

GAHC020000742023



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

Case No. : Crl. Pet./1/2023

SRI. AMIT KUMAR JAIN
S/O SRI AJIT KUMAR JAIN, R/O BIJOYNAGAR, NEAR SAPLING
SCHOOL, OPPOSITE JAIN TEMPLE ROAD, POLICE STATION-
BIJOYNAGAR, DIST-KAMRUP R, PIN-7971122, ASSAM

VERSUS

THE STATE OF NAGALAND AND ANR
NAGALAND KOHIMA

2:SMT. RIDDHI JAIN
DAUGHTER OF SRI. SATISH KUMAR PATNI
R/O H.NO-111
OPPOSITE SBI OLD DAILY MARKET BRANCH
JAIN TEMPLE ROAD
KALIBARI
P.O DIMAPUR
WEST POLICE STATION DIMAPU

Advocate for the Petitioner : Dr N DEKA

Advocate for the Respondent : P.P, NAGALAND

BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

JUDGMENT & ORDER

Date : 07.02.2024

1. Heard Dr. N. Deka, learned counsel for the petitioner. Also heard

Mr. P. Lorin, learned counsel for the respondent No. 2 as well as Mr. V. Zhimomi, learned Public Prosecutor for the respondent No. 1.

2. This Criminal Petition has been registered on filing of an application under Section 482 of the Code of Criminal Procedure, 1973 read with Section 397/401 of the said Code, by Sri Amit Kumar Jain, impugning the Order dated 31.01.2022, passed by the learned Principal Judge, Family Court No. 1, at Dimapur, in Maintenance Case No. 03/2022, under Section 125 of the Code of Criminal Procedure, 1973.

3. The facts relevant for consideration of the instant Criminal Petition, in brief, are as follows:-

- i. That the present petitioner and respondent No. 2 were married to each other on 21.04.2007 and two children were born out of their wedlock, one son, namely, Shaksham Jain and one daughter, namely, Inaaya Jain.
- ii. Both the parties are staying separately from each other since 20.03.2019. The son stays in the custody of the petitioner i.e., the father and the daughter stays in the custody of respondent No. 2, i.e. the mother.
- iii. The respondent No. 2 had filed a divorce case against the present petitioner, which was registered as Divorce Case No. 44/2019 and thereafter, she filed a maintenance case under Section 125 of the Code of Criminal Procedure, 1973 which was registered as Maintenance Case No. 03/2022, claiming a monthly maintenance allowance of Rs. 70,000/- for herself and her minor daughter.
- iv. In the said maintenance case, the respondent No. 2 prayed

for an interim maintenance from the petitioner for herself and her daughter. By the impugned order, the learned Principal Judge, Family Court No. 1, Dimapur directed the present petitioner to pay interim maintenance allowance of Rs. 23,000/- per month w.e.f. the month of June, 2022 to the respondent No. 2 on or before 10th day of each calendar month.

- v. It appears from the LCR that though the date mentioned on the first page of the impugned order is 31.01.2022, however, same has been signed by the learned Principal Judge, Family Court No. 1, Dimapur on 31.01.2023.
- vi. It is pertinent to mention herein that by order dated 14.03.2022, this court called for the records of Maintenance Case No. 03/2022 from the court of the learned Principal Judge, Family Court No. 1, Dimapur and in the interim directed the order dated 31.01.2022 to remain suspended until further orders.

4. Learned counsel for the petitioner has submitted that though the Maintenance Case No. 03/2022 was filed in the month of May 2022 and the first notice in the said case was issued against the present petitioner, by order dated 17.05.2022, the order directing the petitioner to pay the interim maintenance allowance of Rs. 23,000/- to the respondent is dated 31.01.2022, which appears to be a glaring discrepancy and considering the said glaring discrepancies in the dates mentioned in the impugned order and hence, this court by order dated 14.03.2023 suspended the operation of the impugned order.

5. Learned counsel for the petitioner has submitted that the impugned order, directing the petitioner to pay interim maintenance of Rs. 23,000/- to the respondent No. 2 is not a speaking order as it does not mention on what basis the quantum of Rs. 23,000/- has been fixed by the learned Principal Judge, Family Court No. 1, Dimapur.

6. Learned counsel for the petitioner has also submitted that as the impugned order has directed the petitioner to pay a monthly maintenance allowance to the respondent No. 2, beyond his paying capacity, it has substantially affected the rights of the present petitioner and therefore, the same may not be regarded as an interlocutory order within the meaning of Section 397(2) of the Code of Criminal Procedure, 1973 and hence, revision is not barred against the impugned order.

