

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1039 of 2024

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

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Shivi Sudarshan, S/o Rohit Kiran Singh R/o Dharfari House, Club Road, B
203, PS- Mithanpura, PO- Ramna, Distt- Muzaffarpur

... .. Petitioner/s

Versus

Smt. Deepa Sudarshan, W/o Shivi Sudarshan, D/o Ram Nath Mishra At
Dharfari Enclave, Club Road, Post- Ramna, P.S. - Mithanpura, Distt.-
Muzaffarpur. Presently Residing at Shiv Puri Damu Chowk, Post- Kazi
Mohammadpur, P.S.- Kazi Mohammadpur, Distt.- Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brajesh Kumar Tiwari, Advocate
For the Opposite Party	:	Ms. Sushmita Mishra, Advocate
		Ms. Shreyashi Raj, Advocate
For the State	:	Ms. Asha Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 15-07-2025

1. The petitioner is the husband of Opposite Party.
Their marriage was solemnized on 8th of May, 2007. In the
month of January, 2023, the Opposite Party 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, who is aged about 16 years. The petitioner deals with a



catering business and earns Rs. 5 to 6 lakhs per year. It is also alleged that the petitioner is addicted to liquor and in the influence of intoxication, he used to treat the Opposite Party with cruelty. On 10th of December, 2023, he drove her away from her matrimonial home, when she demanded some money to buy medicine. Again, she stated that she has been residing with her parent since 10th of December, 2018. It is also pleaded that the petitioner has no source of income. 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 23rd of August, 2024, the learned Principal Judge, Family Court, Muzaffarpur passed an order of *ad interim* maintenance to be paid by the petitioner in favour of the Opposite Party at the rate of Rs. 10,000/- per month within 10th day of each succeeding month 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 under Section 397 read with Section 401 of the Cr.P.C. 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. I have already pointed out consistent decisions of the Hon'ble Supreme Court in the case, referred to above, that it



is immaterial as to whether the impugned order is passed at an interim stage or at a final stage. An order is revisable if the order would have been passed against the party in favour of whom the order was passed would terminate the entire proceeding.

19. In a very recent decision, while exercising revisional jurisdiction, the High Court at Delhi, vide judgment, dated 1st of July, 2025, in Crl. Revision. P. (MAT) 172 of 2024 had occasion to discuss and distinguish between interim relief/maintenance and ad interim relief/maintenance. It is held as hereunder:

11. In law, interim relief is a temporary relief granted by the Court after hearing both parties, pending final adjudication of the dispute. It is typically granted upon consideration of pleadings, replies, and after evaluating prima facie rights and urgency. In contrast, ad-interim relief is a provisional relief granted ex-parte or at the initial stage, often before the opposite party is served or has filed a reply. It is essentially an urgent measure granted to prevent irreparable harm, subject to further hearing and confirmation.

12. As far as maintenance is concerned, interim maintenance is an allowance granted to the aggrieved party



during the pendency of proceedings and till final adjudication, such as under Section 125 of Cr.P.C. or the Domestic Violence Act, generally after considering pleadings and material placed by both parties. Ad-interim maintenance, on the other hand, is a provisional maintenance granted at the preliminary stage, i.e. prior to adjudicating even the interim maintenance, to alleviate urgent hardship being faced by a dependent spouse or child, pending a more detailed consideration of the case. Thus, while both are temporary in nature, the key difference lies in the stage of grant, extent of hearing accorded before the relief is granted, and the prima facie opinion formed by the Court.”

13. In Manish Divedi v. Jyotsana: 2019 SCC OnLine Del 10492, a Coordinate Bench of this Court also drew a clear distinction between ad-interim maintenance and interim or final maintenance. It was observed that ad-interim maintenance is a tentative arrangement, granted at a preliminary stage, and is subject to final determination of interim or permanent maintenance. At the stage of granting ad interim maintenance, the Court is only required to form a prima facie opinion, based on the material available on record.”

20. Finally, the learned Single Judge of Delhi High



Court considered the decision of the Hon'ble Supreme Court in the case of *Rajnesh v. Neha, reported in (2021) 2 SCC 324* and held that an order of interim maintenance, if passed on the basis of the pleadings of the parties and the evidence on record, such order is revisable.

21. In the instant case, the parties filed their application and rejoinder, stating, inter alia, that the application for interim maintenance filed by the Opposite Party was not maintainable in the eyes of law.

22. Before hearing of the application for interim maintenance, both the parties filed affidavits of assets and liabilities. The parties also led their evidence. In course of evidence, it is ascertained that the Opposite Party/wife received a sum of Rs. 5,00,000/- from her father-in-law in order to maintain her livelihood. She had already spent around Rs. 1,00,000/- and rest amount of 4,00,000/- is remaining in her bank account. It is also ascertained from her evidence that she has been residing in a portion of the house and she does not have to pay any money towards her house rent, electricity and water. For the rest expenditure, she does not have any source of income.

23. The learned Trial Judge passed an order of interim



maintenance on the basis of the pleadings of the parties, affidavits of assets and liabilities and evidence adduced by them at the rate of Rs. 10,000/- per month.

24. It is needless to say that considering the status of the parties and present day market price, the said sum of Rs. 10,000/- per month is not at all exorbitant for the petitioner to pay.

25. In view of the above discussion, this Court holds that an order of interim maintenance passed under the 2nd proviso of Section 125 of the Cr.P.C. on the basis of the pleadings, affidavits of assets and liabilities and *prima facie* evidence of the parties, is an intermediate order and accordingly revisable under Section 397 (1) of the Cr.P.C.

26. If the said order was passed in favour of the petitioner, such order could have terminated entire proceeding under Section 125 of the Cr.P.C. because of the fact that the trial court passed the order on due consideration of the pleadings of the parties and affidavits of assets and liabilities as well as *prima facie* evidence adduced by them.

27. At the same time, I hold that the impugned order, dated 23rd of August, 2024, passed by the learned Principal Judge, Family Court, Muzaffarpur, does not suffer from any



illegality or material irregularity and, therefore, the same is affirmed and the instant revision is dismissed.

(Bibek Chaudhuri, J)

skm/-

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