

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1733 of 2017

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Abhay Chandra Chaudhary, S/o Late Indukar Chaudhary, Resident of
Village- Chanpura, Purwari Tol, P.S.- Benipatti, District- Madhubani.

... ... Petitioner/s

Versus

Srimati Shobha Chaudhary @ Runni Chaudhary, W/o Abhay Chandra
Chaudhary, D/o Sri Chandra Mohan Thakur, Resident of Village-
Bhachchi Thakur Tol, P.S.+ District- Madhubani.

... ... Respondent/s

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*Code of Criminal Procedure, 1973—Section 125(4) and (5)—Hindu
Marriage Act, 1955—Section 24—Maintenance—learned Court
below directed the petitioner (husband) to pay the maintenance
pendente lite and also directed to pay the litigation expenses to the
respondent (wife) monthly—no maintenance has been granted under
Section 125 of Code, 1973—maintenance petition of respondent was
dismissed in default and for non-prosecution—when there is no
adjudication on merits, the emphasis on dismissal of the maintenance
case for denying the claim of the respondent under Section 24 of the
Act, 1955 would only cause denial of justice—nature of right and
remedy provided under Section 125, Code and under Section 24 of
Act, 1955 are different and the procedure and method of recovery are
also different and the remedies are not inconsistent with each other—
petitioner failed to point to any infirmity in the impugned order—
maintenance laws have been enacted as a measure of social justice to
provide succour to dependent wife and children and prevent them
from falling into vagrancy and destitution—no infirmity in the
impugned order—affirmed with modification—petition disposed off.*

(Paras 12, 14, 15, 16)

Criminal Appeal No. 730 of 2020; 2019 VII AD (Delhi) 466: SCC Online Del 9526 ;(1991) 290 MLJ 1; 1985 K.L.T. 849; (2010) 9 SCC 385—Relied upon.

2009 SSC Online AP 486; (2010) 1 DLS 545; AIR 1996 SC 333; AIR 2002 SC 33; (2005) 4 SCC 74; AIR 2005 SC 592; (2017) 4 JCC 2730 —Referred to.

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Versus

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Thakur Tol, P.S.+ District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Mishra, Advocate
For the Respondent/s : None

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
Date : 18-03-2025**

The instant civil miscellaneous petition has been filed
by the petitioner seeking following relief(s):-

*“(i) Quashing the order dated 2.8.2017 passed by
the ld. Principal Judge, Family Court, Madhubani
in M.M. Case no. 77 of 2016 (Annexure-7)
whereby and whereunder he has allowed the
petition of the opposite party/respondent and
directed the petitioner to pay Rs. 3500/- and Rs.
1500/- for maintenance and expenses of the
proceeding monthly during pendency of the case
to the opposite party from the date of order.
(ii) For directing and holding only maintenance
instead of expenses of the proceeding.
(iii) For issuance of any other writ/writs,
order/orders direction/directions for which the
petitioner may be found entitled to.”*

2. Shorn of unnecessary details, the case of the
petitioner is that he has filed the matrimonial case vide M.M
Case No. 77 of 2016 in the court of learned Principal Judge,



Family Court, Madhubani under Section 13(1)(1)(a) of the Hindu Marriage Act, 1955 for divorce against his wife opposite party/respondent, herein on 11.04.2016 on account of desertion by the respondent without any reason. The respondent appeared and contested the claim of the petitioner. During the pendency of the matrimonial case, respondent filed an application under Section 125 Cr.P.C. vide M.R Case No. 82 of 2017 before the learned Principal Judge, Family Court, Madhubani on 25.04.2017 seeking maintenance from the petitioner. Thereafter, the respondent filed an application under Section 24 of the Hindu Marriage Act, 1955 on 16.06.2017 seeking interim maintenance. The petitioner filed his rejoinder to the petition dated 16.06.2017 denying all statements and claims of the respondent and questioned the maintainability of the petition on the ground that the maintenance case filed by the respondent has been pending. The learned Principal Judge, Family Court, Madhubani, after hearing the parties, allowed the application dated 16.06.2017 directing the petitioner to make payment of Rs. 3500/- per month as maintenance *pendente lite* and Rs. 1500/- per month as litigation expenses to the respondent. The said order dated 02.08.2017 is under challenge before this Court.