7. In support of his submission, learned counsel for the petitioner has cited a ruling of the Apex Court in the case of **"Amar Nath And Others Vs. State of Haryana & Others"**, reported in **"AIR 1977 SC 2185"** as well as a judgment of the High Court of Delhi in the case of **"Manish Aggarwal Vs. Seema Aggarwal & Others"**, reported in **"(2013) ILR 1 Delhi 210."**

8. Learned counsel for the petitioner has also submitted that the respondent No. 2 has submitted some documents in the Maintenance Case No. 03/2022 which are false and fabricated and made some misleading statements therein, in order to get the benefit of maintenance allowance. He has submitted that along with the maintenance petition, the respondent No. 2 has submitted the photographs of two cars stating the same to be of the petitioner, however, the same do not belong to the petitioner as the name of the owners in the documents of ownership of the cars is not of the petitioner.

9. It is also submitted by the learned counsel for the petitioner that the petitioner is not the proprietor of M/S Pradeep Silkalaya. Further, it is also submitted by the learned counsel for the petitioner that he is also not the owner of the house, the photograph of which has been annexed, as Annexure No. F in the application filed by the respondent No. 2 before the learned Principal Judge, Family Court No. 1, Dimapur.
10. Learned counsel for the petitioner has also submitted that the respondent No. 2 also inflated the amounts regarding her expenditure on the monthly grocery bills as well as medical expenses only to mislead the Family Court to award a higher maintenance allowance.
11. It is also submitted by the learned counsel for the petitioner that the respondent No. 2 is having a source of income as she owns a restaurant by the name and style "Inaaya Kitchen."
12. It is also submitted by the learned counsel for the petitioner that the petitioner after encountering losses in his business during Covid-19 situation had to join a salaried job as a Sales Manager in Rashi Sales Corporation at a monthly salary of Rs. 27,000/-.
13. The learned counsel for the petitioner has also submitted that the petitioner is also paying an amount of Rs. 1,01,746/-(Rupees One Lakh One Thousand Seven Hundred Forty Six) per year as yearly premium for the Life Insurance Policy in the name of his daughter Inaaya Jain.
14. The learned counsel for the petitioner has also submitted that the petitioner is also taking care of all the expenses of his minor son, including the expenditure incurred on his education.
15. The learned counsel for the petitioner has also submitted that though the statements of assets and liabilities were filed by the petitioner

as well as by the respondent No. 2 in Maintenance Case No. 03/2022, the same was not considered by the learned Principal Judge, Family Court No. 1, Dimapur, as he has been directed to pay about 80% of his salary as monthly maintenance allowance to the respondent No. 2 by the impugned judgment, which is beyond his paying capacity.

16. It is submitted by the learned counsel for the petitioner that the impugned order is liable to be interfered with for the ends of justice.

17. On the other hand, learned counsel for the respondent No. 2 has submitted that the petitioner has filed this criminal petition by suppressing facts as well as by filing concocted documents only with a view to mislead this court.

18. It is also submitted by the learned counsel for the respondent No. 2 that the instant criminal petition is not maintainable under Section 482 of the Code of Criminal Procedure, 1973, as the petitioner has not exhausted the remedies which were available to him under Section 127 of the Code of Criminal Procedure, 1973, against the impugned order.

19. The learned counsel for the respondent No. 2 has also submitted that though the vehicles shown by the respondent No. 2 in the photographs which are annexed as Annexure No. C to the maintenance petition belongs to the father of the petitioner, who has already expired on 28th January, 2020, and the said fact has been suppressed by the petitioner from the court.

20. It is also submitted by the learned counsel for the respondent No. 2 that the business of the firm, named, Pradeep Silkalaya is conducted by the petitioner.

21. It is also submitted by the learned counsel for the respondent No. 2

that the daughter of respondent No. 2 has been suffering from ailment and she has incurred expenses for the medical treatment for the said ailment.

22. It is also submitted by the learned counsel for the respondent No. 2 that the restaurant "Inaaya Kitchen" does not belong to the respondent No. 2 as her brother is the owner of the said restaurant and she occasionally helps her brother during her free time to run the restaurant.

23. Learned counsel for the respondents has prayed for dismissing the Criminal Petition filed by the petitioner.

24. I have considered the submissions made by the learned counsel for both the sides and have gone through the materials available on record including the case record of Maintenance Case No. 03/2022.

