

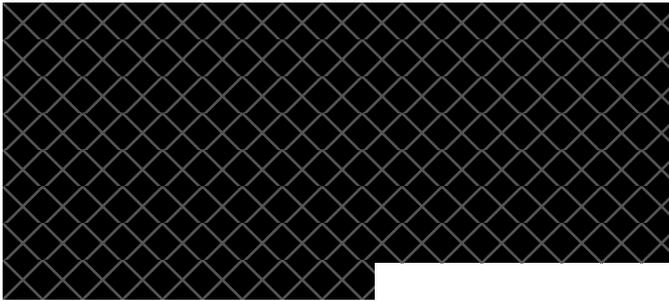
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)

MISC. CRIMINAL CASE NO. 60364 OF 2022.

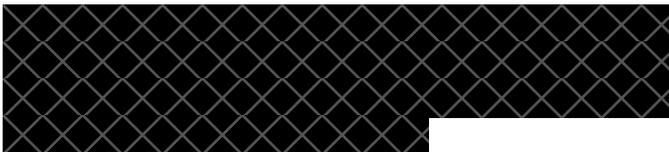
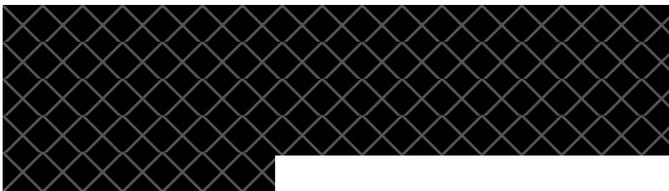
BETWEEN :-



.....PETITIONER

(BY SHRI VAIBHAV JAIN – ADVOCATE)

AND



....RESPONDENT

(NONE)

Reserved on	:	16/01/2023
Pronounced on	:	02 /02/2023

This petition having been heard and reserved for judgment/order, coming on for pronouncement this day, this Court passed the following:

ORDER

Heard on the question of maintainability.

2. As per objection raised by the Registry, this petition under Section 482 of Cr.P.C. is not maintainable and criminal Revision under Section 397/401 of Cr.P.C. should be preferred against the impugned order dated 10.11.2022 passed by learned Principal Judge, Family Court, Balaghat in MJCR No. 171/2022 () whereby learned family Court allowed the application under Section 125 of Cr.P.C. for interim maintenance filed by the respondent-wife and directed the petitioner to pay the interim maintenance to the tune of Rs. 5,000/- per month from the date of application i.e. from 12.07.2022.

3. Learned counsel for the petitioner submits that the impugned order is an interim order, so criminal revision should not lie against the

impugned order and he placed reliance on an order of the Rajasthan High Court in Criminal Revision Petition No. 462/2021 (Vishal Kochar Vs. Smt. Pulkit Sahni) dated 22.04.2022.

4. 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.

5. 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 lie against that order?

6. 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.”

7. 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."

8. 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.

9. **In the case of 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** High Court of Haryana and a 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**, it has been held 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.

10. It is pertinent to examine the scope and ambit of Section 19 of the Family Courts Act, 1984 (hereinafter referred to as the 'said Act').

11. The said Act was enacted with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and to deal with matters connected therewith so as to have a composite statute to deal with various aspects. Though the statute was enacted much earlier, its implementation has been done in a phased manner as the pre-requisite was the establishment of the Family Courts under Section 3 of the said Act. Chapter 5 of the said Act deals with Appeals & Revisions and Section 19 of the said Act is the only Section falling under this chapter which reads as under:

CHAPTER V - APPEALS AND REVISIONS 19. *Appeal. -*
(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908(5 of 1908), or in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974): Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), before the commencement of the Family Courts (Amendment) Act, 1991.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, order or decree of a Family Court.

(6) An appeal referred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

12. A reading of Section 19 of the said Act shows that under sub-section (1), save as provided in sub-section (2), an appeal lies from every judgement or order of the Family Court to the High Court, both on facts and on law. This is irrespective of anything contained in the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC'), Cr.P.C. or any other law, which would, thus, also include The Hindu Marriage Act, 1955 (hereinafter referred to as the HM Act'). However, this right of appeal comes with one limitation, i.e., it does not lie against an interlocutory order. A question, thus, arises as to what is the meaning of an interlocutory order.

