



IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

PRINCIPAL SEAT

Criminal Revision Petition No. 399/2023

Smti. Priyanka Choudhury,
W/o- Shri Pandeswara Madhusudan
C/o :-Ms. Dipa Goswami Mahanta,
32 Roses, N.R. Housing Complex,
P.O. & P.S.-Dispur, District- Kamrup (M)
Assam, Pin-781006.

...PETITIONER

-VERSUS-

Shri Pandeswara Madhusudan
S/o :- Late P.V. Krishna,
R/o Kansas Avenue, House No.1,
TrilokTristar Villa, Royal Chamber Hotel,
P.O.-Coimbatore Civil Aerodrome;
P.S.- E2 Peelamedu, Tamil Nadu,Pin 641014.

...RESPONDENT

...BEFORE...

HON'BLE MR. JUSTICE ROBIN PHUKAN

Appearance:

For the Petitioner :Mr. A. Lal.

For the respondents : Mr. M.I. Hussain

Date of Hearing :- 06.12.2023

Date of Judgment :- 04.01.2024

JUDGMENT AND ORDER

Heard Mr. A. Lal, learned counsel for the petitioner and also heard Mr. M.I. Hussain, learned counsel for the respondent.

2. In this petition, under Sections 397/401 read with Section 482 Cr.P.C., the petitioner - Smti. Priyanka Choudhury, has challenged the legality, propriety and correctness of the order, dated 28.07.2023, so passed by the learned Principal Judge, Family Court No.2, Kamrup (M) Guwahati in F.C. (Criminal) Case No. 162/2023 under section 125 Cr.P.C. It is to be mentioned here that vide impugned order dated 28.07.2023, the learned court below has directed the respondent to pay interim maintenance to the petitioner @ Rs.10,000/ per month.

3. The background facts, leading to filing of the present petition, is briefly stated as under:-

"The petitioner got married with the respondent in the year 2006 at a Temple, as per Hindu rites and customs, and later on, the marriage was registered on 21/01/2015, at Coimbatore. After the marriage, the respondent used to treat the petitioner as a servant and also used to humiliate her before her in-laws

without any rhyme or reason and subjected her to both physical and mental torture during her stay at Coimbatore. She was not given sufficient food, medicine for which she became weak. As the torture meted out to her got intensified day by day, she used to live in a separate room in the first floor of the house along with her parents. Her mother suffered from vascular Parkinson in the month of June, 2017 and she begged money for her medical treatment, but the respondent refused to provide the same for which she died on 06.07.2019. Thereafter, she was compelled to leave the shared household and the respondent also stopped the milkman to deliver milk to the petitioner. And that her father was suffering from Prostrate diseases and was bedridden and the respondent had threatened to evict them. Thereafter, she had lodged one case before the All Women Police Station, Peelamedu. The respondent is a wealthy person and having several properties in and around Coimbatore and Bangalore of worth 5 Crore rupees and he also had lots of fixed deposits in Banks and he has money lending business and he has real estate and construction business and he maintains lavish lifestyle. The father of the petitioner died on 25/11/2022, and the respondent had refused to perform his rituals and she was forced to leave his premises as soon as possible. Thereafter, she left the premises on 02.12.2022, to save her and also to perform rituals of her late father at her native place, Guwahati.

Thereafter, being left with no other option the petitioner has filed one case under section 125 Cr.P.C., being FC (Criminal) Case No.162 of 2023, before the Family Court Kamrup (M), along with an application under section 125(3) Cr.P.C. for interim relief @ Rs.50,000/- per month. The respondent also entered appearance and filed financial affidavit. But, the learned Principal Judge, Family Court No. II Kamrup (M) Guwahati, has disposed of the petition granting her interim maintenance @ Rs.10,000/- per month only.”

4. Being aggrieved, the petitioner approached this Court by filing the present petition on the grounds that:-

- (i) that the order impugned is not in consonance with the law laid down by Hon’ble Supreme Court in **Rajnesh vs. Neha**, reported in **2021(2) SCC 324**, and therefore, the interim maintenance is liable to be enhanced and the order impugned is not based on the sound principle of law;
- (ii) that, the learned court below has failed to consider the fact that the respondent has BMW Car and KIA Car and he has his own house, the market value of which is more than 3 crores and that the petitioner resides in a rented house and she has to pay house rent @ Rs. 15,000/ per month;

- (iii) that, son of the respondent is not dependent upon the respondent and he used to draw salary more than Rs.79,000/- per month.;
- (iv) that, the learned court below has failed to give reason as to how the interim maintenance could be granted from the date of order, which is a breach of discipline;
- (v) that, the learned court below without asking for bank statement of the respondent, which is mandatory in financial affidavit, has passed the order under section 125(3) Cr.P.C, and therefore, it is contended to enhance interim maintenance to Rs.50,000/- per month.