25. As regards the maintainability of an application for revision of the impugned order under Section 401/397 of the Code of Criminal Procedure, 1973, the High Court of Delhi has observed in the case of "**Manish Agarwal Vs. Sima Agarwal**" reported in "**2012 0 Supreme (DEL) 1888**" as follows: -

17. Interim maintenance had been granted under Section 125 Cr.P.C. and the issue arose whether a revision petition could be preferred against that order, as it was alleged to be interlocutory in nature. It was held that the order of interim maintenance was an intermediate or quasi final order. Analogy was drawn from Section 397 (2) of the Cr.P.C. and the pronouncement of the Supreme Court in Amarnath & Ors. Vs. State of Haryana & Ors. AIR 1977 SC 2185 qua the said provision was relied upon. Thus, an order which substantially affects the rights of an accused and decides certain rights of the parties was

held not to be an interlocutory order so as to bar revision. However, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in the aid of pending proceedings would amount to interlocutory orders against which no revision would be maintainable under Section 397 (2) of the Cr.P.C. On the contrary, those orders which decide matters of moment and which affect or adjudicate the rights of the accused, or a particular aspect of trial could not be labeled as interlocutory orders. The Madhya Pradesh High Court held that an application for interim maintenance is a separate proceeding, to be disposed of much earlier than the final order in the main case. Qua the said issue the matter is finally decided by the order passed by reference to the second proviso to Section 125 (1) of the Cr.P.C.. Such orders were, thus, intermediate or quasi final orders. Thus, if an order does not put an end to the main dispute, but conclusively decides the point in issue it can certainly not be said to be an interlocutory order. The judgement drew strength also from the observations of the Supreme Court in Madhu Limaye Vs. State of Maharashtra AIR 1978 SC 47, where the Supreme Court held that ordinarily and generally the expression "interlocutory order" has been understood and taken to mean as a converse of the term "final order". But the interpretation, and the universal application of the principle that what is not a "final order" must be an "interlocutory order" is neither warranted nor justified. In V.C. Shukla Vs. State 1980 (2) SCR 380 the Supreme Court held that the term "interlocutory order" used in the Cr.P.C. has to be given very liberal construction in favour of the accused in order to ensure complete fairness of trial, and revisional power could be attracted if the order

was not purely interlocutory but intermediate or quasi final.

26. In the instant case also, by the impugned order, the petitioner has been directed to pay an interim monthly maintenance allowance of Rs. 23,000/- to respondent No. 2. The plea of the petitioner is that he earns a total monthly salary of Rs. 27,000/- only and therefore, the impugned order may be regarded as an order which substantially affects the rights of the petitioner and for the said reason the same may not be regarded as an interlocutory order so as to bar the revisional jurisdiction of this court under Section 401/397 of the Code of Criminal Procedure, 1973. This court agrees with the submissions made by the learned counsel for the petitioner. As by the impugned order rights of the petitioner are substantially affected, same may not be treated as an interlocutory order for the purpose of Section 397(2) of the Code of Criminal Procedure, 1973. Further, in the instant case, though the petitioner has preferred this Criminal Petition also under Section 482 of the Code of Criminal Procedure, 1973, however, as discussed hereinbefore that a revision under Section 401/397 of the Code of Criminal Procedure, 1973, is maintainable against the impugned order in this petition, this instant petition is treated to be a petition under Section 401/397 of the Code of Criminal Procedure, 1973.

27. Regarding the question of discrepancy in the date of the impugned order, it appears that the impugned order directing the petitioner to pay interim maintenance allowance of Rs. 23,000/- to the respondent is dated at the first page of the said order as 31.01.2022. However, the said order is signed by the learned Principal Judge, Family Court No. 1, Dimapur, with

a date mentioned below the signature as 31.01.2023. Moreover, on perusal of the original case record of Maintenance Case No. 03/2022, which was requisitioned in connection with this instant case, it appears that the order sheet maintained in the said record shows that the order for interim maintenance was passed by the learned Principal Judge, Family Court No. 1, Dimapur, on 31.01.2022 and not 31.01.2023. Hence, for all the purposes of the order of the trial court granting interim maintenance to respondent No. 2, which has been impugned in this case, may be treated as having been passed on 31.01.2023 and not on 31.01.2022.

28. From the submissions made by the learned counsel for the petitioner as well as on perusal of the revision petition filed by him in this case, it appears that he has been aggrieved by the passing of the impugned order of interim maintenance as the quantum of maintenance is about 80% of his salary and the learned Principal Judge, Family Court No. 1, Dimapur failed to consider other financial liabilities with which the petitioner has been burdened.

29. It also appears that both the parties to this case have levelled allegations and counter-allegations against each other, that they have relied on false documents and have made misleading statements before the trial court.

30. However, while considering this instant criminal petition, this court would not go into the other aspects of the matter as both parties are yet to adduce evidence in the maintenance proceeding and the same is yet to be cross-examined by each other and the impugned order is only an order of interim maintenance passed at the initial stage of the proceeding.

31. From the materials available on record, this court finds that the

observation of trial court in the impugned judgment to the effect that the wife, who is an uneducated person having a school going minor daughter with medical problem is entitled to get interim maintenance relief in the interest of justice does not warrant any interference by this court. However, it appears that while ascertaining the quantum of Rs. 23,000/- per month as interim maintenance allowance to be paid by the present petitioner, the trial court did not mention any reason for fixing the quantum of interim maintenance at the rate of Rs. 23,000/- per month and it appears to be a guesswork by the trial court without taking into consideration the affidavit of assets and liabilities filed by the petitioner in this regard.