3. Learned counsel appearing on behalf of the petitioner vehemently contended that the impugned order is not sustainable as it suffers from a number of infirmities. Learned counsel submitted that the impugned order has been passed without consideration of facts and law applicable in the background of these facts. The respondent wife of the petitioner is a cruel lady and she left his matrimonial house on her own and thereafter has been happily residing at her parental house leaving behind her two children. Both the children are being taken care of by the petitioner. The petitioner spends half of his salary for meeting the expenses of education of his children. The petitioner works in a private firm and has been earning about Rs. 15,000/- per month only and out of this meager income, he has to take care of himself as well as his children. Thus, the liabilities of these children are being borne by this petitioner and not by the respondent. The learned counsel further submitted that the main issue involved in the present case is whether the respondent can take advantage of her own wrong. She has deserted the petitioner without any reasonable cause but this fact was not considered by the learned Principal Judge, Family Court. Learned counsel further submitted that the respondent has already filed an application for maintenance and she has



also applied for interim maintenance. Learned counsel referred to subsequent development and submitted that maintenance case filed by the respondent under Section 125 of Cr.P.C. has been dismissed by the same Family Court on 24.01.2020. If a petition for grant for permanent maintenance under Section 125 of Cr.P.C. has been dismissed, no question arises for grant of interim maintenance under Section 24 of the Hindu Marriage Act, 1955 during pendency of the proceeding of the matrimonial case. Thereafter, the petitioner filed an application on 22.01.2021 for recall of the order dated 02.08.2017. The said application was also rejected by the learned Family Court and the petitioner was directed to comply the order dated 03.04.2018 passed by this Court since the original order was modified by the said order of the learned Single Judge by directing the petitioner to keep on making payment of interim maintenance amount while the part order of payment of Rs. 1500/- per month as litigation expenses has been stayed.

4. Learned counsel further submitted that the transient nature of maintenance granted under Section 24 of the Hindu Marriage Act need not be emphasized and this arrangement would come to an end once the matrimonial case is disposed of. In this regard, the learned counsel referred to the decision of a



learned Single Judge of Andhra Pradesh High Court in the case of *Arvind Chenji vs. Krishnaveni*, reported in **2009 SSC OnLine AP 486 : (2010) 1 DLS 545**, wherein the learned Single Judge has held that once the proceeding are disposed of, the arrangement, as to payment of maintenance also comes to an end. It has further been held that, however, a party, who was granted maintenance under Section 24 of the Hindu Marriage Act, cannot insist on payment thereof, beyond the date of disposal of the main proceeding.

5. Learned counsel further submitted that the learned Family Court did not examine the reasonableness of desertion since a bar is put upon the claim of a person claiming maintenance under Section 125 (4) and (5) of Cr.P.C. if there is no reasonable explanation for desertion. Learned counsel also submitted that it is the duty of both the parents to look after their children and only because petitioner has been earning, the respondent does not get absolved of her responsibilities. The respondent is required to prove that her desertion is justifiable and unless she does so, she is not entitled to any interim maintenance.

