

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.652 of 2023

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

Sanjay Paswan, Son Of Sri Kailash Paswan Resident Of Chandrahatti, P.S. -
Dumra, District - Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rajni Kumari Wife Of Sanjay Paswan Resident Of Chandrahatti, P.S. -
Dumra, District - Sitamarhi. Present Address - Daughter Of Narayan
Paswan, Resident Of Ward No.21, Mela Road Bhavdeopur (BEHIND Dr.
Anju Singh) P.S. - Sitamarhi, District - Sitamarhi
3. Arab Kumar (minor) Son Of Sanjay Paswan Thorough His Mother Rajni
Kumari

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Pawan Kumar, Advocate Mr.Dhaneshwar Vashist, Advocate Ms.Diksha, Advocate Mr.Raghav Vatsa, Advocate
For the Respondent/s	:	Mr.Narendra Kumar Singh, APP
For the O.P Nos. 2 and 3 :		Mr.Raghvendra Kumar, Advocate Ms.Simran Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 5 15-07-2025 1. The petitioner is the husband of Opposite Party No.
1. Their marriage was solemnized on 14th of December, 2015.
- The Opposite Party No. 1 filed an application under Section 125
of the Code of Criminal Procedure, praying for maintenance
allowance, alleging, inter alia, that after solemnization of her
marriage with the petitioner, it was consummated and in the
wedlock, she gave birth to a male child. It is alleged that after
marriage, the petitioner and his relatives demanded Rs. 10
Lakhs as dowry, which she denied. It is further alleged that at



the time of marriage father of the Opposite Party had given Rs. 15 lakhs in cash and Rs. 3 lakhs in the account of the brother of the petitioner on 19.05.2015. Again, on 23.05.2015, Rs. 50,000/- and Rs. 49,500/- in the account as well as Rs. 5,00,000/- was given to the father of the petitioner. It is also alleged that in the night of 09.02.2019, they have attempted to immolate her but fortunately her brother Rahul and Lal Babu Paswan reached her matrimonial house on motorcycle and hearing her screaming voice all the accused persons had fled away and thereafter she was admitted in the clinic for treatment. It is further stated that the petitioner has been pursuing his MD course after MBBS in IGIMS, Patna from where he is getting Rs. 70,000/- in terms of stipend and in addition to this, he is earning Rs. 30,000/-. It is further stated by the Opposite Party No. 2 that as she has no source of income and she is a burden on her parents, she is entitled for her expenditure from her husband/petitioner. Therefore, she demanded a sum of Rs. 30,000/- as maintenance per month and Rs. 15,000/- as interim maintenance till the disposal of the application under Section 125 of the Cr.P.C.

2. By an order, dated 2nd of February, 2023, the learned Principal Judge, Family Court, Sitamarhi passed an order of *ad interim* maintenance to be paid by the petitioner in



favour of the Opposite Party No. 2 at the rate of Rs. 20,000/- per month within 10th day of each succeeding month and to pay the due interim maintenance from March, 2022 to February, 2023 for 12 months @ 20,000/-, i.e., Rs. 2,40,000/- within a period of three months from the date of the order, which would be deposited in the bank account of the applicant, till the final disposal of the application under Section 125 of the Cr.P.C.

3. The said order is under challenge in the instant revision.

4. The learned Advocate appearing on behalf of Opposite Party, at the outset, submits that Criminal Revision is not maintainable against an order of *ad interim* maintenance.

5. In support of his contention, he refers to an unreported decision of this Court of a learned Single Judge, passed in Criminal Revision No. 623 of 2011 on 29th of November, 2013.

6. The learned Advocate appearing on behalf of the Opposite Party also refers to an unreported decision in Criminal Miscellaneous No. 22165 of 2016, decided on 16th of September, 2016, passed by the Division Bench of this Court, holding as hereunder: -



“In view of the discussions made above, we are of the view that the only remedy, available to the petitioner, is to make an application under Article 227 of the Constitution of India before this Court, if he is so aggrieved by the order of the interim maintenance, dated 10th of February, 2016, passed by the Principal Judge, Family Court, Munger.”

7. Therefore, the Division Bench held that the application under Section 482 of the Code of Criminal Procedure, challenging an order of interim maintenance is not maintainable before the High Court.

8. In view of the above question regarding maintainability, raised before this Court, it is necessary to examine the above-mentioned unreported decisions in the light of the subsequent judgments of the Hon’ble Supreme Court and other High Courts to come to a finding as to whether the law that no revision is maintainable against an order of *ad interim* maintenance is still hold good in view of the judgment passed in Criminal Revision No. 623 of 2011 (supra).

9. Second and third proviso of Section 125 was inserted by Criminal Procedure Amendment Act 50 of 2001 w.e.f. 24th September, 2001. The relevant portion runs thus: -

“Provided further that the



Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.”

