

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11136 of 2021**

Arising Out of PS. Case No.- Year-0 Thana- District- Muzaffarpur

DEEPAK KUMAR Son of Baidha Nath Sah Resident of Village and Post-
Panapur Kariyat, P.S.- Kanti and Distt- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Khushbu Kumari W/o Deepak Kumar, D/o Binod Sah Resident of Village and Post- Panapur Kariyat, P.S.- Kanti, Distt- Muzaffarpur. At present Village and Post- Daud Chhapra, P.S.- Minapaur, Distt- Muzaffarpur.
3. Alya Soni (Minor) D/o Deepak Kumar under the guardianship of her mother Resident of Village and Post- Panapur Kariyat, P.S.- Kanti, Distt- Muzaffarpur. At present Village and Post- Daud Chhapra, P.S.- Minapaur, Distt- Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sunil Kumar Pandey, Advocate
For the Opposite Party/s : Mr.A.G.

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 19-05-2022**

The present petition has been filed for quashing the order dated 12.10.2020 passed by the learned Principal Judge, Family Court, Muzaffarpur in Maintenance Case No. 345 of 2018 under Section 125 of the Cr.P.C., whereby and whereunder the petitioner has been directed to pay a sum of Rs. 8,000/- per month by way of ad interim maintenance to the opposite parties no. 2 & 3 herein who are the wife and minor daughter of the petitioner herein.

2. The brief facts of the case are that the marriage of the petitioner and the opposite party no. 2 was solemnized on



18.04.2016 as per Hindu rites and rituals and it is alleged that the father of the petitioner had given gifts worth Rs. 2,50,000/- apart from other articles like furniture etc. It appears that during the interregnum period, a daughter was born to the petitioner and opposite party no. 2. However, on 12.06.2018, it is alleged that a demand of dowry was made by the petitioner and his family members and the opposite party no. 2 was ousted from her matrimonial home, whereafter she has been compelled to stay at her parental home. It appears that the opposite party no. 2 and her daughter i.e. opposite party no. 3 had filed a Maintenance Case under Section 125 of the Cr.P.C. before the learned Court of Principal Judge, Family Court, Muzaffarpur being Maintenance Case No. 345 of 2018 alleging therein that the opposite party no. 2 and her daughter had been harassed, beaten and ousted from the matrimonial home and the petitioner herein is running a jewellery shop and earning a handsome income, hence maintenance be awarded in favour of the opposite party no. 2 and her daughter.

3. The petitioner is stated to have filed his reply to the aforesaid petition filed by the opposite parties no. 2 & 3 before the learned Court of Principal Judge, Muzaffarpur, denying the allegations and stating therein that he is ready to keep his wife



and daughter with him. The opposite party no. 2 had also filed a reply stating therein that the petitioner is having an income of Rs. 50,000/- per month. The learned Principal Judge, Family Court, Muzaffarpur by an order dated 12.10.2020 passed in Maintenance Case No. 345 of 2018 has granted ad interim maintenance of a sum of Rs. 8,000/- per month in favour of the opposite parties no. 2 & 3, relevant portion whereof is reproduced herein below:-

“The applicant has stated in her petition that she is facing hardship and unable to maintain herself and her child whereas the O.P. has good income. He earns Rs. 50,000/- per month from his business and other sources. The applicant has no source of income and she is leading miserable life with her minor daughter. It is necessary to allow ad interim maintenance of Rs. 10,000/- per month of her and her minor daughter from the O.P.

On call none turned up on behalf of O.P. but a rejoinder to the above petition has been filed on dated 13.03.2020 by the O.P. praying therein that he is always ready to keep the applicants and maintain them but the applicant is not ready and hence, this petitioner has filed a case u/s 9 of H.M. Act in which she has not filed her W.S. The applicant has filed the petition entirely with wrong and false allegation. The O.P. has no any business and hence, the question of income of Rs. 50,000/- per month does not arise at



all.

