passed under Section 12 of the Act owing to a change in circumstances could only be for a period *ex post facto*, i.e., post the period of an order being made in a petition under Section 12 of the Act and not to a period prior thereto – Thus, such an application for alteration, modification or revocation filed under sub-section (2) of Section 25 of the Act cannot relate to any

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period prior to the order being passed, inter alia, under Section 12 of the Act – Therefore, the prayers sought by the respondent were not maintainable under sub-section (2) of section 25 of the Act. [Paras 13, 17, 18]

Protection of Woman from Domestic Violence Act, 2005 – Applicability of:

Held: The Act is a piece of Civil Code which is applicable to every woman in India irrespective of her religious affiliation and/or social background for a more effective protection of her rights guaranteed under the Constitution and in order to protect women victims of domestic violence occurring in a domestic relationship. [Para 11]

Case Law Cited

Alexander Sambath Abner vs. Miron Lede, 2009 SCC OnLine Mad 2851 – referred to.

List of Acts

Protection of Woman from Domestic Violence Act, 2005; Code of Criminal Procedure, 1898; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Women victims; Domestic Violence; Section 25 of Protection of Woman from Domestic Violence Act, 2005; Section 12 of Protection of Woman from Domestic Violence Act, 2005; Alteration; Modification; Revocation; Change in circumstance; Refund of amount of maintenance.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 3989 of 2024

From the Judgment and Order dated 06.04.2023 of the High Court of Karnataka at Bengaluru in CRLRP No.674 of 2022

Appearances for Parties

Ms. Sruti Chaganti, Shekhar Badiger, N. Sai Vinod, Advs. for the Appellant.

Ms. Harsha Tripathi, Balaji Srinivasan, Advs. for the Respondent.

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Leave granted.

2. Being aggrieved by the order dated 06.04.2023 passed in Criminal Revision Petition No.674/2022 by the High Court of Karnataka at Bengaluru, the appellant who is the wife of the respondent has preferred this appeal.
3. Briefly stated, the facts are that the appellant-wife had filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the Act”). The said petition, i.e., Criminal Miscellaneous No.6/2014 was allowed by the learned Magistrate by order dated 23.02.2015, granting Rs.12,000/- (Rupees Twelve Thousand only) per month as maintenance and Rs.1,00,000/- (Rupees One Lakh only) towards compensation. At this stage itself, it may be mentioned that the respondent-husband did not let in any evidence in the said proceeding. Being aggrieved by the order of the learned Magistrate, the respondent filed an appeal under Section 29 of the Act which was dismissed by the Appellate Court on the ground of delay. The aforesaid orders attained finality as they were not assailed by the respondent herein.
4. Thereafter, the respondent filed an application under Section 25 of the Act before the learned Magistrate. The said application was dismissed. Being aggrieved, the respondent filed Criminal Appeal No.757/2020 under Section 29 of the Act before the Appellate Court. The said appeal was allowed and the matter was remanded to the learned Magistrate with a direction to consider the application filed by the respondent under Section 25 of the Act, by giving an opportunity to both the parties to adduce their evidence and to dispose of the same in accordance with law.
5. Being aggrieved by the said order, the appellant herein filed Criminal Revision Petition No.674/2022 before the High Court, which, by the impugned order dated 06.04.2023 dismissed the same with a direction to the learned Magistrate to consider the application filed by the respondent under Section 25 of the Act, without being influenced by any observation made by the Appellate Court while disposing of Criminal Appeal No.757/2020.

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Being aggrieved by the aforesaid orders, the appellant-wife has filed this appeal.

6. We have heard learned counsel for the respective parties at length.
7. Learned counsel for the appellant, during the course of her submissions, drew our attention to the prayers sought for by the respondent in the application filed under Section 25 of the Act, in light of sub-section (2) of the said Section. She submitted that the application filed under the said provision could be by an aggrieved person seeking alteration, modification or revocation of any order made under the Act and for reasons to be recorded in writing, the learned Magistrate can pass such an order appropriate to the facts of the case. But in the instant case, the respondent is seeking setting aside of the order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014 and with an additional prayer for seeking return of the entire amount of maintenance paid by the respondent to the appellant on the ground of fraud. Learned counsel for the appellant submitted that such prayers are not maintainable. She contended that the aforesaid application is not for alteration, modification or revocation of an order made under the Act; it is in substance for setting aside of the order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014; that such an application is not maintainable at all.
8. Learned counsel further submitted that the High Court as well as the Appellate Court were not right in remanding the matter to the learned Magistrate to consider the application filed by the respondent herein under sub-section (2) of Section 25 of the Act. She therefore submitted that the impugned orders may be set aside and the application filed by the respondent may be dismissed and consequently, the earlier order passed on 23.02.2015 in Criminal Miscellaneous No.6/2014 may be given effect to while sustaining the order dated 04.03.2020, by which the application under Section 25 of the Act was dismissed.
9. Per contra, learned counsel for the respondent submitted that the reason as to why the application under Section 25 of the Act was filed was owing to the fact that the appellant herein had misrepresented the fact that she was in need of maintenance whereas she is an employed person and not at all in need of maintenance. The fact that she had said that she was unemployed goes to the root of the matter and hence, despite the order of the learned Magistrate awarding Rs.12,000/- (Rupees Twelve Thousand Only) per month as maintenance having attained finality, an application under Section

