

Court No. - 71

Case :- CRIMINAL REVISION No. - 2220 of 2005

Revisionist :- Smt. Rekha Gautam

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

Counsel for Revisionist :- Raj Singh

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal,J.

Matter taken up in the revised list. No one appears on behalf of the revisionist.

Notice was issued to the opposite party no. 2 vide order dated 11.5.2005. As per office report dated 01.8.2005, it is apparent that notice has been duly served personally on the opposite party no. 2.

No one appears on behalf of the opposite party no. 2 even when the matter has been taken up in the revised list. Service of notice upon the opposite party no. 2 is thus sufficient.

Sri Ankit Srivastava, learned State counsel is present.

This revision is of year 2005. This Court, therefore, deems it fit to proceed in the matter on the basis of the record with the assistance of the learned State counsel.

The present criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") has been filed before this Court with the following prayers:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this revision and modify the judgement and order dated 1.4.2005 passed by Additional Sessions Judge (Court No. 9) Aligarh in Crl. Revision No. 797 of 2002 Yogesh Gautam vs. State of U.P. and other, to the extent of Rs. 1,000/- be granted to the son of Revisionist as per judgement and order dated 31.8.2002 passed by the trial court; otherwise the revisionist as well as her son shall suffer irreparable loss.

It is further prayed that this Hon'ble Court may also be pleased to stay the effect and operation of the impugned judgement and order dated 1.4.2005 passed by Addl. Sessions Judge (Court No. 9) Aligarh in Crl. Revision No. 797 of 2002, Yogesh Gautam vs. State of U.P. and others, during the pendency of present revision before this Hon'ble Court so that justice may be done."

Heard Sri Ankit Srivastava, learned State counsel and perused the material on record including the impugned order.

Vide order dated 1.4.2005 the revisional court has modified the order dated 31.8.2002 to the extent that Rs. 1000/- per month be given to the revisionist and

Rs. 400/- per month be given to her minor children from the date of order.

The view as taken by the revisional court of granting Rs.1000/- per month to the revisionist and Rs. 400/- to her minor children the date of order is illegal. The Apex Court in the Case of **Rajnish Vs. Neha and another : Criminal Appeal No. 730 of 2020 (Arising out of SLP (Crl.) 9503 of 2018) decided on November 4, 2020 : 2020 SCC Online SC 903**, in para-10, has held that the maintenance has to be awarded from the date of application. It has held as follows:

"IV Date from which Maintenance to be awarded

There is no provision in the HMA with respect to the date from which an Order of maintenance may be made effective. Similarly, Section 12 of the D.V. Act, does not provide the date from which the maintenance is to be awarded.

Section 125(2) Cr.P.C. is the only statutory provision which provides that the Magistrate may award maintenance either from the date of the order, or from the date of application. [K. Sivaram vs. K. Mangalamba and others: 1989(1) APLJ (HC) 604].

In the absence of a uniform regime, there is a vast variance in the practice adopted by the Family Courts in the country, with respect to the date from which maintenance must be awarded. The divergent views taken by the Family Courts are : first, from the date on which the application for maintenance was filed; second, the date of the order granting maintenance; third, the date on which the summons was served upon the respondent.

(a) From date of application

The view that maintenance ought to be granted from the date when the application was made, is based on the rationale that the primary object of maintenance laws is to protect a deserted wife and dependant children from destitution and vagrancy. If maintenance is not paid from the date of application, the party seeking maintenance would be deprived of sustenance, owing to the time taken for disposal of the application, which often runs into several years.

The Orissa High Court in Susmita Mohanty v Rabindra Nath Sahu, 1996(I) OLR 361 held that the legislature intended to provide a summary, quick and comparatively inexpensive remedy to the neglected person. Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in Courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order.

In Kanhu Charan Jena v. Smt. Nirmala Jena, 2001 Cri L.J. 879, the Orissa High Court was considering an application u/S. 125 Cr.P.C., wherein it was held that even though the decision to award maintenance either from the date of

application, or from the date of order, was within the discretion of the Court, it would be appropriate to grant maintenance from the date of application. This was followed in *Arun Kumar Nayak v Urmila Jena*, (2010) 93 AIC 726 (Ori) wherein it was reiterated that dependents were entitled to receive maintenance from the date of application.

The Madhya Pradesh High Court in *Krishna Jain v Dharam Raj Jain*, 1993 (2) MPJR 63 held that a wife may set up a claim for maintenance to be granted from the date of application, and the husband may deny it. In such cases, the Court may frame an issue, and decide the same based on evidence led by parties. The view that the "normal rule" was to grant maintenance from the date of order, and the exception was to grant maintenance from the date of application, would be to insert something more in [Section 125\(2\) Cr.P.C.](#), which the Legislature did not intend. Reasons must be recorded in both cases. i.e. when maintenance is awarded from the date of application, or when it is awarded from the date of order.

The law governing payment of maintenance u/S. 125 [Cr.P.C.](#) from the date of application, was extended to HAMA by the Allahabad High Court in *Ganga Prasad Srivastava v Additional District Judge, Gonda & Ors.*⁵¹ The Court held that the date of application should always be regarded as the starting point for payment of maintenance. The Court was considering a suit for maintenance u/S. 18 of HAMA, wherein the Civil Judge directed that maintenance be paid from the date of judgment. The High Court held that the normal inference should be that the order of maintenance would be effective from the date of application. A party seeking maintenance would otherwise be deprived of maintenance due to the delay in disposal of the application, which may arise due to paucity of time of the Court, or on account of the conduct of one of the parties. In this case, there was a delay of seven years in disposing of the suit, and the wife could not be made to starve till such time. The wife was held to be entitled to maintenance from the date of application / suit.

