



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Revision Petition No. 462/2021

Vishal Kochar

-----Petitioner/Non-Applicant

Versus

1. Smt. Pulkit Sahni

2. Ku. Mahak



-----Respondents

Connected With

S.B. Criminal Revision Petition No. 505/2021

1. Smt. Pulkit Sahni

2. Baby Mehak

-----Petitioners

Versus

Vishal Kochar

-----Respondent



For Petitioner(s) : Mr. Ashvin Garg, Adv.
For Respondent(s) : Mr. Ram Chandra Sharma, Adv.

HON'BLE MR. JUSTICE UMA SHANKER VYAS
Order

Reserved on: 28/03/2022

Pronounced on: 22/04/2022

REPORTABLE

1. These cross criminal revision petitions are filed under Sec. 397/401 Criminal Procedure Code, against the order dated 27.01.2021 passed by Family Court No.2, Jaipur in Case No.1/20, whereby interim maintenance was allowed in pending application u/s.125 Cr.P.C. Petitioners-original applicants Mrs.Pulkit and Baby Mehak-wife and daughter of Vishal have challenged this order for enhancement of the amount of interim maintenance, whereas, the other petitioner-original non applicant Vishal has prayed for quashing the impugned order.

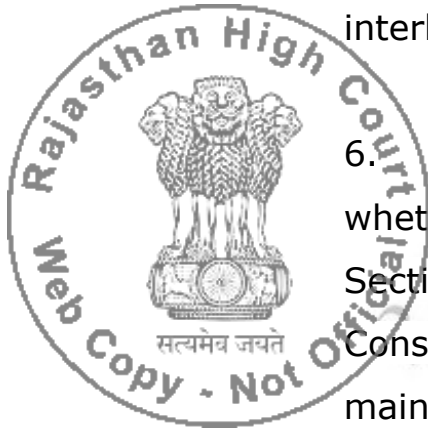
2. Before going into merits, issue regarding maintainability of these revision petitions is to be decided.

3. Heard learned counsels for both the parties on the aforesaid point.

4. It was contended that revision petition is maintainable against the impugned order; however, learned counsels fairly admitted that there are judgments of contrary view on this point as well.



5. Section 397(2) Cr.P.C. provides that the power of revision conferred by sub-section (1) of Section 397 Cr.P.C shall not be exercised in relation to an interlocutory order passed in any appeal, inquiry, trial or other proceeding. Thus it is undisputed legal position that a revision petition is not maintainable against an interlocutory order at all.



6. Now question remains for consideration is whether the order of interim maintenance passed under Section 125 of Cr.P.C is an interlocutory order? Consequently, whether criminal revision petition is maintainable against that order?

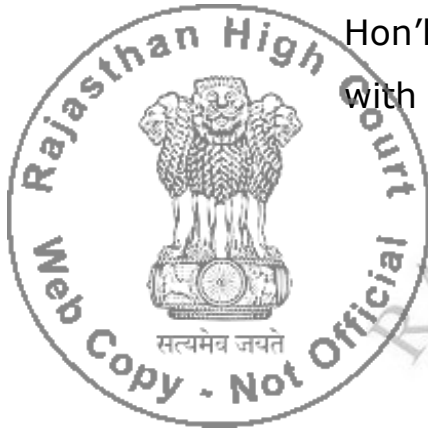
7. Term '**Interlocutory Order**' has not been defined in the Cr.P.C. Hon'ble Apex Court in the case of **V.C. Shukla vs State, reported in AIR 1980 (SC) 962**, has given following observation in para No.23 regarding the nature of interlocutory order:-

"Thus, summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in the ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having to resort to Criminal Procedure Code or any other statute. 'That is to say, if we construe interlocutory order in ordinary



parlance it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in s. 11(1) of the Act."

8. Further, in the case of **Madhu Limaye vs State of Maharashtra, reported in (1977) 4 SCC 551**, the Hon'ble Apex Court has made following observations with regard to the criterion of interlocutory order:-



"Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606:-

"..... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of two words must therefore be considered separately in relation to the particular purpose for which it is required."

In para 1607 it is said:-

"In general a judgment or order which determines the principal matter in question is termed "final"."

In para 1608 at pages 744 and 745 we find the words:-

"An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the- final judgment are to be worked out, is termed "interlocutory". An



interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

9. As per these judicial pronouncements of the Hon'ble Apex Court, it is clear that if an order is passed in a pending proceeding or a trial and it does not terminate the proceeding finally and rights and liabilities of the parties are not decided in finality, then that order shall be considered as an interlocutory order.

10. Learned counsels for the petitioners have relied on the decision of this Court in the case of **Amir Khan vs State of Rajasthan & Ors., reported in 2019 (1) WLC (Raj) UC 645** and submitted that in this judgment it was held that revision is maintainable against the order of interim maintenance. But this judgment stands on different set of laws i.e Protection of Women from Domestic violence Act 2005 (hereinafter referred to be as "**the Act of 2005**").