6. Learned counsel next referred to the decision of the Hon'ble Supreme Court in the case of *Major Ashok Kumar*



Singh vs. VIth Addl. Sessions Judge, Varanasi & Ors., reported in ***AIR 1996 SC 333*** on the point that as the petitioner is not impotent and the respondent wife has deserted him without any reasons, she is not entitled to seek maintenance from the petitioner. In the aforesaid case, the Hon'ble Supreme Court held that if the respondent was entitled to live separately from the appellant on the ground of his impotency and if the respondent was unable to maintain herself, she was entitled to seek maintenance from the appellant. Learned counsel next referred two more decisions of the Hon'ble Supreme Court in the case of ***Roshan Deen vs. Preeti Lal***, reported in ***AIR 2002 SC 33*** and in the case of ***Board of Control for Cricket, India & Anr. vs. Netaji Cricket Club & Ors.***, reported in ***2005 (4) SCC 741 : AIR 2005 SC 592*** with regard to the powers of this Court under Article 227 of the Constitution of India and the learned counsel submitted that the said power has been conferred in order to advance the cause of justice and not to thwart it. The look out of the High Court is not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of an erroneous interpretation of law. The endeavor of the Court should be towards doing complete justice. Learned counsel also referred to the decision of the Delhi High



Court in the case of *Jetender Kumar @ Rajan Vs. Kamlesh @ Ganga & Ors.*, reported in *(2017) 4 JCC 2730* wherein the learned Single Judge held that both the parents have a legal, moral and social duty to provide to their children the best education and standard of living within their means. Thus, the learned counsel submitted that the impugned order be set aside and the present petition be allowed.

7. Despite a number of opportunities, no one appeared on behalf of the respondent to make submission on her behalf and advance any argument in rebuttal though *vakalatnama* on behalf of the respondent has been filed.

8. I have given my thoughtful consideration to the submission of the learned counsel for the petitioner and have perused the record. Though a number of objections have been raised against the impugned order, the issue before this Court lies in a narrow compass and the same is whether the interim maintenance granted by the learned Principal Judge, Family Court, Madhubani under Section 24 of the Hindu Marriage Act to the respondent is sustainable or not? Now, Section 24 of the Hindu Marriage Act reads as under:-

“24. Maintenance pendente 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 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.”

9. It is very much clear that the nature of maintenance granted under Section 24 of the Hindu Marriage Act is temporary and it is only during pendency of the litigation between the parties. But it is not that the party in whose favour this maintenance *pendente lite* has been granted, would become remediless as such party can make a claim for permanent alimony, or an application can be filed under Section 125 of Cr.P.C. So far as claim of the learned counsel for the petitioner about maintainability of application under Section 24 of the Hindu Marriage Act while a claim for maintenance under Section 125 of Cr.P.C. has already been made is concerned, it is also made clear that grant of maintenance under Section 125 of Cr.P.C. on one hand and grant of maintenance under Section 24 of the Hindu Marriage Act on the other hand, are not mutually exclusive. Reference in this regard could be made to the decision of the Andhra Pradesh High Court in the case of **Arvind Chenji** (supra).



10. So far as claim of the learned counsel for the petitioner about dismissal of maintenance case debarring the respondent from claiming any maintenance under Section 24 of the Hindu Marriage Act is concerned, this issue is no more *res integra*. The Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha & Anr. (Criminal Appeal No. 730 of 2020)*** referring to a Division Bench decision of Delhi High Court in the case of ***RD vs. BD 2019 VII AD (Delhi) 466 : SCC OnLine Del 9526*** observed that the legislative mandate envisages grant of maintenance to the wife under various statutes. It was not the intention of the legislature that once an order is passed in either of the maintenance proceedings, the order would debar re-adjudication of the issue of maintenance in any other proceeding.

11. In the instant case, no maintenance has been granted under Section 125 of Cr.P.C. and the perusal of the order dated 24.01.2020 of the learned Principal Judge, Family Court, Madhubani shows that the maintenance petition of the respondent was dismissed in default and for non-prosecution. When there is no adjudication on merits, the emphasis on dismissal of the maintenance case for denying the claim of the respondent under Section 24 of the Hindu Marriage Act would



only cause denial of justice. The Hon'ble Supreme Court in the case of **Rajnesh** (supra), considering the claim of maintenance under different statutes, held as under:-

“It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.”