10. Thus, the Statute used the term interim maintenance which a wife; legitimate or illegitimate minor child; legitimate or illegitimate child who has attained majority, where such child is, by reason of any physical or mental abnormality or injury, unable to maintain itself or father or mother, unable to maintain himself or herself, is entitled to get in view of the amended provision of the Cr.P.C. w.e.f. from 24th of September, 2001.

11. A Co-ordinate Bench of this Court in Criminal



Revision No. 623 of 2011 (supra) held that the order, granting interim maintenance is in the nature of interlocutory order and on account thereof, revision in terms of Section 19(4) of the Family Courts Act is found barred.

12. The Co-ordinate Bench relied on the decisions of the Hon'ble Supreme Court in *Amar Nath's* case as well as *Madhu Limaye's* case, while identifying the nature of order under two categories:

(a) final order

(b) interlocutory order wherein, it has been held that any order passed at any stage of the proceeding in case decides the issue in question in its finality, then in that event, the order impugned cannot be termed as an interlocutory order.

13. The same question with regard to revisional jurisdiction of the High Court came up for consideration before a three Judges Bench decision in *Girish Kumar Suneja v. Central Bureau of Investigation*, reported in (2017) 14 SCC 809. In paragraph 17 of the said judgment, the Hon'ble Supreme Court held as under:-

“17 The concept of an intermediate order first found mention in Amar Nath v. State of Haryana [(1977) 4 SCC 137] in which case



the interpretation and impact of Section 397 (2) of the Cr.P.C. came up for consideration. This decision is important for two reasons. Firstly it gives the historical reason for the enactment of Section 397(2) of the Cr.P.C. and secondly considering that historical background, it gives a justification for a restrictive meaning to Section 482 of the Cr.P.C.”

14. It is needless to say that Sub-section (2) of Section 397 of the Cr.P.C. specifically bars that the powers of revision conferred by Section (1) of Section 397 shall not be exercised in relation to interlocutory order passed in any appeal, enquiry, trial or other proceedings.

15. The concept of intermediate order was further elucidated in ***Madhu Limaye vs. State of Maharashtra [1977 4 SCC 551]***, by contra-distinguishing a final order and an interlocutory order. This decision lays down a principle that an intermediate order is one, which is interlocutory in nature, but when reversed, it has the effect of terminating the proceeding and thereby resulting in a final order. To such intermediate orders immediately come to mind an order taking cognizance of an offence and summoning an accused and an order framing charges. *Prima facie*, these orders are interlocutory in nature,



but when an order of taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceeding against that person resulting in a final order in his or her favour. Similarly, an order of framing charges, if reversed, has the effect of discharging an accused and resulting in a final order in his or her favour. Therefore, an intermediate order is one which if passed in a certain way, the proceeding would terminate, but if passed in another way, the proceeding would continue.

16. In ***Girish Kumar Suneja*** (supra), the Hon'ble Supreme Court referred its earlier decision in the case of ***K. K. Patel v. State of Gujarat***, reported in ***(2000) 6 SCC 195***, wherein a revision petition was filed challenging the taking of cognizance and issuance of a process. It was said: -

“It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v. State of Haryana, Madhu Limaye v. State of Maharashtra, V.C. Shukla v. State through CBI [1980 Supp SCC 92] and Rajendra Kumar Sitaram Pande v. Uttam [(1999) 3 SCC 134]). The feasible test is whether by upholding the objections raised by



a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable.”

17. At this juncture, a question naturally arises as to whether an order of interim maintenance is an interlocutory order or an intermediate order.

18. In Criminal Misc. Case No. 22165 of 2016 (Md. Akil Ahmad v. State of Bihar & Anr.), a Division Bench of this Court passed a judgement on 16th of September, 2016. Relying on a Larger Bench decision reported in 1992 PLJR 693 which stated in paragraph 16 as hereunder:-

“16. Whether the High Court can exercise such power of superintendence only when no appeal or revision has been provided under the Code against orders passed by such criminal courts or even in cases where the persons concerned have availed the remedy provided under the Code for setting aside such orders? It may be urged that in the aforesaid two Full Bench decisions of this Court and in the case of Chandra Shekhar Singh & Another (supra) before the Supreme Court, no internal remedy by way of appeal or revision



had been provided, rather there was a bar so far exercise of appellate or revisional power of this Court under the old Code is concerned, in my view whether a bar has been placed or not on exercise of the appellate or revisional power under the Code itself is not of much consequence so far as the power of this Court under Article 227 of the Constitution is concerned. But there may be three situations under which the power under Article 227 may be invoked. Firstly, where no appeal or revision has been provided against the order in question, secondly, where the person aggrieved has already filed a revision application before Sessions Judge and his revision application to this Court against the order passed by the Sessions Judge is barred under Section 397(3) of the Code. The third eventuality may be where although a revision application or an application under Section 482 of the Code is maintainable before this Court, still an application under Article 227 is filed. In my view, there is no question exercise of power under Article 227 in the third category of cases, the remedy being available to petitioner under the provisions of the Code itself. So far the cases falling in the first category i.e., where no appeal or revision has been provided as has been said by the Supreme Court, it will require an exceptional case before power under Article 227 is to be exercised. In respect of the cases coming under second category i.e., the revision application have already been dismissed by the Sessions Judge, and bar under Section 397(3) is applicable for interference under Article 227, very exceptional circumstances must exist in view of the



judgment of the Supreme Court in the case of Jagir Singh(Supra) ”

19. Thus, the Division Bench held that an order of interim maintenance can only be challenged under Article 227 of the Constitution of India.