32. Though at the time of fixing the quantum of interim maintenance some amount of guesswork or rough estimation may be allowed as the maintenance proceeding at that time normally at its initial stage. However, in view of the guidelines laid down by the Supreme Court of India in "**Rajnish Vs. Neha & Anr.**" reported in "**(2021)2 SCC 324**," while ascertaining the quantum of interim maintenance allowance, the court is supposed to consider the affidavit of assets and liabilities and if there is any dispute in respect of any declaration made in the affidavit of disclosure, the court may invoke the provision of Section 165 of the Indian Evidence Act or Section 106 of the Indian Evidence Act, however, in the instant case, though the Principal Judge, Family Court No. 1, Dimapur has justified as to why the respondent No. 2 should get an interim maintenance allowance during the pendency of the maintenance proceeding, however, no reasons have been mentioned in the impugned order for fixing the quantum of monthly maintenance allowance at the

rate of Rs. 23,000/-.

33. In the instant case, in the affidavit of assets and liabilities filed by the present petitioner in Maintenance Case No. 03/2022, he has shown in column No. F (3) of the said affidavit, his monthly income as Rs. 27,000/- only, which he is earning as a Sales Manager in Rashi Sales Corporation. Similarly, as regards income from other sources though he has answered in affirmative in column No. F(8) of the affidavit, however, he has not quantified the said income instead he has submitted the details of income tax report for three years.

34. Though, the learned counsel for the respondent No. 2 has stated that the petitioner have suppressed certain material facts and made misleading statements in the affidavit, however, same can be verified only after the witnesses for both the sides and the evidence adduced by them is tested by cross-examination and the said stage has not yet arrived.

35. In a Revision Petition filed against an order granting interim maintenance, the Revisional Court is not required to assess that evidence on record minutely, which is yet to be tested by cross-examination. However, the quantum of the interim maintenance allowance may be ascertained on the basis of those aspects of the statement of assets and liabilities of the parties which more or less remains undisputed.

36. In the instant case, the petitioner has admitted that he is earning Rs. 27,000/- per month and he has income from other sources also and it is also admitted that the minor son of the petitioner is living with the petitioner, whereas, their minor daughter is living with the respondent No. 2. As also observed by the Supreme Court of India in "**Rajnish Vs. Neha**" (supra) that there is a tendency on the part of the wife to exaggerated

her needs and there is a corresponding tendency by the husband to conceal his actual income and as at this stage the parties are yet to adduce their evidence, it would have been appropriate for the trial court to fix the quantum of interim maintenance allowance on the basis of those declarations in the affidavits of assets and liabilities which are more or less undisputed.

37. In the instant case, fixing of Rs. 23,000/- per month as the quantum of maintenance allowance to be paid by the present petitioner on the basis of admitted earning of the petitioner as disclosed by him in his affidavit of assets and liabilities, it appears to be on higher side as same is about 80% of the admitted earnings of the petitioner. Moreover, as in the impugned order no whisper has been made as to on what basis the quantum of Rs. 23,000/- has been fixed as interim maintenance allowance, the same is liable to be interfered with.

38. This court is of the considered opinion that considering the earning of the petitioner as admitted by him in the affidavit of assets and liabilities as well as also considering his liabilities, if he is directed to pay a sum of Rs. 11,000/- per month which would be appropriately 40% of the admitted monthly income of the present petitioner, the same would be just and proper under the facts and circumstances of this case.

39. In view of above, the impugned order dated 31.01.2023 passed by the learned Principal Judge, Family Court No. 1, Dimapur is hereby modified to the extent that the petitioner is directed to pay Rs. 11,000/- per month to the respondent No. 2 from the date of filing of the application for interim maintenance allowance by the respondent No. 2, before the learned Principal Judge, Family Court No. 1, Dimapur.

40. It is also made hereby clear that the payment may be directly made to the bank account of the respondent No. 2 details of which shall be furnished to the petitioner by the respondent No. 2. The payment monthly interim maintenance allowance shall be made by the petitioner before the 10th day of each calendar month.
41. With the above observation, this Criminal Petition is accordingly disposed of.
42. Send back the LCR of Maintenance Case No. 03/2022, along with a copy of this judgment to the Court of learned Principal Judge, Family Court No. 1, Dimapur.
43. The Registry of the Principal Seat of this Court shall transmit the case record of this case along with LCR to the Registry of Kohima Bench at Kohima immediately.

Sd/-
JUDGE

Comparing Assistant