

IN THE HIGH COURT OF JUDICATURE AT PATNA
Dr. Dilip Kumar @ Dr. Dilip Kumar Sharma @ Dilip Sharma

vs.

The State of Bihar & Anr.

(Criminal Miscellaneous No. 6740 of 2016)

22.11.2024

**(Hon'ble Mr. Justice Ashutosh Kumar,
Hon'ble Mr. Justice Mohit Kumar Shah and
Hon'ble Mr. Justice Harish Kumar)**

Issue for Consideration

Whether an order passed under the second proviso to Section 125 CrPC granting interim maintenance is an “interlocutory order” and hence non-revisable, or whether it qualifies as an “intermediate/quasi final order” revisable under Section 19(4) of the Family Courts Act, 1984.

Headnotes

Criminal Procedure Code – Section 125 (Second Proviso) – Interim Maintenance – Nature of Order – Not interlocutory –

Held, an order passed under the second proviso to Section 125 CrPC granting interim maintenance is not merely an interlocutory order. It substantially affects rights and liabilities of the parties, carries finality qua the issue of interim maintenance, and thus qualifies as an “intermediate” or “quasi-final” order.

[Paras 30, 36, 37, 45]

Family Courts Act, 1984 – Section 19(4) – Revisional Jurisdiction of High Court – Maintainable against interim maintenance order –

Held, Section 19(4) provides revisional jurisdiction to the High Court against any non-interlocutory order passed under Chapter IX CrPC by the Family Court. Since interim maintenance is not interlocutory, revision is maintainable.

[Paras 28, 45–46]

Constitution of India – Article 227 – Invocation unnecessary where statutory revision under Family Courts Act is available –

Held, in view of Section 19(4) of the Family Courts Act providing a statutory remedy, the need to invoke Article 227 of the Constitution or Section 482 CrPC does not arise.

[Paras 43, 44]

Criminal Procedure Code – Inherent Powers under Section 482 – To be used sparingly –

Held, inherent powers under Section 482 CrPC are reserved for rare and exceptional cases. When revision under Family Courts Act is available, resort to Section 482 is discouraged.

[Paras 7, 26, 43]

Judicial Discipline – Md. Akil Ahmad (2016) (4) PLJR 968 – Overruled –

Held, the view taken in Md. Akil Ahmad v. State of Bihar, 2016 (4) PLJR 968, treating interim maintenance orders as interlocutory and barring revision under Section 19(4), is overruled.

[Paras 5–6, 42, 46]

Case Law Cited

Asian Resurfacing of Road Agency Pvt. Ltd. v. CBI, 2018 (2) PLJR 329 (SC) – [Para 7]; Savitri v. Govind Singh Rawat, (1985) 4 SCC 337 – [Para 16]; Shah Babulal Khimji v. Jayaben D. Kania, (1981) 4 SCC 8 – [Paras 32–34]; Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 – [Para 38]; V.C. Shukla v. State, 1980 (2) SCR 380 – [Para 39]; Aakanksha Shrivastava v. Virendra Shrivastava, 2010 (3) MPLJ 151 – [Para 36]; Kiran Bala Srivastava v. Jai Prakash Srivastava, 2005 (23) LCD 1 – [Para 35]; Amar Nath v. State of Haryana, (1977) 4 SCC 137 – [Para 36]; Md. Akil Ahmad v.

State of Bihar, 2016 (4) PLJR 968 – Overruled – [Paras 5, 42, 46]

List of Acts

Code of Criminal Procedure, 1973; Family Courts Act, 1984; Constitution of India

List of Keywords

Section 125 CrPC; Second proviso; Interim maintenance; Interlocutory order; Intermediate order; Revisional jurisdiction; Section 19(4); Article 227 Constitution; Section 482 CrPC; Md. Akil Ahmad overruled

Case Arising From

Order dated 21.01.2016 passed by Principal Judge, Family Court, Munger in Maintenance Case No. 153 of 2014, granting interim maintenance of ₹15,000/- per month and costs of ₹10,000/- to the wife and children of the petitioner.

Appearances for Parties

For the Petitioner: Mr. Ansul, Advocate (Amicus); Mr. Rajesh Kumar Singh, Sr. Advocate (Amicus); Ms. Soni Shrivastava, Advocate (Amicus)

For the State: Mr. Parmeshwar Mehta, APP; Mr. Choubey Jawahar, APP

Headnote Prepared by Reporter :- Ms. Akanksha Malviya, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6740 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

Dr. Dilip Kumar @ Dr. Dilip Kumar Sharma @ Dilip Sharma, Son of Late Shiv Pujan Prasad, R/o-Keshopur Grudwara Road, P.S.-Jamalpur, District-Munger.

