

**Court No. - 44**

**Case :-** CRIMINAL REVISION No. - 4878 of 2022

**Revisionist :-** Smt. Anjana Mukhopadhyay

**Opposite Party :-** State of U.P. and Another

**Counsel for Revisionist :-** Pankaj Srivastava,Rahul Agarwal

**Counsel for Opposite Party :-** G.A., Bipin Kumar Rao, Chandan Sharma

**Hon'ble Pankaj Bhatia,J.**

1. Heard Ms. Aakashi Agarwal for the revisionist and Sri Subham Tripathi for the respondent no.2.
2. The revision has been filed challenging the order dated 03.09.2022 passed by the Additional Principal Judge, Family Court Gautam Buddh Nagar whereby the interim maintenance has been granted to the revisionist @Rs.15,000/- (Fifteen Thousand) per month.
3. The contention of the counsel for the revisionist is that the revisionist was employed earlier as a teacher and was imparting private tuition. Subsequently, post Covid, even the private tuition could not be carried out and the revisionist is also suffering from foot cellulitis Rt. leg Varicose veins whereas the opposite party no.2 has retired from Army and after the One Rank One Pension introduced by the Army Authorities, the opposite party no.2 earning into pension in excess of Rs.1,50,000/- per month.
4. In the light of the said, it is argued that the award of maintenance @Rs.15,000/- per month is wholly inadequate to meet the expenses and the same should be modified.
5. The counsel for the respondent, on the other hand, argues as a first submission that a revision would not lie against an order of interim maintenance passed in exercise of power under section 125

Cr.P.C. He places reliance on the two orders passed by this Court in ***Criminal Revision No.3005 of 2023 (Rahul Nagar vs. State of U.P. and another)*** wherein this Court relying upon a coordinate Bench judgment in the case of ***Jitendra Kumar Verma vs. State of U.P. and two others reported in MANU/UP/1042/2020 (Criminal Revision No.412 of 2019 dated 01.06.2020)*** had opined that the order passed under section 125 Cr.P.C. granting interim maintenance is an interlocutory order and thus, the criminal revision against the same was not maintainable. He further relies upon the judgment in the case of ***Criminal Revision No.32 of 2020 (Mohd. Shaqeel vs. Smt. Ranno and two others) decided on 22.01.2020*** wherein this court while dismissing a revision arising out of an order of interim maintenance under section 125 Cr.P.C. held that there were diverse views of different High Courts, whether the interim maintenance is an interlocutory order or not and the court chose to rely upon the view taken by the Rajasthan High Court which had held that the order of grant of interim maintenance is an interlocutory order and based upon the said analogy proceeded to dismiss the revision.

6. The counsel for the revisionist, on the other hand, places reliance on a division Bench judgment of this Court in the case of ***Liaqat Hussain vs. Jainab Praveen and another; First Appeal Defective No.300 of 2020 decided on 03.12.2020*** wherein against an order of interim maintenance, an appeal was filed under the Family Courts Act, which was repelled by this Court by holding that a remedy of criminal revision was available against an interim and final order passed under section 125 and 128 of Cr.P.C. He also places reliance on an order passed by this Court in the case of ***Sugandha Porwal vs. State of U.P. and others; Criminal Revision No.1421 of 2021 decided on 16.08.2021*** wherein this court relying

upon the judgment in the case of ***Madhu Limaye vs. The State of Maharashtra; (1977) 4 SCC 551*** holding that an order of interim maintenance can not be termed as an interlocutory order and is in the nature of an immediate order. In the light of the said two judgments, the counsel for the revisionist argues that a revision is maintainable.

7. On the basis of the arguments raised, in respect of the first issue with regard to maintainability of the revision, the judgment of the Division Bench in the case of ***Liaqat Hussain (supra)*** and the judgment of the Supreme Court relied upon while delivering the judgment of ***Sugandha Porwal (supra)*** are binding on me and thus, I have no hesitation in holding that a revision would lie against an interlocutory order, which strictly is not an interlocutory order but an immediate order.