Considering the facts and circumstances of the case and submission as advanced on behalf of both parties, this Court finds that applicant filed this maintenance case against the O.P. for maintenance of herself and her minor daughter as O.P. is not taking care of the applicant and her minor daughter since the case is at evidence stage. So, prayer of the ad interim maintenance is quite justified as O.P. is not providing any maintenance to the applicant and her minor daughter. Accordingly, O.P. is ordered to pay Rs. 8000/- (eight thousand) per month ad interim maintenance to the applicant and her minor daughter by 10th day of each month of the calendar year till the final order of the case and his order be effective from the order of this case.”

4. The learned counsel for the petitioner has raised only a solitary ground for consideration to the effect that since the petitioner is ready to keep his wife and daughter with him, there was no occasion for the learned Court below to grant any ad interim maintenance.

5. I have heard the learned counsel for the petitioner and perused the materials on record. Section 125 (1) (a) of the Cr.P.C. provides for grant of maintenance to the wife, unable to maintain herself. Proviso to Section 125 Cr.P.C. empowers the learned court below to grant monthly allowance by way of



interim maintenance and expenses for such proceeding.

It may be apt to refer to a constitution Bench judgment rendered by the Hon'ble Apex Court in the case of ***Md. Ahmed Khan vs. Shah Bano Begam*** reported in **1985(2) SCC 556** wherein it has been held that Section 125, which occurs under Chapter IX of the Cr.P.C., imposes liability to maintain close relatives who are indigent and is founded upon the individuals obligation to the society to prevent vagrancy and destitution. The Hon'ble Apex Court in the case of ***Ramesh Chandar Kaushal vs. Veena Kaushal*** reported in **1978 (4) SCC 70** has held the provisions regarding grant of maintenance is a measure of social justice, specially enacted to protect women and children, which falls within the constitutional sweep of Article 15(3) reinforced by Article 39.

6. At this juncture, it would be relevant to refer to a judgment rendered by the learned three Judges Bench of the Hon'ble Apex Court, reported in **2019(12) SCC 303 (*Reena Shalkan vs. Sameer Singh*)**, paragraph nos. 13, 14, & 16 whereof are reproduced herein below:-

“13. Be that as it may, the High Court took into account all the relevant aspects and justly rejected the plea of the respondent about inability to pay maintenance amount to the appellant on the finding that he was well educated and an able bodied person.



Therefore, it was not open to the respondent to extricate from his liability to maintain his wife. It would be apposite to advert to the relevant portion of the impugned judgment which reads thus:

"79. The respondent during the cross examination has admitted that he too is B.Com, M.A.(Eco.) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as net Annual Salary. However, he has claimed that he has resigned from Sprint Canada on 23.11.2010 and the same has been accepted on 27.11.2010 and the respondent since then is unemployed and has got no source of income to maintain himself and his family. 80. In the instant case, the petitioner has filed the case under Section 125 Cr. P.C.,1973 for grant of maintenance as he does not know any skill and specialized work to earn her livelihood i.e. in paragraph 26 of maintenance petition against her husband. However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not plead that he is not an able bodied person nor he is able to prove sufficient earning or income of the petitioner.

81. It is an admitted fact emerging on record that both the parties got married as per Hindu Rights and Customs on 24.03.2002 and since then the petitioner was living with her parents from 10.08.2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living



in Canada and having Canadian citizenship. The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able bodied person having good health and physique and he can earn enough on the basis of him being able bodied to meet the expenses of his wife. In this context, the observation made in Chander Prakash v. Shrimati Shila Rani, AIR 1968 Del 174 by this Court is relevant and reproduced as under:

"7.....an able bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in position to earn enough to be able to maintain them according to the family standard. It is for such able bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child.

"82. The husband being an able bodied person is duty bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in Bhuwan Mohan Singh v. Meena, AIR 2014 SC 2875, is relevant:"

3.....Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home



for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain her self and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds. (emphasis applied) 83. The respondent's mere plea that he does not possess any source of income ipso facto does not absolve himself of his moral duty to maintain his wife in presence of good physique along with educational



qualification."