... .. Petitioner/s

Versus

- 1. The State of Bihar.
- 2. Swati Omi, Wife of Dr. Dilip Kumar Sharma @ Dr. Dilip Kumar of Chhoti Kelawari Anand Lane, P.S.-Kotwali, District-Munger.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ansul, Advocate (Amicus)
Mr. Rajesh Kumar Singh, Sr. Advocate (Amicus)
Ms. Soni Shrivastava, Advocate (Amicus)
For the State : Mr. Parmeshwar Mehta, APP
Mr. Choubey Jawahar, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE HARISH KUMAR
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)
Date : 22-11-2024

In the case of marital discord of one Dr. Dilip Kumar @ Dr. Dilip Kumar Sharma @ Dilip Sharma, the Principal Judge, Family Court, Munger in Maintenance Case No. 153 of 2014 directed him to pay Rs. 15,000/- per month as an ad interim maintenance to his wife/opposite party No. 2 as also his children. There was a further direction to pay Rs. 10,000/- as lump sum



amount towards the cost of expenses and Rs. 1,000/- for each date in the proceeding as the recurring cost of litigation.

2. Dr. Dilip Kumar challenged the afore-noted order passed by the Family Court under Section 482 of the Code of Criminal Procedure, 1973 (*in short the Cr.P.C.*).

3. A question of maintainability was raised by opposite party No. 2 on the strength of a judgment of Division Bench of this Court in ***Md. Akil Ahmad Vs. The State of Bihar and Another : 2016 (4) PLJR 968.***

4. In the afore-noted judgment, after going through the scheme of the Family Courts Act, 1984 (*in short the Act of 1984*) and the provisions contained in Chapter IX of the Cr.P.C., the Division Bench had conclusively held that from a conjoint reading of Sections 10 and 20 of the Act of 1984, the inherent power of the High Court under Section 482 Cr.P.C. could not be invoked against the order granting interim maintenance



under Section 125 Cr.P.C. in as much as the applicability of the provisions of Cr.P.C. is confined only before the Family Courts under the proceedings of Chapter IX of the Code. It also held that since an order granting interim maintenance is an interlocutory order, therefore no challenge could be made against such an order under Section 19 (4) of the Act of 1984.

5. The Division Bench of this Court therefore concluded that the only remedy available to the aggrieved party against the order of interim maintenance under the second *proviso* to Section 125 Cr.P.C. would be to make an application under Article 227 of the Constitution of India and no other forum.

6. The learned Single Judge, on finding such opinion of the Division Bench to be in conflict with other judgments of Bench with co-eval strength, referred the matter to the Chief Justice for constitution of a Division Bench for a reconsideration of the issues involved in ***Md. Akil Ahmad's*** case (*supra*).



7. While saying so, the learned Single Judge relied upon ***Asian Resurfacing of Road Agency Pvt. Ltd. And Another Vs. Central Bureau of Investigation : 2018 (2) PLJR 329 (SC)***, wherein it was held as follows:-

“20. It was observed that power under Section 482 Cr.P.C. could be exercised only in the rarest of rare cases and not otherwise:

*38. The Criminal Procedure Code is undoubtedly a complete code in itself. As has already been discussed by us, the discretionary jurisdiction under Section 397(2) CrPC is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 CrPC is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Criminal Procedure Code or to prevent abuse of the process of any court or otherwise to serve the ends of justice. **As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If***



that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Criminal Procedure Code restricts it in the interest of a fair and expeditious trial for the benefit of the accused person, we find it difficult to accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues.

.....

23. We may also refer to the observations of the Constitution Bench in **Ratilal Bhanji Mithani v. Asstt. Collector of Customs, Bombay and Anr.** about the nature of inherent power of the High Court:

“The inherent powers of the High Court preserved by Section 561-A of



the Code of Criminal Procedure are thus vested in it by “law” within the meaning of Article 21. The procedure for invoking the inherent powers is regulated by rules framed by the High Court. The power to make such rules is conferred on the High Court by the Constitution. The rules previously in force were continued in force by Article 372 of the Constitution.”