8. To appreciate the said arguments, it is essential to note the mandate of section 125 of Cr.P.C., which is as under :

***"125. Order for maintenance of wives, children and parents.***

*(1) If any person having sufficient means neglects or refuses to maintain -*

*(a) his wife, unable to maintain herself, or*

*(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*

*(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*

*(d) his father or mother, unable to maintain himself or herself,*

*a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*

*Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means :*

*[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this subsection, 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."*

9. The power to grant maintenance during the pendency of the proceedings flows from second proviso to section 125(1). The manner in which, the said power is to be exercised is ultimately to determine whether the order is interlocutory or not. As the order conclusive decides the grant of maintenance during the pendency of application based upon the material facts, it can certainly not be termed as an interlocutory order as it decides the rights of grant of interim maintenance during the pendency of the application, thus, on a plain interpretation of section 125(1) Cr.P.C. also, the grant of interim maintenance cannot be termed as an interlocutory order as it categorically decides the rights of the maintenance during the pendency of the application, thus, to that extent, the submission of the counsel for the respondents merits rejection.

10. As regards the quantum of interim maintenance granted by the Additional Principal Judge, Family Court, it records that in the affidavit filed by the parties, the husband has disclosed his per month income as Rs.97,829/- and based upon the said, the interim

maintenance was granted @ Rs.15000/- per month.

11. Before this Court, a supplementary affidavit has been filed wherein the income tax return of the respondent for the assessment year 2020-21 have been stated, wherein the total income of the opposite party is shown as Rs.16,49,180/- and the net tax payable on the said income, was assessed at Rs.3,16,944/-, thus, even on the basis of the income for the assessment year 2020-21, it can be safely presumed that the income of the opposite party in his hand would be around Rs.13,00,000/- (Thirteen lakhs) per annum. On the said amount, this court even if it does not consider the submission of enhancement of pension after the enforcement of OROP, it can safely be presumed that the income in the hands of the respondent is more than Rs.13,00,000/- per annum which works out approximate rupees one lac per month. The pension, besides the benefit of OROP, also increases based upon the addition of dearness allowances on a year to year basis. Thus, the reasoning as recorded in the impugned order for grant of Rs.15000/- as maintenance is absolutely without any substance. The submission of the counsel for the respondent that the revisionist is getting Rs.10,000/- per month from the son born out of the wedlock of the revisionist and the opposite party further fortifies the fact that the amount of maintenance granted to the revisionist is not sufficient as she has to take financial help from her son.

12. For all the reasonings recorded above, the order passed by the Additional Principal Judge is modified with condition that the respondent shall pay an amount of 25% of the amounts so received on a month to month basis in the pension account and the same would be payable from the date of application filed by the revisionist before the Additional Principal Judge, Family Court.

The opposite party shall file the Pension Payment Orders (PPO) along with an affidavit as well as statement of account of the Bank where the pension is credited on a monthly basis within four weeks from today before the Additional Principal Judge, Family Court, Gautam Budh Nagar.

13. In addition to the said, the respondent shall renew the health card which entitles for free medical treatment from the army authorities, being the spouse of the opposite party.

14. The difference of amount, as ordered above, from the amount as paid by the respondent in terms of the impugned order shall be calculated and paid to the revisionist within a period of three months from today. The respondent shall also take steps for renewal of the health card which entitles for free medical treatment/subsidized medical treatment by taking the necessary steps within a period of six weeks from today.

15. Further directions are issued to the Additional Principal Judge, Family Court where the matter is pending to decide the final maintenance application based upon the fresh affidavits to be filed by both the parties with regard to income and assets in the light of the judgment of the Supreme Court in the case of *Rajneesh vs. Neha and another; Criminal Appeal No.730 of 2020 arising out of SLP (Crl) No.9503 of 2018 decided on 04.11.2020* within a period of four months from today. The family court shall also endeavour to decide the divorce proceedings as initiated by the respondents with all expedition.

15. The revision stands **disposed off**.

**Order Date :-** 20.11.2023

VNP/-