11. So far as the provisions of the Act of 2005 are concerned, under Section 12 of the Act an aggrieved person can file an application to seek various reliefs including monetary relief i.e. relief of maintenance under section 20 of the Act. Section 23 of the Act of 2005 empowers the Magistrate to pass an interim order as he deems just and proper in any proceeding pending before him. Section 29 of the Act provides for an appeal to the Court of Session against an order passed under this Act and it does not exclude an interim order from it's ambit.





12. The order of interim maintenance under the provisions of Act 2005 does not terminate the proceedings finally. The matter remains *sub judice* and rights and liabilities of the parties are not decided in finality. Though, in such circumstances, the interim order of maintenance is in the nature of interlocutory order, yet it is appealable as per Section 29 of the Act 2005. In the case of **Amir Khan vs State of Rajasthan and Others** (supra), it was held that such interim order is appealable under Section 29 of the Act of 2005, and a criminal revision petition is maintainable against the final order of appellate Court. This judgment stands on different set of laws i.e., Act 2005 and does not deal with the question of maintainability of revision against interlocutory order, hence, it cannot be applied with regard to the orders of interim maintenance passed under Section 125(1) of Cr.P.C.

13. Learned counsels have also relied upon the judgment of Larger Bench of this court in the case of **Kavita Vyas vs Deepak Dave, reported in 2018 (1) RLW 97**, which is concerned with the order passed under section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to be as "**the Act of 1955**"). Section 24 of the Act of 1955 reads as under:-

"24. Maintenance pendent lite and expenses of proceedings:- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the





respondent to pay to the petitioner the expenses of the proceeding, and monthly amount during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."



14. Larger Bench of this Court in the case of **Kavita Vyas vs Deepak Dave (supra)**, while answering the reference in Para no. 23, observed that:

23. "Accordingly, we answer the reference by declaring that the Division Bench of this Court in the decision reported as RLW 2011 (2) Raj.1615 Ajay Malik V/s Smt.Shashi does not lay down the correct view. The reference is answered by holding that an appeal shall lie under Section 19(1) of the Family Courts Act, 1984 against an order passed by a Family Court under Section 24 of the Hindu Marriage Act, 1955."

15. Thus, it is clear that if any proceeding is initiated under Act 1955, then any party to such proceeding can file a separate application under Section 24 of the Act and husband or wife, who does not have any independent source of income for living and necessary expenses for the proceedings, can claim for maintenance from other party. Application under Section 24 of the Act 1955 is an independent/separate proceeding and order passed under such proceeding



decides the rights of parties in their finality. After such order, no proceeding remains pending in application filed under Section 24. Therefore, based on the above explained criterion, such order is not an interlocutory order but a final order. It is pertinent to mention here that Section 19 of the Act of 1955 permits appeal only against final order, and bars any appeal or revision against interlocutory order. Therefore, looking into the specific intention and spirit of Section 24 of the Act of 1955, the above judgment has no applicability to the order of interim maintenance passed under Section 125 of Cr.P.C.



16. Learned counsels while relying upon the judgments of High Court of Punjab and Haryana in **Sumerchand vs Sandhuran Rani and Others, reported in 1987 Cr.L.J. 1396, Sunil Kumar Sabharwal vs Neelam Sabharwal, reported in 1991 Cr.L.J. 2056** and the order dated 15.11.18 passed by the High Court of Uttarakhand in the case of **Ashu Dhiman vs Smt Jyoti Dhiman, Cr. Misc. Application (C-482) No.434/2018**, submitted that an order passed for interim maintenance under provisions of Section 125 of Cr.P.C is not an interlocutory order, hence, criminal revision petition is maintainable against such order.

17. In the case of **Paras Devi vs Suresh Chand, reported in 2012 (17) RCR (Criminal) 554**, the Co-ordinate Bench of this Court while entertaining the criminal revision petition, set-aside the order of Session court passed in criminal revision filed against the order of interim maintenance under Section 125 of Cr.P.C, where the amount of interim maintenance was reduced



from Rs.2000/- per month to Rs.1000/- per month. Issue of maintainability of the revision petition against the order of interim maintenance was neither challenged nor decided.

18. Similar question arose before the Division Bench of this Court in the case of **Anu vs Ratan Lal Sharma, reported in RLR 1993 (1) 125**, wherein, it was held that an Interim maintenance Order passed in pending proceeding under Section 125 of CrPC is an interlocutory order. In para No.11 of the said judgment following observations were made:-

“An interim order of maintenance allowance in the proceedings under Section 125, Cr.P.C. is interim in nature, By such interim order rights and liabilities of the parties are not decided at all. Object of such relief is to grant maintenance to the wife, children or parents, who are unable to maintain themselves and are dependent on the husband, father and son/ daughter as the case may be. Their primary object is to prevent starvation and vagrancy. It is a measure of social justice and to compel a man to perform his moral and legal obligation, he owes to society in respect of his wife, and minor children so that they are not left beggared and destitute on the scrap heap of the society and thereby driven to a life of vagrancy and immorality and crime for their subsistence. Minor children are to be taken care of by the father. It is the moral and legal duty of a father to provide sufficient maintenance for his minor children so that they may have proper meals, clothing, and schooling. Therefore, an interim order of allowances for their maintenance is necessary and now it is permissible after the