24. As rightly noted in the impugned judgment, a Bench of seven Judges in **L. Chandra Kumar** (supra) held that power of the High Court to exercise jurisdiction under Article 227 was part of the basic structure of the Constitution.

25. Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 Cr.P.C., the principle laid down in **Madhu Limaye** (supra) still holds the field. Order framing charge



may not be held to be purely an interlocutory order and can in a given situation be interfered with under Section 397(2) Cr.P.C. or 482 Cr.P.C. or Article 227 of the Constitution which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation.

26. We have thus no hesitation in concluding that the High Court has jurisdiction in an appropriate case to consider the challenge against an order framing charge and also to grant stay but how such power is to be exercised and when stay ought to be granted needs to be considered further.”

8. The issue came up before Division Bench of this Court where it was found that an order for interim maintenance under the second *proviso* to Section 125 Cr.P.C. by a Family Court may not strictly be an interlocutory order, but an intermediate order, which would be revisable.



9. As such, the Division Bench formulated the following two questions to be determined by a larger Bench:-

(i) Whether interim maintenance order passed under the second *proviso* of Section 125 of the Code of Criminal Procedure, 1973 is an interlocutory order or an intermediate order?

(ii) If the interim maintenance order passed under the second *proviso* of Section 125 of the Code of Criminal Procedure, 1973 is an intermediate order, whether revision against the said order is maintainable under Section 19 (4) of the Family Courts Act?

10. We have examined the provisions contained in Chapter IX of the Cr.P.C., 1973 and the various provisions of the Act of 1984.

11. Section 125 Cr.P.C. provides that if any person having sufficient means neglects or refuses to maintain his wife who is unable to maintain herself or his legitimate or illegitimate minor child, whether married or



not, or in case of such child not being a married daughter who has attained the age of majority, where such child is by reason of any physical or mental abnormality or injury, unable to maintain itself or his father or mother who are unable to maintain themselves, a Magistrate of the First Class may, on proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother of an amount which the Magistrate thinks fit.

12. The first *proviso* to Section 125 Cr.P.C. further reads that the Magistrate may order the father of a minor female child to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such female minor child, if married, is not possessed of sufficient means.

13. The second *proviso* to Section 125 declares further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance, order such person to make a



monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding, which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct. The outer time limit for deciding such application for interim maintenance was fixed at sixty days from the date of service of notice of the application to such person.

14. Section 126 Cr.P.C. provides for the procedure to be followed for a proceeding to be conducted under Section 125 Cr.P.C. Section 127 permits of alteration in allowance on proof of a change in the circumstances of any person receiving a monthly allowance for the maintenance or interim maintenance. And Section 128 Cr.P.C. provides for the mechanism for enforcement of such order of maintenance.

15. The second *proviso* to Section 125 Cr.P.C. empowering a Magistrate to order for interim maintenance was added by Act 50 of 2001 with effect



from 24.09.2001.

16. Prior to the afore-noted amendment in Section 125 Cr.P.C., the section did not expressly empower the Magistrate to pass an interim order of maintenance; though having regard to the nature of jurisdiction to pass such orders, it was held by the Supreme Court that the Magistrate had the implied powers to make such order of interim maintenance. [*refer to Savitri Vs. Govind Singh Rawat : 1985 (4) SCC 337*].

17. The afore-noted judgment was based on the principle *ubi a liquid conceditur, conceditur et id sine quo res ipsa esse non protest* [where anything is conceded, there is conceded also anything without which the thing itself cannot exist]. Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorized in express terms be also done, then that something else will be supplied by necessary intendment. Such a construction



would only advance the object of the Legislation under consideration. Any contrary view would result in grave hardship to the applicant, who may have no means to subsist until the final order is passed.

18. The Parliament, taking a holistic view of the matter that an applicant may have to wait for several years for getting the relief even in a proceeding of summary nature, amended Section 125 Cr.P.C. and brought in the second *proviso* granting power to the Magistrate to grant ad-interim maintenance on his satisfaction.

19. Before such amendment in the Cr.P.C., the Act of 1984 was enacted to provide for establishment of Family Courts with a view to promote conciliation in and secure speedy settlement of dispute relating to marriage and family affairs and for matters connected therewith.

20. Section 7 of the Act of 1984 provides for establishment of Family Courts and appointment of



Judges to the Family Court. With respect to jurisdiction of such Family Courts, it provides, *inter alia*, that a Family Court shall have the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of:

(i) A suit or proceeding between the parties to a marriage for a decree of nullity of marriage or restitution of conjugal rights or judicial suppression or dissolution of marriage; and

(ii) A suit or proceeding for declaration as to the validity of a marriage or as of the matrimonial status of any person and a suit or proceeding for maintenance.