12. So even on this point the contention of the learned counsel for the petitioner is not sustainable. Similar view was taken earlier by the Madras High Court in the case of **Manoj Vanaja vs. Gopu**, reported in (1991) 290 MLJ 1 wherein the learned Single Judge making a reference to the case of **Kuttappan vs. Thanka** reported in 1985 K.L.T. 849 observed



that the purpose, nature of right and remedy provided under Section 125, Cr.P.C. and under Section 24 of the Hindu Marriage Act, are different and the procedure and method of recovery are also different and the remedies are not inconsistent with each other.

13. There could be no quarrel with the contention of the learned counsel for the petitioner about the power and jurisdiction of this Court under Article 227 of the Constitution of India which is for the purpose of advancement of justice under Article 227 of the Constitution. The power and jurisdiction has been conferred on this Court for superintendence over all courts, tribunals throughout its territory and the said power is to keep the courts and tribunals within their bounds and to see that they do not exceed their jurisdiction and this power is to be used very sparingly and in order to promote the cause of justice and not to thwart the same. Under its superintendence power, this Court would not look into the disputed question of facts or re-appreciate the facts to arrive at a different finding than the trial court. Even the mere erroneous orders are not to be interfered with in its supervisory jurisdiction under Article 227 of the Constitution. The Hon'ble Supreme Court in the case of *Jai Singh & Ors. Vs. M.C.D. & Anr.*



reported in **(2010) 9 SCC 385** observed that the High Courts cannot act like “bull in China shop” and the exercise of jurisdiction must be within the well recognized constraints. Unless there is some perversity apparent on face of record or there is any error of jurisdiction requiring any interference by this Court, this Court would be most reluctant to interfere with any interlocutory order passed by the learned trial court. So the contention raised by the learned counsel for the petitioner regarding desertion of the respondent wife without any valid and reasonable ground calls for appreciation of facts and is a matter which is required to be looked into by the learned Family Court and this Court could not express any opinion at this stage.

14. Though the learned counsel for the petitioner has raised a number of issues, he has failed to point to any infirmity in the impugned order to draw the attention of this Court to the need of making interference in the impugned order except for the fact that the children have been staying with the petitioner and he has also to take care of the needs of the children. As this issue has been raised before the learned trial court and considered by the learned trial court, the same can not be re-appreciated by this Court. Another point raised by learned counsel for the petitioner is with regard to grant of litigation



expenses on monthly basis which carries some merit as the impugned order could not be said to be a speaking order on this aspect since the learned trial court has not furnished any reasons for passing such order and this aspect of the impugned order needs interference by this Court.

15. Other contentions and the authorities cited by the learned counsel for the petitioner are not much relevant for the purpose of disposal of the present petition. Moreover, the impugned order is an order *pendente lite* and it should be endeavor of the parties to get the matrimonial case disposed of and it appears from the record that the matrimonial case has been proceeding at the stage of evidence of the present respondent. Once the matrimonial case is disposed of, the interim order would come to an end and, therefore, instead of pursuing his case before this Court challenging interim order, the petitioner would be well advised to diligently prosecute his matrimonial case. It is to be borne in mind that maintenance laws have been enacted as a measure of social justice to provide succour to dependent wife and children and prevent them from falling into vagrancy and destitution.

16. Therefore, in the light of discussion made hereinbefore, I am of the considered opinion that there is no



infirmity in the impugned order which has been passed after due consideration of facts and circumstances and the same is affirmed but with slight modification that the litigation cost awarded on monthly basis shall be revised by the learned Principal Judge, Family Court, Madhubani by passing orders afresh during pendency of the Matrimonial Case No. 77 of 2016 after assessing the legal expenses of the respondent in attending the Court.

17. Accordingly, the present petition stands disposed of with the aforesaid direction.

18. Having regard to the fact that the matrimonial case has been instituted in the year 2016, the learned Principal Judge, Family Court, Madhubani would take steps for its early disposal without granting unnecessary adjournments to the parties.

19. Pending Interlocutory Application, if any, stands disposed of.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	23.01.2025
Uploading Date	18.03.2025
Transmission Date	NA