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25 of the Act was filed seeking revocation of the said order and the Appellate Court as well as the High Court were justified in directing the learned Magistrate to consider the said application.

10. We have considered the arguments advanced at the Bar in light of the facts of this case and Section 25 of the Act. For immediate reference, Section 25 of the Act is extracted as under:

“25. Duration and alteration of orders

- (1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.
- (2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.”

On a reading of the same, it is evident that an aggrieved person or a respondent as defined under the Act can seek for alteration, modification or revocation of an order made under the provisions of the Act if there is a change in the circumstances as per sub-section (2) of Section 25 of the Act. This would indicate that after an order has been made, *inter alia*, under Section 12 of the Act, such as in the instant case granting Rs.12,000/- as maintenance per month, if there is any change in the circumstance, the same could be a ground for seeking alteration, modification or revocation of such an order. Such circumstances could be illustratively stated in the context of the present case as the wife on divorce having been given an alimony or the wife earning an amount higher than the respondent-husband and, therefore, not in need of maintenance or such other circumstances. The said change in the circumstance must occur only after an initial order is made under Section 12 of the Act and cannot relate to a period prior to the passing of an order under Section 12 of the Act.

11. The Act is a piece of Civil Code which is applicable to every woman in India irrespective of her religious affiliation and/or social background for a more effective protection of her rights guaranteed under the Constitution and in order to protect women victims of domestic violence occurring in a domestic relationship.

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12. Section 25(2) of the Act contemplates an eventuality where an order passed under the Act can be altered, modified or revoked. Section 25(2) of the Act provides that the aggrieved person or the respondent, as defined under the Act, may approach the Magistrate by filing an application for alteration, modification or revocation of “any order” made under the Act. Thus, the scope of Section 25(2) of the Act is broad enough to deal with all nature of orders passed under the Act, which may include orders of maintenance, residence, protection, etc. If any such application is filed before the Magistrate by any of the two parties, i.e., the aggrieved person or the respondent, then the Magistrate may, for reasons to be recorded in writing, pass an order as he may deem appropriate. Thus, an order passed under the Act remains in force till the time that order is either set aside in an appeal under Section 29 of the Act, or altered/modified/revoked in terms of Section 25(2) of the Act by the Magistrate.
13. However, the Magistrate while exercising his discretion under Section 25(2) of the Act has to be satisfied that a change in the circumstances has occurred, requiring to pass an order of alteration, modification or revocation. The phrase “a change in the circumstances” has not been defined under the Act. The said phrase was present under Section 489 of the now repealed Code of Criminal Procedure, 1898, as well as under Section 127(1) of the Code of Criminal Procedure, 1973 (CrPC, 1973), now repealed, as is also found under Section 146(1) of the present Bharatiya Nagarik Suraksha Sanhita, 2023 (BNNS, 2023), but the legislature (Parliament) has intentionally not provided a definition for the same in the repealed Codes or the present Sanhita. Thus, the Magistrate has to adjudge the change in the circumstances based on the material put forth by the parties in a case and having regard to the circumstances of the said case. A change in the circumstances under the Act may be of either a pecuniary nature, such as a change in the income of the respondent or an aggrieved person or it could be a change in other circumstances of the party paying or receiving the allowance, which would justify an increase or decrease of the maintenance amount ordered by the Magistrate to pay or any other necessary change in the relief granted by the Magistrate including a revocation of the earlier order. The phrasing of the provision is wide enough to cover factors like the cost of living, income of the parties, etc. Further, a change in the circumstances need not just be of the respondent but

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also of the aggrieved person. For example, a change in the financial circumstances of the husband may be a vital criterion for alteration of maintenance but may also include other circumstantial changes in the husband or wife's life which may have taken place since the time maintenance was first ordered.