21. The jurisdiction also extended to other aspects like guardianship, custody, access of children etc.

22. Section 8 of the Act of 1984, an exclusionary provision, provides that no other Court except the Family Court shall exercise any jurisdiction in these matters where a Family Court has been established for any area.



23. With respect to procedure to be followed by the Family Court, Section 10 of the Act of 1984 provides as hereunder:-

“10. Procedure generally.-(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil Court and shall have all the powers of such Court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of



the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.”

(emphasis provided)

24. Section 19 under Chapter V of the Act of 1984, providing for appeals and revisions, is being quoted hereunder for ready reference as also for completeness as it would be the epicenter of the discussions hereinafter:-

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 preferred under subsection (1) shall be heard by a Bench consisting of two or more Judges.

25. Dealing with miscellaneous provisions, Section 20 of the Act of 1984 declares that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Family Courts Act.

26. The order of interim maintenance cannot be appealed against for the reason of the provisions contained in Section 19 (1) and (2) of the Act of 1984, which provides that no appeal shall lie from an order passed under Chapter IX of the Cr.P.C., which includes Sections 125 to 128 of the Code. The *proviso* to Section 19 (2) of the Act clearly declares that nothing in Section 19 (2) shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the



Cr.P.C. before the commencement of the Family Courts Act, 1991.

27. Were this to mean that in the event a Magistrate exercising his jurisdiction under the second *proviso* to Section 125 Cr.P.C., granting ad interim maintenance, there would be no forum to challenge the same?

28. Section 19 (4) of the Act of 1984 does provide a remedy, *viz.*, that the High Court may of its own motion or otherwise, call for an examine the record of any proceeding in which the Family Court, situate within its jurisdiction passed an order under Chapter IX of the Cr.P.C. for the purposes of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order (emphasis provided), and as to the regularity of such proceedings. Except as provided under Section 19, no appeal or revision would lie to any Court from any judgment, order or decree of a Family Court.

29. Herein the question formulated by the



referring Bench requires to be answered.

30. If an order of interim maintenance is held to be an interlocutory order, no revision would lie as mandated under Section 19 (4) of the Act of 1984. This conundrum troubled the Judges of the High Courts across the country and different views were espoused by different High Courts.

31. The Delhi High Court in ***Manish Aggarwal Vs. Seema Aggarwal and Ors. : 2012 SCC Online DEL 4816*** traversed through the divergent opinions of different High Courts and thought it fit to interpret whether an order of interim maintenance under the second *proviso* to Section 125 Cr.P.C. is an interlocutory order, making it unrevisable.

32. In ***Shah Babulal Khimji Vs. Jayaben D. Kania & Anr. : (1981) 4 SCC 8***, the Supreme Court had observed that an order, or even an interlocutory order, could be called a judgment when it has the quality of attaching finality to it. The Supreme Court laid down



that there could be three kinds of judgments, *viz.*, a final judgment deciding all the questions or issues in controversy; a preliminary judgment which could be in two formats, namely:- (i) where the Trial Judge by an order dismisses the suit without going into the merits, but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable, in which case also the suit is finally decided, one way or the other; and (ii) where the Trial Judge passes an order after hearing the preliminary objection 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 Section 80 etc. These decisions by the Trial Court would not terminate the suit which is yet to be tried on merits. However, the Trial Judge rejecting the objections, undoubtedly adversely affects a valuable right of a defendant, who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds.



33. 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.

34. An intermediary or interlocutory judgment which are interlocutory orders containing the quality of finality as clearly specified in Clauses A to W of Order 43 Rule 1 of the Civil Procedure Code, which have also been held to be judgments within the meaning of 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 as much as, those orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding.

35. Based on this broad classification, the Full Bench of the Allahabad High Court in ***Smt. Kiran Bala Srivastava Vs. Jai Prakash Srivastava : 2005 (23)***



LCD 1, while dealing with the provision contained in Section 24 of the Hindu Marriage Act, 1955 (*hereinafter referred to as the HM Act*) acknowledged the significance of an order of maintenance under the HM Act. A refusal to grant maintenance, or grant of inadequate maintenance, would have a serious consequence for the spouse (generally the wife) as it may have the result of him/her giving up the idea of defending himself/herself or for prosecuting the substantive proceedings for want of sufficient means. Similarly, non-payment of amount awarded under Section 24 of the HM Act could visit the concerned party with the consequence of striking out of the defence or of dismissal of his/her cause.