20. The decision of Md. Akil Ahmad (supra) was considered by the Larger Bench in Dr. Dilip Kumar @ Dr. Dilip Kumar Sharma vs. The State of Bihar & Anr (Cr. Misc No. 6740 of 2016) and the Larger Bench vide order dated 22nd of November, 2024, in paragraph 45 and 46 observed as follows:-

“45. We are thus of the considered view that an order of interim maintenance is an order finally deciding the issue of the moment, which is not, stricto sensu, an interlocutory order but an intermediary order against which no bar of preferring revision against such order would apply.”

“46. The questions are, thus, answered as follows:-

(i) An order of interim maintenance under the second proviso of Section 125 Code of Criminal Procedure, 1973 is not an “interlocutory order”, but an “intermediate/quasi final order”; and

(ii) The remedy of criminal revision would be available qua both the interim and the final order under Sections 125 to 128 of the Code of Criminal Procedure, 1973 under sub-section (4) of Section 19 of the Family Courts Act, 1984.



21. The issue as to whether interim order of maintenance is revisable or not is, thus, decided in the affirmative.

22. At this stage, the instant revision is taken up for hearing on merit.

23. It is submitted by the learned Advocate for the petitioner / husband that the Trial Court by passing the impugned / order 2nd of February, 2023, directed the petitioner to pay entire arrears interim maintenance from the months of March, 2022 to February, 2023 at the rate of Rs. 20,000/- per month i.e., Rs. 2 lakhs 40 thousand within a period of three months from the date of the order. The petitioner was also directed to pay current interim maintenance at the rate of Rs. 20,000/- per month.

24. The amount of maintenance was considered on the ground that the petitioner is a Medical Officer in Bihar Health Services. Beside he has some income from his private practice. Thus, the Trial Court held the petitioner's income to the tune of Rs. 1 Lakh 20 Thousand per month.

25. In the instant revision, the petitioner has denied such finding of the Trial Court, stating, inter alia, that his monthly salary is Rs. 65,251/- and he took substantial amount of



loan during his medical examination. Now he is repaying the said educational loan at the rate of Rs. 36,438 per month. Thus, the petitioner has only remained a sum of Rs. 28,000/- for his personal expenses as well as for the maintenance of his old parents.

26. It is further submitted by the learned Advocate for the petitioner that the opposite party / wife used to discharge a duty as Jevika and earned Rs. 15,000/- per month. Subsequently, she got the job of teacher in the Government School and earns Rs. 25,000/- per month. Thus, the opposite party has sufficient means of income and no amount is required at present for interim maintenance of the petitioner.

27. Learned Advocate for the opposite party, on the other hand, submits that indisputably marriage of the parties was solemnized in the year 2015. In the said wedlock, the parties were blessed with a son, who is now reading in Class II. The petitioner being the father has moral and legal duty even to maintain his son but he has not discharged any such duty. As on this date, an amount of Rs. 6 Lakh and 60 thousand is due towards interim maintenance to be paid by the petitioner in favour of the opposite party no. 2. Only because the opposite party no. 2 get an employment as a Government Teacher, her



claim for interim maintenance cannot be denied.

28. Having heard the learned counsel for the parties, I find that the order of interim maintenance was disposed of by the Trial Court without obtaining any affidavit of assets and liabilities as directed by the Hon'ble Supreme in ***Rajnish v. Neha***. If the affidavit of assets and liabilities were filed, then the contesting parties would not have disputed their assets and liabilities. It is true that the petitioner had taken a series of adjournment in the Trial Court to stall the maintenance proceeding. However, this Court is not in a position to assess any material in the impugned order whereby and whereunder the Trial Court fixed Rs. 20,000/- per month as interim maintenance without considering affidavits of assets and liabilities and the income of the opposite party.

29. In view of such circumstances, the impugned order is set aside.

30. The parties are directed to file affidavit of assets and liabilities within three weeks from the date of communication of this order to the Family Court. No further time shall be granted on any reason whatsoever.

31. On the basis of the affidavit of assets and liabilities, the learned Trial Judge shall decide the quantum of



interim maintenance payable to the petitioner during the pendency of the application under Section 125 of the Cr.P.C. in accordance with law.

32. However, the petitioner shall go on paying a sum of Rs. 10,000/- per moth for the maintenance of his minor son till the disposal of the maintenance proceeding.

33. With the above order, the instant revision is disposed of.

(Bibek Chaudhuri, J)

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