The Delhi High Court in *Lavlesh Shukla v Rukmani*, Crl. Rev. Pet. No. 851/2019, decided by the Delhi High Court vide order dated 29.11.2019, held that where the wife is unemployed and is incurring expenses towards maintaining herself and the minor child / children, she is entitled to receive maintenance from the date of application. Maintenance is awarded to a wife to overcome the financial crunch, which occurs on account of her separation from her husband. It is neither a matter of favour to the wife, nor any charity done by the husband.

(b) From the date of order

The second view that maintenance ought to be awarded from the date of order is based on the premise that the general rule is to award maintenance from the date of order, and grant of maintenance from the date of application must be the exception. The foundation of this view is based on the interpretation of [Section 125\(2\) Cr.P.C.](#) which provides :

"(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be."

The words "or, if so ordered" in [Section 125](#) has been interpreted to mean that where the court is awarding maintenance from the date of application, special reasons ought to be recorded. [Bina Devi & Ors. v State of Uttar Pradesh & Ors. (2010) 69 ACC 19] In Bina Devi v State of U.P., (2010) 69 ACC 19, the Allahabad High Court on an interpretation of S.125(2) of the [Cr.P.C.](#) held that when maintenance is directed to be paid from the date of application, the Court must record reasons. If the order is silent, it will be effective from the date of the order, for which reasons need not be recorded. The Court held that [Section 125\(2\)](#) Cr.P.C. is prima facie clear that maintenance shall be payable from the date of the order.

The Madhya Pradesh High Court in Amit Verma v Sangeeta Verma & Ors. C.R.R. No. 3542/2019 decided by the Madhya Pradesh High Court vide Order dated 08.1.2020, directed that maintenance ought to be granted from the date of the order.

(c) From the date of service of summons

The third view followed by some Courts is that maintenance ought to be granted from the date of service of summons upon the respondent.

The Kerala High Court in S. Radhakumari v K.M.K. Nair, AIR 1983 Ker 139, was considering an application for interim maintenance preferred by the wife in divorce proceedings filed by the husband. The High Court held that maintenance must be awarded to the wife from the date on which summons were served in the main divorce petition. The Court relied upon the judgment of the Calcutta High Court in Samir Banerjee v Sujata Banerjee, 70 CWN 633, and held that Section 24 of the HMA does not contain any provision that maintenance must be awarded from a specific date. The Court may, in exercise of its discretion, award maintenance from the date of service of summons.

The Orissa High Court in Gouri Das v Pradyumna Kumar Das, 1986 (II) OLR 44, was considering an application for interim maintenance filed u/S. 24 HMA by the wife, in a divorce petition instituted by the husband. The Court held that the ordinary rule is to award maintenance from the date of service of summons. It was held that in cases where the applicant in the maintenance petition is also the petitioner in the divorce petition, maintenance becomes payable from the date when summons is served upon the respondent in the main proceeding.

In Kalpana Das v Sarat Kumar Das, AIR 2009 Ori 133, the Orissa High Court held that the wife was entitled to maintenance from the date when the husband entered appearance. The Court was considering an application for interim maintenance u/S. 24 HMA in a petition for restitution of conjugal rights filed by the wife. The Family Court awarded interim maintenance to the wife and minor

child from the date of the order. In an appeal filed by the wife and minor child seeking maintenance from the date of application, the High Court held that the Family Court had failed to assign any reasons in support of its order, and directed :

"9. ...Learned Judge. Family Court has not assigned any reason as to why he passed the order of interim maintenance w.e.f. the date of order. When admittedly the parties are living separately and prima facie it appears that the Petitioners have no independent source of income, therefore, in our view order should have been passed for payment of interim maintenance from the date of appearance of the Opposite Party-husband..."

Discussion and Directions

The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded.

Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of the order in S. 125(2) [Cr.P.C.](#), it would be appropriate to grant maintenance from the date of application in all cases, including [Section 125 Cr.P.C.](#) In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

In *Shail Kumari Devi and Ors. v Krishnan Bhagwan Pathak*, (2008) 9 SCC 632, this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In *Bhuvan Mohan Singh v Meena*, (2015) 6 SCC 353, this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.

The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependant spouse hampers their capacity to be effectively represented before the Court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the concerned Court.

In *Badshah v Urmila Badshah Godse* (2014) 1 SCC 188, the Supreme Court was considering the interpretation of [Section 125 Cr.P.C.](#) The Court held :

"13.3. ...purposive interpretation needs to be given to the provisions of [Section 125 CrPC](#). While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society."

It has therefore become necessary to issue directions to bring about uniformity and consistency in the Orders passed by all Courts, by directing that maintenance be awarded from the date on which the application was made before the concerned Court. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant."

Looking to the facts of the case and the the legal proposition as laid down by the Apex Court in the case of **Rajnesh (Supra)**, the present criminal revision is partly allowed.

The judgement and order dated 1.4.2005 passed by Additional Sessions Judge (Court No. 9) Aligarh in CrI. Revision No. 797 of 2002 Yogesh Gautam vs. State of U.P. and other, is set aside, in so far as it issues a direction for payment of maintenance from the date of order.

The opposite party no. 2/Yogesh Gautam is directed to pay a sum of Rs.1000/- per month to the revisionist and Rs. 400/- to her minor children, from the date of application. The payment shall be done within a period of six months. The arrears of payment to be paid within six months from today in three equal instalment, the first instalment of which shall be paid within a period of one month from today and the remaining two instalment shall be paid within equally divided in the remaining time.

Lower court record be sent to the court concerned forthwith.

Office is directed to communicate this Court to the court concerned within two weeks from today.

(Samit Gopal,J.)

Order Date :- 5.3.2022

Naresh