36. In ***Aakanksha Shrivastava Vs. Virendra Shrivastava & Anr. : 2010 (3) MPLJ 151*** (a Division Bench judgment of the Madhya Pradesh High Court), an issue arose whether a revision petition could be preferred against an order of interim maintenance. It was held that the order of interim maintenance under Section



125 Cr.P.C. was an intermediate or *quasi* final order. Relying upon the judgment of ***Amar Nath Vs. State of Haryana : (1977) 4 SCC 137***, it was held that an order which substantially affects the rights of an accused and decides certain rights of the parties is not to be held an interlocutory order so as to make it unrevisable. It cannot be equated with orders like summoning witnesses; adjourning cases; passing orders for bail; calling for reports and such other steps in the aid of pending proceedings. Orders only like the afore-noted ones would amount to interlocutory orders against which no revision would be maintainable under Section 397 (2) of the Cr.P.C. and also under Section 19 (4) of the Act of 1984. It was held in no uncertain terms that an order of interim maintenance under Section 125 Cr.P.C. is an order which decides the “matter of moment”.

37. The other reason for not holding such order of ad-interim maintenance as interlocutory order was that an application for interim maintenance gives rise



to a separate proceeding to be disposed off much earlier than the final order in the main case. *Qua* the issue of interim maintenance under the second *proviso* to Section 125 Cr.P.C., the matter is finally decided by the order passed by the Magistrate and, therefore, they could at best be called intermediate or *quasi* final orders. Such an order may not put an end to the main dispute, but it conclusively decides the point in issue. Holding such orders to be interlocutory orders would only cause justice be to deflected.

38. Similar views by other High Courts were based on the judgment of Supreme Court in ***Madhu Limaye Vs. State of Maharashtra : (1977) 4 SCC 551*** in which the Supreme Court had held that ordinarily and generally, the expression interlocutory order has been understood and taken to mean as a converse of the term final order; but the interpretation and the universal application of the principle “what is not a final order must be an interlocutory order” is neither warranted nor



justified.

39. Similarly in ***V.C. Shukla Vs. State : 1980 (2) SCR 380***, the Supreme Court has held that the term “interlocutory order” used in the Cr.P.C. has to be given very liberal construction in favour of the accused in order to ensure complete fairness of trial and the revisional power could be attracted if the order was not a purely interlocutory, but intermediate or *quasi* final.

40. The High Courts, with a different view over the issue, *viz.*, Bombay, Rajasthan, Karnataka and Orissa, have distinguishing the judgment in ***Shah Babulal Khimji (supra)***, holding that the Supreme Court in this instance had been examining the scope of appeal under the letters patent and it was in that context that the expression judgment was discussed and assigned a much wider meaning. The Family Courts Act, 1984 has a different scheme and it would not be appropriate to assign any wider meaning of the word ‘judgment’ and include even interlocutory orders in it.



41. The learned Single Judge of this Court, while first referring the matter to the Division Bench in the instant case, was, perhaps, of the view that there could be no outright proscription of the forum of Section 482 Cr.P.C. or that the only forum against the order of ad interim maintenance would be Article 227 of the Constitution of India.

42. The reason provided in ***Md. Akil Ahmad's*** case (*supra*) by the Division Bench of the Patna High Court for non-application of Section 482 Cr.P.C. was perhaps the mandate of the Act of 1984 under Section 10 that the provisions of Cr.P.C. or the rules made thereunder would apply to the proceedings under Chapter IX of the Code before a Family Court only.

43. We have great reservation in accepting this proposition as particular provisions cannot be of limited application before the Family Courts only and not before the higher Courts. Nonetheless when the order granting ad-interim maintenance is held to be not



interlocutory in exact sense of the term and there is a provision under the Family Courts Act, 1984, viz., Section 19 (4), which could get triggered, it would obviate the necessity of looking for any other forum like Section 482 Cr.P.C. for challenging such order.