5. Mr. Lal, the learned counsel for the petitioner, submits that the impugned order, so passed by the learned court below, suffers from manifest illegality and impropriety and the same is not sustainable in law. Mr. Lal further submits that the learned court below has passed the impugned order ignoring the ratio laid down by Hon'ble Supreme Court in the case of **Rajnes** (supra) and granted interim maintenance from the date of order and not from the date of application as mandated. Mr. Lal also submits that the respondent has filed financial affidavit without enclosing his bank statement and the learned court below had, without insisting upon production of bank statement, determined the quantum of interim maintenance. Mr. Lal also submits that the respondent is a wealthy person and he used to run BMW and KIA vehicles and has the real estate business and also money lending business and has several properties and

fixed deposits and as such he is an able bodied person to pay interim maintenance @ Rs.50,000/- per months. Therefore, it is contended to allow this petition.

6. On the other hand, Mr. M.I. Hussain, the learned counsel for the respondent, has raised objection about the maintainability of the petition as the impugned order is an interim order against which revision petition is not maintainable. Mr. Hussain also submits that the impugned order suffers from no infirmity or illegality and the same requires no interference of this court as the learned court below, after considering all the facts and circumstances has fixed the quantum and if the petitioner has any grievance, she may raise the same at time of final hearing of the case. Mr. Hussain therefore, contended to dismiss this petition.

7. In his reply to the submission of learned counsel for the respondent, Mr. Lal submits that it is well established from a catena of decisions of Hon'ble Supreme Court that revision petition is maintainable against interim order. Mr. Lal has referred to the decision of Hon'ble Supreme Court in the case of **Madhu Limaye vs. The State Of Maharashtra** reported in **1978 SCR (1) 749** and also referred to another decision of Madhya Pradesh High Court in **Misc. Criminal Case No. 60364 of 2022 (Rajendra Kumar vs. Smti Rukhmani Bisen)** in support of his submission.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order, dated

28.07.2023, passed by the learned court below. Also I have gone through the case law referred by Mr. Lal, the learned counsel for the petitioner.

9. A careful perusal of the impugned order dated 28.07.2023, passed by the learned court below, indicates that the learned court below has directed to pay interim maintenance from the date of order, not from the date of application @ Rs.10,000/- per month. And while determining the quantum of interim maintenance the learned court below has taken into account the affidavit disclosing the assets and liabilities filed by the respondent.

10. The requirement of law, as laid down by Hon'ble Supreme Court in the case of **Rajnesh** (supra) is that maintenance in all cases has to be awarded from the date of application not from the date of order. Since the learned court below has awarded interim maintenance from the date of order, the same cannot be said to be in consonance with the direction of Hon'ble Supreme Court in the case of **Rajnesh** (supra). The learned counsel for the respondent has rightly pointed this out and there is substance in his submission.

11. That, as regard the objections raised by learned counsel for the respondent regarding maintainability of the revision petition against an interlocutory order of granting interim maintenance, there is no manner of doubt that the order of granting interim maintenance is an interlocutory order, in view of the decision of Hon'ble Supreme Court in the case of **Madhu Limaye** (supra). Wherein, while dealing with the issue it has been held as under:-

"Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606 "

"..... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of two words must therefore be considered separately in relation to the particular purpose for which it is required."

In para 1607 it is said :

"In general, a judgment or order which determines the principal matter in question is termed "final"."

In para 1608 at pages 744 and 745 we find the words:-

"An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the- final judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

12. Now, the question is whether revision petition against an interim order is maintainable or not. While dealing with the issue, a co-ordinate bench of this court in **Rajesh Saha vs. Jhuma Saha** reported in **2019 3 GLR 106**, held that –

"23. For the reason stated above and considering the entire aspect of the matter, this court is of the view that the order of granting interim maintenance by a Magistrate under section 125 Cr.P.C. is purely an interlocutory order, since the trial with regard to the issue of maintenance and its amount still remains alive before the said Magistrate.

- 24. As such, revision petition against such an interim order of maintenance passed by the Magistrate under section 125 Cr.P.C., being purely an interlocutory order, is not maintainable.**
- 25. Accordingly, this revision petition, being not maintainable, stands dismissed.”**

13. But, in the case of **Rajendra Kumar** (supra) Madhya Pradesh High Court, while dealing with the issue, held as under :-

“18. Considering the above legal position, I am of the considered opinion that order of maintenance affect right of a person drastically and substantially, hence, it cannot be treated as interlocutory order and criminal revision should be preferred under section 19(4) of the Family Court Act against the order passed on the application for interim maintenance by the Family Court.”

14. Though, however, there is conflicting views of different High Court about maintainability of the revision petition against an interlocutory order, this court, considering the ratio laid by Hon’ble Supreme Court in respect of the Doctrine of Binding Precedent, in the case of **National Insurance Company Limited vs. Pranay Sethi and Ors**, reported in **(2017) 16 SCC 680**, would not like to take a different view from that of the view taken by a co-ordinate Bench of this in the case of **Rajesh Saha** (supra).

15. In view of above discussion and finding this court is of the considered opinion that this revision petition, under sections 397/401

Cr.P.C., is not maintainable against an interlocutory order of granting interim maintenance. And accordingly, the same stands dismissed.

16. However, it is provided that the learned court below shall made an endeavour to finally hear and dispose of the petition within earliest possible time, keeping in mind the ratio laid down by Hon'ble Supreme Court in the case of **Rajnesh** (supra) in respect of giving effect of the final order from the date of application not from the date of order.

JUDGE

Comparing Assistant