14. The view so taken by the High Court is unassailable. Indeed, the respondent has raised a plea to question the correctness of the said view, in the reply affidavit filed in this appeal, but in our opinion, the finding recorded by the High Court is unexceptionable.

16. We, therefore, direct the respondent to pay the enhanced maintenance amount, as determined in terms of this order, to the appellant within a period of eight weeks from today after duly adjusting the amount already deposited in Court/paid to the appellant till date. The appellant will be entitled to forthwith withdraw the maintenance amount deposited by the respondent in Court, if any. The impugned judgment of the High Court is accordingly modified in the aforementioned terms."

7. A bare perusal of the aforesaid judgment rendered by the Hon'ble Apex Court in the case of Reena Shalkan (supra) would demonstrate that an able bodied young man is presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is equally a well settled law that Section 125 Cr. P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who left her matrimonial home so that some suitable arrangement can be made by the Court and she can sustain



herself as also her children, if there are any, and it is the obligation of the husband to ensure that his wife leads a life in a similar manner as she would have lived in the house of her husband, hence it is the sacrosanct duty of the husband to render her financial support and he cannot take subterfuges to deprive her of the benefit of living with dignity, thus any plea by the husband that he does not possess any source of income, *ipso facto* does not absolve him of his moral duty to maintain his wife.

8. From the records, the marriage between the petitioner and the opposite party no. 2 stands admitted as also a child has been born out of the said wedlock. It is also apparent from the records that the opposite party nos. 2 & 3 have been ousted from the matrimonial home and that is why the opposite party no. 2 along with her minor daughter is living at her parental house and has got no independent source of income to maintain herself.

9. Having regard to the principles of law settled by the Hon'ble Apex Court in the case of Reema Salkan (supra) as also in the case of Bhuwan Mohan Singh(supra) and Chandar Prakash (supra), this Court finds from the facts of the present case that the petitioner is under an obligation to maintain his



legally wedded wife i.e. the opposite party no. 2 and his daughter i.e. the opposite party no. 3 and the learned Principal Judge, Family Court, Muzaffarpur, has awarded a meager amount of maintenance of Rs. 8,000/- per month to the opposite party nos. 2 & 3, vide the impugned judgment dated 12.10.2020, thus this Court is of the considered view that the maintenance amount so awarded by the learned court below is not excessive, specially keeping in mind the spiraling inflation rate and high cost of living index, prevailing today, hence, there is no merit in the present petition.

10. This Court further finds that granting interim maintenance is similar to giving first aid. Chapter-IX of Criminal Procedure Code, 1973 provides a quick remedy by way of a summary procedure to protect the applicant (deserted wife or children) against starvation and tide over immediate difficulties by securing some reasonable sum by way of maintenance. Section 125(1)(a) of Cr.P.C. provides for grant of maintenance to the wife, unable to maintain herself. Proviso to Section 125 Cr.P.C. empowers the Magistrate to order monthly allowance for the interim maintenance and also the expenses of such proceeding during its pendency. The foundation of the measures of social justice enacted by the



Legislature lies beneath the sweep of Article 15(3) of the Constitution of India. It fulfills the concept of a welfare State in a vibrant democracy by safeguarding wives and children and preventing them from the modes of vagrancy and its consequences. Thus, it would be appropriate for the Courts to direct the person against whom an application is made under Section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application.

The contents of the wife's application, which is supported by her affidavit, prima facie makes out just grounds for the wife to live separately and that she is not able to sustain herself and her child financially, consequently, making out a case for interim maintenance. In the present petition, the Court is concerned with interim maintenance and nothing beyond that.

11. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, this Court finds that firstly the ad interim maintenance awarded to the opposite party nos. 2 & 3 is not final and secondly there is neither any infirmity nor illegality nor any jurisdictional error in the impugned judgment dated 12.10.2020 so as to warrant



any interference apart from the fact that the ad interim maintenance awarded to the wife and minor daughter of the petitioner is very reasonable considering the prevailing economic situation, hence the present petition stands dismissed being devoid of any merit.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
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