

(2021) 01 CHH CK 0010

Chhattisgarh High Court

Case No: Criminal Miscellaneous Petition (CRMP) No. 602 Of 2018

Dalendra Kanoje

APPELLANT

Vs

Reena Kanoje

RESPONDENT

Date of Decision: Jan. 21, 2021

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 125, 125(1)
- Constitution Of India, 1950 - Article 142

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Manoj Paranjpe, Abhijeet Mishra

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. The short question in the present petition is that whether the learned Judicial Magistrate is justified in granting the respondent/wife the

amount of maintenance under Section 125 (1) of CrPC from the date of the application i.e. 11.11.2013.

2. In the maintenance proceeding initiated by the respondent/wife under Section 125 of CrPC against the petitioner/husband, the learned Trial

Magistrate granted maintenance of Rs.5,000/- per month to the respondent/wife from the date of the application i.e. 11.11.2013. Being

aggrieved, the petitioner/husband called in question the order dated 15.07.2016 before the Revisional Court and the Revisional Court dismissed

the revision finding no merit and held that the maintenance has rightly been granted to the wife from the date of the application i.e. 11.11.2013

and upheld the order on merit also, which has been called in question in the present petition.

3. Mr. Paranjpe, learned counsel for the petitioner/husband, would submit that both the Courts below are absolutely unjustified in granting

maintenance to the respondent/wife from the date of the application i.e. 11.11.2013 and the respondent/wife should have been granted the

maintenance from the date of the order i.e. 15.07.2016, therefore, the order of maintenance be modified and the respondent/wife be given

maintenance from the date of the order i.e. 15.07.2016 instead of date of the application i.e. 11.11.2013, which has been opposed by Mr.

Mishra, learned counsel for the respondent/wife, and he further submits that it has rightly been granted by the learned Magistrate from the

date of the application.

4. I have heard learned counsel for the parties, considered their submissions made herein- above and also went through the records with

utmost circumspection.

5. The question as to whether from what date the wife is entitled for maintenance in proceeding under Section 125 of CrPC is no longer res

integra and it has been authoritatively decided by the Supreme Court in the matter of Rajnesh vs Neha and another (2020) SCC online SC

903. It has been held that the wife is entitled for maintenance from the date of the application and further held in paras 74 to 79 as under:-

Discussion and Directions

74.The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance should be granted.

75.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 S. 125(2) Cr.P.C., it would be appropriate to grant maintenance from the date of application in all cases, including Section 125

Cr.P.C. 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.

76. In *Shail Kumari Devi and Ors. v Krishnan Bhagwan Pathak* (2008) 9 SCC 632, 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* (2015) 6 SCC 353, 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.

77. 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 hampers their capacity to be effectively represented before the Court. In order to prevent a dependent 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 concerned Court.

78. In *Badshah v Urmila Badshah Godse* (2014) 1 SCC 188, the Supreme Court was considering the interpretation of Section 125 Cr.P.C.

The Court held :

“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 the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the

gap between the law and society.” (emphasis supplied)

79. 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 concerned Court. 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.

Finally, it was directed by the Supreme Court as under:-

VI. Final Directions

81. In view of the following discussion as contained in Part B to V of this judgment, we deem it appropriate to pass the following direction in

exercise of our powers under Article 142 of the Constitution of India:-

(a) xxx

(b) xxx

(C) xxx

(d) Date from which maintenance is to be awarded

We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B - IV

above.

6. Reverting to the facts of the case, in light of the imperative directions by the Supreme Court in *Rajnesh* (supra), it is quite vivid that the

order of the learned Magistrate granting maintenance to the wife from the date of the application is absolutely justified and strictly in

accordance with law.

7. Lastly, Mr. Paranjpe submits that the amount of maintenance is on higher side.

8. The amount of Rs.5,000/- per month awarded to the wife cannot be said to be on higher side, rather it is on lower side. As such, the

quantum of maintenance cannot also be interfered with, as it is just and fair.

9. I do not find any merit in this petition. It deserves to be and is hereby dismissed accordingly.