

CRIMINAL REVISION**Present :The Hon'ble Mr. Justice Prasenjit Mandal****C.R.R. No.1794 of 2009**

Judgement On: June 23, 2010.

Fatema Bibi

Versus

Ali Hossain Mondal

POINTS

INTERIM MAINTENANCE – Interim order of maintenance– Whether interlocutory order-
Revision against such order whether maintainable– Code of Criminal Procedure 1973, Ss. 125, 397
(2), 401

FACTS

This application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 has arisen out of an order dated 18.04.2009 passed by the learned Judicial Magistrate, Kalyani, District – Nadia in Misc. Case NO.47 of 2007 under Section 125 of the Cr. P.C., 1973 by directing the husband/opposite party to pay a sum of Rs.200/- per month for herself and Rs.200/- per month more for her minor daughter as interim maintenance from the date of the order. Being the aggrieved by the said order, the wife has preferred this revisional application.

HELD

Section 397(2) of the Cr.P.C. clearly bars entertainment of an application relating to an order which is interlocutory in the nature. Now the question is whether the order impugned is of interlocutory nature. No doubt, the order impugned shall remain in force till the disposal of the maintenance

proceeding. Such type of orders can be changed, varied or cancelled according to the situation during the pendency of the proceeding under Section 125 of the Cr.P.C. The objection to the petition for interim maintenance as raised by the husband, if considered as true, will not entitle to the disposal of the main application under Section 125 of the Cr.P.C. but dismissal of the application for interim maintenance. So by the dismissal of the said petition for interim maintenance there will not be an end of the maintenance proceeding. In such a situation, according to the decision reported in 2001 SCC (Cri) 200 the order impugned is of interlocutory in nature and against such order, no revision lies as per Section 397(2) of the Cr.P.C. Para 7

CASES CITED

K. K. Patel & Anr. Vs. State of Gujarat & Anr. reported in 2001 SCC (Cri) 200

For the petitioner: Mr. Shatoroop Purkayastha.

For the Opposite party: Mr. Dipanjan Chatterjee.

Prasenjit Mandal, J:

THE COURT 1.This application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 has arisen out of an order dated 18.04.2009 passed by the learned Judicial Magistrate, Kalyani, District – Nadia in Misc. Case NO.47 of 2007 under Section 125 of the Cr. P.C., 1973 by directing the husband/opposite party to pay a sum of Rs.200/- per month for herself and Rs.200/- per month more for her minor daughter as interim maintenance from the date of the order. Being the aggrieved by the said order, the wife has preferred this revisional application.

2.The fact of the case is that by the impugned order, the learned Magistrate observed, prima facie, that there was a legal marriage between the parties. One daughter was born in the wedlock. The husband and other members of his house subjected the petitioner/wife to torture both, physically and mentally. Then, on 16.03.2007 they drove the petitioner along with the child from their house. The wife had to take shelter at her paternal house along with her girl child. She has no income. On the other hand, her husband has 12/15 bighas of land and thus he earns Rs.15,000/- /20,000/- per month. The petitioner requires some money to save herself and her daughter from starvation and so she has claimed interim maintenance at the rate of Rs.2,000/- per month for each of the two.

3.Upon due consideration of the affidavits filed by the wife and the husband, the learned Magistrate granted interim maintenance at the rate of Rs.200/- for the wife and Rs.200/- for the minor daughter with effect from the date of order. Thereafter he fixed the date of recording evidence. The contention of Mr. Purkayastha is that the amount as granted by the learned Magistrate as maintenance for the two is not even enough for a single meal each for the two a day. Such nominal amount cannot be the just and reasonable amount as observed by the Court as interim maintenance for the two.

4.On the other hand, Mr. Chatterjee, the learned Advocate for the husband, submitted that this application against an interim order of maintenance is not maintainable at all because the same is an interlocutory order. He has referred to the decision in the case of K. K. Patel & Anr. Vs. State of Gujarat & Anr. reported in 2001 SCC (Cri) 200 and thus he submitted that this revisional application is not maintainable.

5.Having considered the submission of the learned Counsel for the parties and on perusal of the materials on record, I find that on the basis of the affidavit, the learned Magistrate observed that

prima facie the parties are husband and wife and that one child was born to them in the wedlock. Upon due consideration of the submissions of the parties as made in the affidavits, the Court observed that it was just and reasonable to pass an order granting maintenance at the rate of Rs.200/- per month for the wife and Rs.200/- per month for the daughter from the date of order.

6.Now the question is whether such interim order can be sustained.

7.Section 397(2) of the Cr.P.C. clearly bars entertainment of an application relating to an order which is interlocutory in the nature. Now the question is whether the order impugned is of interlocutory nature. No doubt, the order impugned shall remain in force till the disposal of the maintenance proceeding. Such type of orders can be changed, varied or cancelled according to the situation during the pendency of the proceeding under Section 125 of the Cr.P.C. The objection to the petition for interim maintenance as raised by the husband, if considered as true, will not entitle to the disposal of the main application under Section 125 of the Cr.P.C. but dismissal of the application for interim maintenance. So by the dismissal of the said petition for interim maintenance there will not be an end of the maintenance proceeding. In such a situation, according to the decision reported in 2001 SCC (Cri) 200 the order impugned is of interlocutory in nature and against such order, no revision lies as per Section 397(2) of the Cr.P.C. Accordingly, I am of the view that this revisional application is not maintainable.

8.It is, therefore, dismissed.

9.Considering the circumstances, there will be no order as to costs.

10.Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