authoritative judgment of the Apex Court of the Country in Savitri v. Govind Singh: 1986 D.M.C. 1. We are of the firm view that any order granting interim maintenance allowance is an interlocutory order within the meaning of Sub-section (1) of Section 19 of the Act. The phraseology used in Sub-section (1) of Section 19 of the Act unmistakably provides that no appeal shall lie from any judgment or order which is an interlocutory order. The provisions of appeal under Section 19 of the Act are stringent by incorporating non obstante clauses therein. **Even a revision against an interlocutory order is barred under Sub-section (4) of Section 19 of the Act.** The Legislature in its wisdom thought-fully enacted Section 19 with a view to dispose of matrimonial cases as expeditiously as possible. Clear and unambiguous language of Section 19(1) admits no other interpretation. Mr. L.R. Mehta, learned Counsel appearing for minor children, when faced with this situation, has to concede fairly and rightly so, that the appeals are not maintainable against the impugned order granting interim maintenance allowance. Mr. Ratan Lal Sharma also could not bring any decision to our notice taking a contrary view. We, therefore, have no hesitation in holding that all the present appeals are not maintainable under Section 19 of the Act as they are directed against an interlocutory order.”



19. The Co-ordinate Benches of this Court in the cases of **Chhotu Singh vs Basanti, (RLW 2003(1) 114), and in Anshul Kulshresth vs Smt Swarnima and Another, (RLW 2019 (1) 610)** have also considered that an order of interim maintenance passed under



Section 125 of CrPC is an interlocutory order. In the case of **Anshul Kulshreshth vs Smt Swarnima and Others** (supra), which is compatible with the above reasoning reads as:-



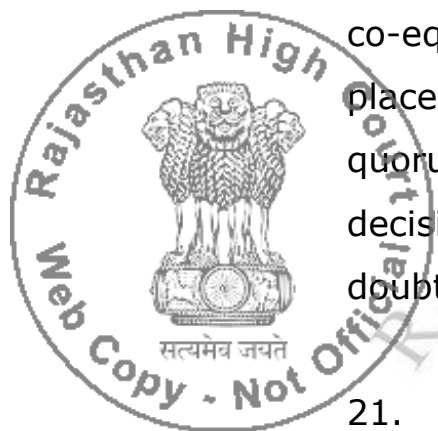
“13. There are differing views of different High Courts, Punjab & Haryana High Court are of view that interim maintenance order is not an interlocutory order, whereas Calcutta @ Madhya Pradesh High Court are of the view that interim maintenance order is an interlocutory order but this court is bound by the decision of the Rajasthan High Court **“Chhotu Singh vs Smt. Basanti & Ors.” (Supra) & Minor Anu vs Ratan Lla Sharma”** (Supra), wherein grant of interim maintenance is held to be an interlocutory order.

14. Since the interim maintenance order continues till the final decision of an application under Section 125 Cr.P.C. and the decision of an interim application does not decide the rights and liabilities of the parties, it cannot be considered to be a final order as to give rights to the parties to move a revision petition. Hence, the revision petition is not maintainable.”

20. The five Judges Bench of the Hon'ble Apex Court in the landmark pronouncement in **Central Board of Dawoodi Bohra Community Vs. State of Maharashtra, reported in (2005) 2 SCC 6736**, held that the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength. A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention



of the Chief Justice and request for the matter being placed for hearing before a bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.



21. In the light of above mentioned legal propositions regarding law of precedents and their binding force, judgments of other High Court/s have only persuasive force and not binding force. **This Court is bound by the decision of the Division Bench of this court in Anu vs Ratanlal, reported in RLR 1993(1) 125 and judgments of Co-ordinate Bench of this Court in Chhotu Singh vs Basanti Devi and Others, reported in RLW 2003(1)114 and Anshul Kulshreshth vs Smt Swarnima, reported in RLW 2019(1)610, wherein it was categorically held that the order of interim maintenance passed in pending application under Section 125 of CrPC is an interlocutory order.**

22. It is also pertinent to mention here that Section 19 (1) & (4) of the Family Courts Act, 1984 provides that no appeal or revision shall lie against any interlocutory order passed by Family Court. The impugned order dated 27.01.2021 is passed by the Family Court No.2, Jaipur empowered under the Family



Courts Act, 1984, therefore such revision petitions are not maintainable in the light of these provisions also.

23. An order of interim maintenance passed under Sec. 125 of Cr.P.C by any Family Court or Magistrate, during the pendency of the proceeding, remains effective up to the final order only and does not decide the rights and liabilities of the parties in finality.

24. As per above discussion and settled legal position, this Court arrives at the conclusion that the impugned order dated 27.01.2021, regarding interim maintenance under Section 125 Cr.P.C., is an interlocutory order, hence both the revision petitions being not maintainable, either under Section 397/401 Cr.P.C. or under Section 19 of the Family Courts Act, are accordingly dismissed.

25. All pending applications, if any, also stand disposed of.

26. A copy of this order be placed in each connected file.

(UMA SHANKER VYAS),J

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