

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1007 of 2024

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

Rajiv Krishna Son of Laliteshwar Kumar Singh Resident of Mohalla - Shivkripa Nikunj, Road No. 24, Rajiv Nagar, P.S. - Rajiv Nagar, District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Tanya Kumari Wife of Rajiv Krishna, Daughter of Suresh Prashad Singh Present residing at Mohalla - Rajput Nagar Colony Road No. 3, House No. 118, Police Station - Industrial Area, District - Vaishali at Hajipur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Baidnath Thakur Mr. Sachin Kumar Mr. Pramod Kumar Prasad Singh
For the O.P. No. 2.	:	Mr. Ravi Shankar Roy
For the Respondent/s	:	Mr. Nagendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 3 04-08-2025 This is an application under Section 19(4) of the Family Courts Act, 1984 filed by the petitioner/husband principally against the opposite party No. 2 challenging correctness, legality and propriety of the impugned order dated 1st October, 2024 passed by the learned Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No. 121 of 2020 whereby and whereunder the petitioner was directed to pay maintenance allowance @ Rs. 20, 000/- per month to the opposite party No. 2 from the date of filing of the application. It is to be noted here that the application under Section 125 of the Cr. P.C. was filed in the year 2020.



2. At the time of argument, the learned Advocate on behalf of the petitioner did not raise any objection with regard to the relationship of the petitioner and opposite party No. 2 as husband and wife. Their marriage was solemnized on 24th November, 2019. The opposite party No. 2 could not stay in her matrimonial home even for two months. It is alleged that she was tortured by her husband and other matrimonial relations and finally driven out from her matrimonial home.

3. Secondly, it is not in dispute that the opposite party No. 2 has no source of income, though she is an educated lady who completed M.B.A. course. However, she did not get any job and therefore she is unable to maintain herself.

4. Thirdly, it is admitted by the learned Advocate for the petitioner that the petitioner is an Officer of a nationalized bank and his net salary on the date of passing of the order was Rs. 84780/-.

5. Learned Advocate on behalf of the petitioner did not raise any objection with regard to quantum of maintenance as the trial court granted even less than 25% of the monthly salary of the petitioner towards maintenance in favour of the opposite party No. 2. The objection raised by the learned Advocate on behalf of the petitioner is that while trial court is



within the jurisdiction to pass an order of maintenance allowance from the date of filing of the application but he must record reasons as envisaged by Sub-section (6) of Section 354 of the Code in support of the order passed. It is contended on behalf of the petitioner that no reason was subscribed by the trial court on the ground that as to why the maintenance allowance was passed from the date of filing of the application.

6. Sub-section (2) of Section 125 of the Cr.P.C. was inserted by Amendment Act 50 of 2021 w.e.f. 24th September, 2001. The provision runs thus:-

"125.(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."

7. Thus, it is within the discretion of the trial Court to consider as to whether an order of maintenance shall be passed from the date of order or from the date of application. The statute does not envisage providing special reason or recording a reason under Sub-section (6) of Section 354 Cr. P.C. in support of the order for maintenance from the date of application. Sub-section (6) of Section 354 states:-

"Every order under Section 117 or sub-section (2) of section 138 and every final order made under Section 125, Section 145 or Section 147 shall contain the point or



points for determination, the decision thereon and the reasons for the decision.

8. In an application under Section 125 of the Cr. P.C., the points for determination are generally as follows:-

- 1. Is the petitioner a legally married wife of the opposite party.*
- 2. Has the opposite party refused or neglected to maintain the petitioner.*
- 3. Has the petitioner any sufficient means to maintain herself.*
- 4. Is the opposite party having sufficient means, neglects or refuses to maintain the petitioner.*

9. With all humility and respect to the order passed by the Hon'ble Supreme Court in ***Shail Kumari Devi & Anr. Vs. Krishna Bhagwan Pathak @ Kishun B Pathak*** reported in ***AIR 2008 SC 3006***, this Court is of the view that point for determination of a petition under Section 125 of the Cr. P.C. is not as to whether the petitioner is entitled to claim maintenance from the date of application or from the date of order. The issue has subsequently been settled in ***Rajnesh Kumar Vs. Neha*** reported in ***(2021) 2 SCC 324***.

10. Paragraph No. 113 of the said judgment states as follows:-

“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 court concerned. 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.”

11. Thus, it no longer *res interga* that an order of final maintenance allowance can be passed from the date of application filed by the petitioner. It is necessary to be passed from the date of filing of the petition because only after refusal and neglect by the husband to maintain his wife in spite of his sufficient means the wife files the petition under Section 125 of the Cr. P.C. Therefore, the petitioner is deprived of being maintained from the date of filing of the application and, therefore, order is passed by the learned Principal Judge, Family Court directing the petitioner to pay maintenance from the date of filing of the application. If the learned Principal Judge fails to subscribe any reason as to why he is granting maintenance allowance from the date of filing of the application, the impugned order cannot be held to be incorrect, illegal or improper within the meaning of Section 397 of the Code of Criminal Procedure. The second limb of submission made by the learned Advocate for the petitioner/husband is that the learned Principal Judge, Family Court, Vaishali at Hajipur passed an interim order of maintenance on 23rd September, 2022 directing the petitioner to pay maintenance @ Rs. 15,000/- per month. The petitioner has been paying the amount of interim



maintenance from the date of the order till date. Thus, it is contended on behalf of the petitioner that till 22nd December, 2024, the petitioner paid a sum of Rs. 4,05,000/- @ Rs. 15000/- per month. The trial Court did not pass any order with regard to adjustment of the interim maintenance with that of final maintenance order. On the other hand, the trial Court directed the petitioner to pay the current maintenance @ Rs. 20,000/- per month plus Rs. 15000/- per month towards arrear maintenance, total Rs. 35000/- per month.

12. It is submitted by learned Advocate for the petitioner that this will cause tremendous financial hardship to the petitioner.

13. It is not in dispute that the application under Section 125 of the Cr. P.C. was filed on 13th November, 2020. The order of interim maintenance was passed on 23rd September, 2022. It is submitted by the learned Advocate for the petitioner that he has already paid Rs. 4,75,000/- to the opposite party towards interim maintenance. The said amount is required to be adjusted from the final amount of maintenance.

14. Thus, this Court finds that from 13th November, 2020 to August, 2022, the petitioner is under obligation to pay Rs. 20,000/- per month towards maintenance. From 23rd



September, 2022 till the date of last payment of interim maintenance, the petitioner is under obligation to pay balance amount of rupees five thousand only towards final maintenance. Thereafter he will again go on paying maintenance @ Rs. 20,000/- from 1st day of October, 2024. If any interim maintenance amount is paid after first day of October, 2024, it will be adjusted in the similar manner.

15. So far as arrear maintenance is concerned, the petitioner is at liberty to make payment towards arrear maintenance during the period when he did not pay interim maintenance @ Rs. 10,000/- per month.

16. With the above order, the instant revision application is disposed of, subject to the above modification.

(Bibek Chaudhuri, J)

Saif/-

U		T	
---	--	---	--

