



2025:AHC:227887

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 23035 of 2025

AFR

Sonam Yadav

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Rajeev Sawhney
Counsel for Opposite Party(s)	:	Shashank Kumar, G.A.

Court No. - 83

HON'BLE RAJIV LOCHAN SHUKLA, J.

1. Heard Shri Rajiv Sawhney, Learned counsel for the applicant, Shri Rishu Bhartiya, Advocate holding the brief of Shri Shashank Kumar, Learned counsel for opposite party No.2, and Shri Surendra Singh, Learned AGA for the state.

2. The sole grievance raised by the Learned counsel for the applicant is to the extent that the application of the applicant for grant of interim maintenance, pending decision on proceedings under Section 125 Cr.P.C. filed on 05.08.2024, has been allowed by means of the impugned order dated 03.04.2025, passed by the Principal Judge, Family Court, Kaushambi in Case No.573 of 2023 (Smt. Sonam Yadav vs. Uttejan Yadav), from the date of the order and not from the date of the application.

3. Learned counsel for the applicant relies upon the decision of Hon'ble the Supreme Court in ***Rajnish vs. Neha and another*** reported in **(2021) 2 SCC 324**, wherein, Hon'ble the Supreme Court has held that normally applications for maintenance should be allowed from the date of the application. Learned counsel further states that this direction of the Supreme Court is also applicable on applications for grant of interim maintenance during the pendency of the main application for grant of maintenance under Section 125 Cr.P.C.

4. Learned counsel for the opposite party No.2, on the other hand, contends

that the directions of the Supreme Court, as contained in paragraph No.109 of the judgement in the case of Rajnesh versus Neha (supra), is only for final orders of maintenance and does not include orders with respect to applications for interim maintenance or maintenance, during the pendency of proceedings under Section 125 Cr.P.C.

5. I have heard Learned counsel for the parties.

6. Since the issue involved is only with respect to the interpretation of the directions given by Hon'ble the Supreme Court in the case of Rajnesh versus Neha, no counter affidavit has been called for from the opposite parties, and it is with the consent of the parties that this application has been decided at the admission stage itself.

7. The Hon'ble Supreme Court in the case of Rajnesh versus Neha (supra) has given the following directions in paragraphs 109, 110, 111, 112, and 113:-

"109. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

110. In Shail Kumari Devi v. Krishan Bhagwan Pathak, this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In Bhuwan Mohan Singh v. Meena, this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.

111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that

maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

112. In Badshah v. Urmila Badshah Godsem, the Supreme Court was considering the interpretation of Section 125 CrPC. The Court held : (SCC p. 196, para 13)

"13.3. .. purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society."

(emphasis supplied)

113. 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."

8. An overall consideration of the discussions and directions given by the Supreme Court in the above-mentioned decision clearly indicates that the directions in the above-mentioned case apply to proceedings for interim maintenance also. A provision which has been enacted for the benefit of a particular class has to be given an interpretation, which promotes the object of the relief provided. Once interim maintenance has to be awarded, the only reasonable conclusion which can be drawn from the directions of the Hon'ble the Supreme Court is that the said interim maintenance must also be granted from the date of the application. This is also keeping in view the fact that applications for interim maintenance also remain pending for years altogether.

9. Section 125 Cr.P.C. reads as under:-

"125. Order for maintenance of wives, children and parents:-

(1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon 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, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, 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.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation. - For the purposes of this Chapter, -

(a)"minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,

(b)"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

(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.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any

such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

10. A perusal of paragraph 109 of the determination of the Hon'ble Supreme Court in the case of Rajnesh versus Neha (supra) would indicate that reference has specifically been made to Section 125 (2) Cr.P.C. From the directions given by Hon'ble the Supreme Court, it is clear that the Hon'ble the Supreme Court clearly intended the grant of maintenance under Section 125 Cr.P.C. final or interim maintenance, as the case may be to abide by the directions. Therefore, restricting the interpretation of the directions given by the Hon'ble the Supreme Court to final disposal of application under Section 125 Cr.P.C. is, in my opinion, incorrect, and such argument raised by the Learned counsel for the opposite party No.2 cannot be sustained.

11. Although Section 125 Cr.P.C. mandates that an application for interim maintenance shall, as far as possible, be disposed of within 60 days from the

date of service of notice of the application, it is a sad reality that in many cases applications for interim maintenance remain pending for a long time.

12. In the present case, the application under Section 125 Cr.P.C. had been moved on 17.10.2023. The objections to the application for interim maintenance dated 05.08.2024 appear to have been filed, on 27.01.2025, and the same came to be decided by means of the impugned order dated 30.04.2025 i.e. well beyond the period of 60 days from the date of service of notice. Orders for maintenance are passed for women and children, who have been forsaken by their husbands/fathers or have an otherwise valid reason to live separately or seek maintenance and who have no adequate source of income to maintain themselves. Permitting a woman to live in penury, while her application for interim maintenance is decided, cannot be the intent of the law. The grant of maintenance should date back to the filing of the application, as the filing of the application determines the exigency of seeking maintenance. A litigant comes before the Court for a cause of action, which arises *in praesenti*. Pendency of the proceedings in Court, without any order in favor of the litigant, should not be to the disadvantage of the litigant.

13. The application under section 125 was moved in the year 2023 and till date no final orders have been passed. Such a situation would not dis-entitle the recipient of maintenance from her right to seek maintenance from the date of initiation of the proceedings, only due to the time taken in conclusion of proceedings before the concerned Court.

14. In such circumstances, I find that even grant of interim maintenance must date back to the date of the filing of the application and the Learned Principal Judge, Family Court, Kaushambi ought to have granted interim maintenance from the date of filing of the application itself.

15. In view of the discussions made above, the application is ***allowed***. The order passed by the Learned Principal Judge, Family Court, Kaushambi is modified to the extent that the maintenance granted by the impugned order dated 03.04.2025 shall be from the date of the application of interim maintenance i.e. 05.08.2024.

December 17, 2025

A. Pandey

(Rajiv Lochan Shukla,J.)