13. Sub-section (2) of Section 19 of the said Act specifically prohibits any appeal from an order passed under Chapter 9 of the Cr.P.C. which contains only four provisions, i.e., Section 125 to

Section 128. Thus, a conjoint reading of sub-section (1) and sub-section (2) of Section 19 of the said Act makes it clear that the appeal would not be maintainable before this Court from an order passed under Chapter 9 of the Cr.P.C. However, it is not as if a party aggrieved by an order passed under any of the provisions of Chapter 9 of the Cr.P.C. is remediless. This is so in view of sub-section (4) of Section 19 of the said Act, which provides for the revisionary power specifically qua an order passed under Chapter 9 of the Cr.P.C. making the intent of the legislature quite clear. Once again, the exception carved out is that it should not be an interlocutory order and, thus, it would have to be examined as to what is an interlocutory order in the context of Section 125 to Section 128 of the Cr.P.C. for the purpose of Section 19 (4) of the said Act.

14. In the Case of **Manish Aggarwal Vs. Seema Aggarwal & Ors ILR (2013) 1 Delhi 210**, Division Bench of Delhi High Court held that remedy of criminal revision would be available against both the interim and final orders under Section 125-128 of Cr.P.C. under sub-Section (4) of Section 19 of the said Act.

iii. The remedy of criminal revision would be available qua both the interim and final order under Sections 125 to 128 of the Cr.P.C. under sub-section (4) of Section 19 of the said Act. iv. As a measure of abundant caution we clarify that all orders as may be passed by the Family Court in exercise of its jurisdiction under Section 7 of the said Act, which have a character of an intermediate order, and are not merely interlocutory orders, would be amenable to the appellate jurisdiction under sub-section (1) of Section 19 of the said Act.

15. In the case of Shah **Babulal Khimji Vs. Jayaben D. Kanta & Anr.** AIR 1981 SC 1786, the Apex Court has observed as below:-

“11.The Apex Court laid down that there can be three kinds of judgments. Relevant portion of the said judgment to that effect is as follows:

(1) A final judgment--A judgment which decides all the questions or issues in controversy so far as the trial Judge is concerned and leaves, nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the trial Judge indisputably and unquestionably is a judgment within the meaning of the Letters Patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.

(2) A preliminary judgment--This kind of a judgment may take two forms--(a) where the trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the trial Judge is concerned and, therefore, appealable to the larger Bench. (b) Another shape which a preliminary judgment may take is that

where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g., bar of jurisdiction, res judicata, a manifest defect in the suit. Absence of notice under Sec. 80 and the like, and these objections are decided by the trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to a larger Bench.

(3) Intermediary or interlocutory judgment: Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43, Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore,

appealable. There may also be interlocutory orders which are not covered by Order 43, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse affect on the party concerned must be direct and immediate rather than indirect or remote...”

16. In the case of **Aakansha Shrivastava Vs. Virendra Shrivastava & Anr. 2010 (3) MPLJ 151** Division Bench of the Madhya Pradesh High Court has held as under:-

“17. Interim maintenance had been granted under Section 125 Cr.P.C. and the issue arose whether a revision petition could be preferred against that order, as it was alleged to be interlocutory in nature. It was held that the order of interim maintenance was an intermediate or quasi final order. Analogy was drawn from Section 397 (2) of the Cr.P.C. and the pronouncement of the Supreme Court in Amarnath & Ors. Vs. State of Haryana & Ors. AIR 1977

SC 2185 qua the said provision was relied upon. Thus, an order which substantially affects the rights of an accused and decides certain rights of the parties was held not to be an interlocutory order so as to bar revision.”

17. In the case of **Aakansha Shrivastava (Supra)** the Division Bench of this Court further held that any order which affects right of a person drastically and substantially, cannot be treated as interlocutory order and criminal revision can be preferred under Section 19(4) of the Family Courts Act against the order passed on the application for interim maintenance by the Family Court. Further more in the Case of **Rajesh Shukla Vs. Meena Shukla 2005(2)MPLJ 483**, it has been held by Full Bench of this Court while passing of maintenance under Section 125 of Cr.P.C. in exercise of powers, against such order under Section 19(4) of Cr.P.C. criminal revision should be registered. In another case **Nasreen Begum Vs. The State of Jharkhand & others 2006 Cri.L.J. 326** has held the Section 19(4) of the said Act make special provision of revision with regard to orders passed under Section 125 of Cr.P.C. and thus revisions would lie.

18. Considering the above legal position, I am of the considered view that order of maintenance affects right of a person drastically and substantially, hence, it cannot be treated as interlocutory order and criminal revision should be preferred under Section 19(4) of the Family Courts Act against the order passed on the application for interim maintenance by the Family Court.

19. Accordingly, M.Cr.C. is hereby dismissed.

**(RAJENDRA KUMAR (VERMA))
JUDGE**

MISHRA