

IN THE HIGH COURT OF JUDICATURE AT PATNA

Md. Manjoor Alam @ Md. Manzoor Alam

vs

Hasena Khatoon

Miscellaneous Appeal No. 237 of 2020

24-06-2023

(Honourable Mr. Justice P. B. Bajanthri
and Honourable Mr. Justice Jitendra Kumar)

Issue for Consideration

Whether a final order passed by the Family Court under Section 125 of the Code of Criminal Procedure, 1973, is amenable to Miscellaneous Appeal or Criminal Revision under Section 19 of the Family Courts Act, 1984.

Headnotes

Objection raised by the office regarding maintainability of the present Miscellaneous Appeal is upheld, because final order passed under Section 125 Cr.P.C. by the Family Court is amenable to Criminal Revision in this court under Section 19(4) of the Family Courts Act, 1984. (Para 10)
Appeal is dismissed. (Para 11)

Case Law Cited

Raj Kumar Sah v. State of Bihar and Anr., 2008 (4) PLJR 817; Sunita Kumari v. Prem Kumar, 2009 SCC Online Pat 253

List of Acts

Family Courts Act, 1984 (Section 19); Code of Criminal Procedure, 1973 (Chapter IX, Section 125)

List of Keywords

Family Court; Section 125 Cr.P.C.; Maintenance; Miscellaneous Appeal; Criminal Revision; Section 19 Family Courts Act; Maintainability

Case Arising From

Order dated 10.01.2020 passed by the learned Additional Principal Judge, Family Court, Katihar, in Maintenance Case No. 197 of 2013 / C.I.S. No. 618 of 2014.

Appearances for Parties

For the Appellant: Mr. Anshuman Jaipuriyar, Advocate

For the Respondent/s :

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.237 of 2020

Md. Manjoor Alam @ Md. Manzoor Alam S/o Md. Sultan Ansari @ Md. Sultan Kawal, Resident of Mohalla- G.F. Rahman Colony Sharifganj, Ward No. 39, P.o.- Daheriya Mill, P.s.- Sahayak (Katihar), Pin-854103, District- Katihar, Moh.-9971949378 At present Residing at Village- 502, Khairpur, Kotla Mubarakpur, Lodhi Road, Central Delhi, Delhi, Pin-110003

... ..Appellant

Versus

Hasena Khatoon D/o Late Sher Mohammad, Ex-Wife of Md. Manjoor Alam @ Md. Manzoor Alam, At present Residing at Mohalla- G.F. Rahman Colony Sharifganj, Ward No. 39, P.o.- Daheriya Mill, P.s.- Sahayak (Katihar), Pin-854103, District- Katihar, Moh.-8051614979

... .. Respondent

Appearance :

For the Appellant/s : Mr. Anshuman Jaipuriyar, Advocate
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 24-06-2023

1. The present Miscellaneous Appeal has been filed impugning the final order dated 10.01.2020, passed by learned Additional Principal Judge, Family Court, Katihar, in Maintenance Case No. 197 of 2013/C.I.S. No. 618 of 2014, whereby the appellant has been directed to pay maintenance to his wife and two children.

2. The office has raised objection regarding maintainability of the present Miscellaneous Appeal in view of



the ruling of Hon'ble Division Bench of this Court in the case of **Raj Kumar Sah Vs. The State of Bihar and Anr.**, as reported in **2008 (4) PLJR 817**, wherein Hon'ble Division Bench, after considering all the relevant statutory provisions and case laws, has clearly held that the final order passed by Family Court under Section 125 Cr. P.C. is amenable to Criminal Revision in High Court.

3. However, learned counsel for the appellant contests the objection raised by the office submitting that the objection is not sustainable in view of the decision of Hon'ble Full Bench of this Court in the case of **Sunita Kumari Vs. Prem Kumar** as reported in **2009 SCC Online Pat 253**.

4. We perused the **Sunita Kumari Case (Supra)** relied upon by learned counsel for the appellant. We find that the issue involved in this case was different from that of the present Miscellaneous Appeal. In **Sunita Kumari case (supra)**, the issue was whether the appeal filed under Section 19 of the Family Courts Act, 1984 should be treated as First Appeal or Miscellaneous Appeal, and after considering all the relevant statutory provisions and precedents, it was held that the appeal filed under Section 19 of the Act should be treated as Miscellaneous Appeal and not as First Appeal.

5. However, the issue involved in the present Misc



Appeal is whether the final order, passed by the Family Court under Section 125 of the Cr. P.C., is amenable to Misc. Appeal or Criminal Revision?

6. Chapter V of the Family Courts Act, 1984 deals with the appeal and revision. This chapter comprises single section i.e Section 19. Sub Section 2 of this Section clearly provides that 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 Code of Criminal Procedure, 1973. (*Underlining is mine for emphasis*). Section 125 of the Cr. P.C. comes under Chapter IX of the Code of Criminal Procedure. Hence, it is crystal clear that no appeal can lie against an order passed by Family Court under Section 125 of the Cr. P.C. in view of Section 19(2) of the Family Courts Act.

7. Now question is what is remedy to a party aggrieved by final order passed by a Family Court under Section 125 Cr.P.C. The answer lies in Sub-section 4 of Section 19 of the Family Courts Act, 1984 which provides that High Court may, of its own 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 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. This provision clearly suggests that final order passed by Family Court under Section 125 Cr. P.C. is amenable to Revisional jurisdiction of the High Court.

8. However the question remains whether such revision under Sec 19 (4) of the Family Courts Act would be civil revision or criminal revision. This question has been comprehensively dealt with by Hon'ble Division Bench in **Raj kumar Sah Case (Supra)** wherein in para 13 it has been held that the Family Court exercises two types of power, suits and proceeding except the proceeding under Chapter IX of the Code of Criminal Procedure are decided by the Family Court as a District Court or a Subordinate Civil Court and while dealing with the proceeding under Chapter IX of the Code of Criminal Procedure exercises the jurisdiction of the Judicial Magistrate First Class. In the circumstances, when orders have been passed in exercise of the power of the Judicial Magistrate First Class, revision before this court under Sec 19(4) of the Act can not be termed as Civil Revision and it has been further held in the same para that the orders passed under Chapter IX of CrPC by a Family Court is revisable under Sec. 19(4) of the Act as a Criminal Revision. In Para 17 it has been again observed that the Family Court while exercising the power under Chapter IX



of the Code of Criminal Procedure is neither District Court nor Subordinate Civil Court and hence, in principle, a revision under section 19(4) of the Act against an order passed under Chapter IX of the Code of Criminal Procedure is fit to be registered as a Criminal Revision application.

9. As such, the submission made on behalf of the appellant is misconceived and unacceptable to this Court.

10. Accordingly, objection raised by the office regarding maintainability of the present Miscellaneous Appeal is upheld, because final order passed under Section 125 Cr. P.C. by the Family Court is amenable to Criminal Revision in this court under Section 19(4) of the Family Courts Act, 1984.

11. Hence, the present appeal is dismissed as not maintainable. However, the appellant is at liberty to file appropriate petition as per law.

(Jitendra Kumar, J)

(P. B. Bajanthri, J)

Amrendra/-

AFR/NAFR	AFR
CAV DATE	21.06.2023
Uploading Date	24.06.2023
Transmission Date	