44. It would be more convenient to understand the reason with which we agree entirely, why the referring Bench asked for a reconsideration of **Md. Akil Ahmad's** case (*supra*) by extracting hereunder a few paragraphs from the afore-noted referral order:-

"27. Admittedly, an interim order under second proviso of Section 125 of the Code of Criminal Procedure is passed during pendency of petition filed under Section 125(1) of the Code of Criminal Procedure. The second proviso of Section 125 of the Code of Criminal Procedure has been brought on statute book to give instant relief to the applicant but the interim order, admittedly, decides rights and liabilities of the respective parties. No doubt, before passing interim order under Section 125 of the Code of Criminal



Procedure, there is no need of formal proof of the claim of the applicant but the interim maintenance order passed under second proviso of Section 125 of the Code of Criminal Procedure, prima facie, decides rights and liabilities of the parties. Furthermore, the interim maintenance order passed under second proviso of Section 125 of the Code of Criminal Procedure can be altered from time to time. Similarly, the order passed under Section 125(1) of the Code of Criminal Procedure can also be altered at subsequent stage, if the circumstance demands.

28. *Furthermore, I find that if a person against whom the order of interim maintenance has been passed fails without sufficient cause to comply with the order of the Court, coercive steps may be taken against him. The order passed under second proviso of Section 125 of the Code of Criminal Procedure appears to be an interlocutory order on its very face but as to whether in true sense the order passed under second proviso of Section 125 of the Code of Criminal Procedure is an*



interlocutory order or not, it has to be seen.

29. *Section 127 of the Code of Criminal Procedure gives power to Court to alter the order passed either under Section 125(1) of the Code of Criminal Procedure or under second proviso of Section 125 of the Code of Criminal Procedure, therefore, according to Section 127 of the Code of Criminal Procedure, even the order passed under Section 125(1) of the Code of Criminal Procedure is not a final order and that order can be altered later on, if the change of circumstance demands. Similar position is in respect of second proviso of Section 125 of the Code of Criminal Procedure as the order of interim maintenance can also be altered at subsequent stage of the proceeding, therefore, it is obvious that nature of both the orders, either passed under Section 125(1) of the Code of Criminal Procedure or passed under second proviso of Section 125 of the Code of Criminal Procedure, are quite similar in nature as both orders can be altered at subsequent stage. Section 19(4) of the Family Courts Act does not,*



specifically, bar the revision against the order passed under second proviso of Section 125 of the Code of Criminal Procedure and the only restriction is to avail the provision of Section 19(4) of the Family Courts Act that order in challenge should not be an interlocutory order. Therefore, in the aforesaid circumstance, the nature of order of interim maintenance passed under second proviso of Section 125 of the Code of Criminal Procedure appears is an intermediate order and Section 19(4) of Family Courts Act, 1984 bars the entertainment of revision only against interlocutory order and not against intermediate order.

30. *As I have already observed that the second proviso of Section 125 of the Code of Criminal Procedure falls under the category of intermediate order, therefore, the interim maintenance order passed under second proviso of Section 125 of the Code of Criminal Procedure can be revised under Section 19(4) Family Courts Act.*

31. *However, it is pertinent to note here that learned Division Bench of this Court in **Md. Akil Ahmad case (supra)***



*did not consider the aforesaid aspect and treating the order passed under second proviso of Section 125 of the Code of Criminal Procedure as interlocutory order came to conclusion that revision under Section 19(4) of the Family Courts Act, 1984, against the interim maintenance order passed under second proviso of Section 125 of Code of Criminal Procedure is not maintainable. Therefore, in my view, the aforesaid observation of learned Division Bench of this Court given in **Md. Akil Ahmad (supra)** case needs reconsideration by a larger Bench.*

45. We are thus of the considered view that an order of interim maintenance is an order finally deciding the issue of the moment, which is not, *stricto sensu*, an interlocutory order but an intermediary order against which no bar of preferring revision against such order would apply.

46. The questions are, thus, answered as follows:-

(i) An order of interim maintenance under



the second proviso of Section 125 Code of Criminal Procedure, 1973 is not an “interlocutory order”, but an “intermediate/*quasi* final order”; and

(ii) The remedy of criminal revision would be available *qua* both the interim and the final order under Sections 125 to 128 of the Code of Criminal Procedure, 1973 under sub-section (4) of Section 19 of the Family Courts Act, 1984.

47. The reference stands answered accordingly.

(Ashutosh Kumar, J)

Mohit Kumar Shah, J : I agree

(Mohit Kumar Shah, J)

Harish Kumar, J : I agree

(Harish Kumar, J)

Praveen-II/-

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CAV DATE	05.10.2024
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