14. However, for the invocation of Section 25(2) of the Act, there must be a change in the circumstances after the order being passed under the Act. ***Alexander Sambath Abner vs. Miron Lede, 2009 SCC OnLine Mad 2851*** is also to the same effect. Thus, an order for alteration, modification or revocation operates prospectively and not retrospectively. Though the order for grant of a maintenance is effective retrospectively from the date of the application or as ordered by the Magistrate, the position is different with regard to an application for alteration in an allowance, which may incidentally be either an increase or a reduction – to take effect from a date on which the order of alteration is made or any other date such as from the date on which an application for alteration, modification or revocation was made depending on the facts of each case.
15. The position is analogous to Sections 125 and 127 of the CrPC, 1973, wherein the legislature under Section 125(2) of the CrPC, 1973 had given power to the Magistrate to grant maintenance from the date of the application, but did not give any such power under Section 127 of the CrPC, 1973. Therefore, under the Act, the order of alteration or modification or revocation could operate from the date of the said application being filed or as ordered by the Magistrate under Section 25(2) of the Act. Thus, the applicant cannot seek its retrospective applicability, so as to seek a refund of the amount already paid as per the original order.
16. The respondent herein has however sought the following prayers in the application filed under Section 25 of the Act, which read as under:

“WHEREFORE, the petitioner respectfully prays that this Hon'ble Court may be pleased to pass the following orders:

 - a) Set aside the order dated 23-02-2015 passed in Crl. Mis. 6/2014,
 - b) In pursuant of that direct the respondent to pay back the entire amount received by her by playing fraud on the court and on petitioner.

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- c) Direct the respondent to pay the cost of this litigation,
- d) Grant such other relief or reliefs on this Hon'ble Court deem fit and proper in the circumstances of the case to meet the ends of justice."

What the respondent is seeking is in fact a setting aside of the order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014 and return of the amount paid by him to the appellant herein in terms of the said order by way of a restitution of the *status quo ante*.

17. Learned counsel for the appellant rightly contended that the said order has in fact merged with the Appellate Court's order in the appeal filed by the respondent which was dismissed on the ground of delay and there being no further challenge to the said order. In fact, the order dated 23.02.2015 has attained finality. Therefore, there cannot be a setting aside of the order dated 23.02.2015 for the period prior to such an application for revocation being made. Unless there is a change in the circumstance requiring alteration, modification or revocation of the earlier order owing to a change occurring subsequent to the order being passed, the application is not maintainable. Thus, the exercise of jurisdiction under sub-section (2) of Section 25 of the Act cannot be for setting aside of an earlier order merely because the respondent seeks setting aside of that order, particularly when the said order has attained finality by its merger with an appellate order as in the instant case unless a case for its revocation is made out. Secondly, the prayers sought for by the respondent herein are for refund of the entire amount of maintenance that was paid prior to the application under sub-section (2) of Section 25 of the Act being filed and the order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014 being in fact revoked. The revocation of an order, *inter alia*, under Section 12 of the Act sought by a party cannot relate to a period prior to such an order being passed. We find that in the instant case the second prayer was not at all maintainable inasmuch as we have already observed that any alteration, modification or revocation of an order passed under Section 12 of the Act owing to a change in circumstances could only be for a period *ex post facto*, i.e., post the period of an order being made in a petition under Section 12 of the Act and not to a period prior thereto. Thus, such an application for alteration, modification or revocation filed under sub-section (2) of Section 25 of the Act cannot relate to any period prior to the order being passed, *inter alia*, under Section 12 of the Act.

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18. In the circumstances, we find that the prayers sought for by the respondent herein were not at all maintainable under sub-section (2) of Section 25 of the Act as they related to the period prior to 23.02.2015 when the original order was passed. In fact, the prayers sought for by the respondent are totally contrary to the spirit of sub-section (2) of Section 25 of the Act. While making such a prayer, the respondent could not have sought in substance for setting aside of the original order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014 and seeking refund of the maintenance amount which was paid to the appellant pursuant to the said order. The respondent could not have also sought the aforesaid prayers: firstly, because he did not participate in the proceedings before the learned Magistrate; secondly, respondent belatedly filed an appeal before the Appellate Court which was dismissed and thirdly, when that appeal was dismissed on the ground of delay, he did not choose to assail the said order before a higher forum.
19. In the circumstances, the orders of the High Court as well as the first Appellate Court are set aside and the application filed by the respondent is dismissed. However, liberty is reserved to the respondent herein to file a fresh application under Section 25 of the Act, if so advised. If such an application is filed by the respondent, the same shall be considered by the learned Magistrate having regard to the observations made above and on its own merits, which can be relatable to the period subsequent to the date of making the earlier order dated 23.02.2015 in the instant case. Any revocation of the order dated 23.02.2015 could be with effect from the date of the application, if any, to be made by the respondent herein or as ordered by the learned Magistrate.
20. This appeal is allowed and disposed of in the aforesaid terms.
Pending application(s), if any, shall stand disposed of.

Result of the Case: Appeal allowed.