

(1990) 02 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No"s. 1081-M and 6339 of 1989

Gurpartap Singh

APPELLANT

Vs

Smt. Satwant Kaur and Another

RESPONDENT

Date of Decision: Feb. 28, 1990

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(1), 125(2), 354, 482

Citation: (1991) 1 ILR (P&H) 382

Hon'ble Judges: S.D. Bajaj, J; K.S. Bhalla, J

Bench: Division Bench

Advocate: A.K. Mittal, for the Appellant; Harnaresh Singh Gill, for the Respondent

Final Decision: Allowed

Judgement

K.S. Bhalla, J.

In a case for maintenance moved u/s 125 of the Code of Criminal Procedure (in short, "the Code") by wife and minor daughter, an application was filed for maintenance pendente lite in Court of a Magistrate at Amritsar. Maintenance pendente lite was allowed both to the wife and the daughter by the Magistrate from the date of application. Revision preferred against that order was dismissed by Additional Sessions Judge, Amritsar. Both those orders were assailed in this Court u/s 482 of the Code and the line of attack was that maintenance pendente lite could not be granted from the date of the application. Considering the point of initiation of the interim maintenance, a substantial question of law, the learned Single Judge,--vide his order dated November 29, 1989, referred the matter for opinion of larger Bench. This is how the matter came before the Division Bench Question referred for opinion in the order of reference runs as follows:

Whether is is obligatory for the Court to give special reasons for granting maintenance/interim maintenance u/s 125 of the Code of Criminal Procedure 1973, from the date of the application?

2. It is both moral and legal obligation of a person to maintain his wife and children. The wife is required to be maintained from the time of her marriage and the child from the time of his or her birth. Normally wife resides with her husband after the marital tie and is maintained in the house. So is the case with minor child after his/her birth. Thus the right of maintenance accrues to a wife immediately after she is tied maritally to her husband and to a minor child immediately after his or her birth. When a husband having sufficient means neglects or refuses to maintain his wife or a minor child, he can be compelled u/s 125 of the Code to maintain them. The said provision of law also permits a wife to live separately or to refuse to live with her husband provided she has just ground for so doing and Court is permitted to make an order under aforesaid provision notwithstanding her separate living. Claim for maintenance normally takes birth under such situation and it can be said that a wife or a minor child has a cause of action against husband/father on his failure to discharge his recognised moral/legal obligation to maintain them. The right of maintenance which had already accrued is continuous one and cause of action arises only when that right is disrupted. However, a wife living separately may not feel like exercising her right of maintenance otherwise recognised by the society as well as law, and it being a rule of nature that a person gets something only when he/she claims the same, discharge of obligation can start only from the date of claim and it cannot possibly run earlier to the same. Date of claim of maintenance/interim maintenance obviously would be date of application for such maintenance/interim maintenance. The Chapter With regard to maintenance of wives and children in the words of Sir James Fitzstephen, provides a mode of preventing vagrancy, or at least of preventing its consequences". Section 125 of the Code thus is intended to fulfil the aforesaid social purpose. Its object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children. By providing a simple, speedy but limited relief, they seek to ensure that the neglected wife and children are not left beggared and destitute on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. Subsistence is called for even during the pendency of the petition for maintenance and its need cannot by any stretch of imagination be said to start only when order for payment of maintenance is made, although it is subject to ultimate recognition of neglect or refusal to maintain.

3. Section 125 of the Code nowhere provides for interim maintenance or maintenance pendente lite. However, the apex Court has held in Savitri Rawat Vs. Govind Singh Rawat, in favour of the right of the Petitioner u/s 125 of the Code, to get interim maintenance which in our opinion obviously recognises the payment of maintenance since before the date of the order for maintenance under the aforesaid provision i.e., Section 125 of the Code. It is further held therein that such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to subsequent modification, if necessary which necessarily infers that order for interim maintenance is to be made from the date of

application for such maintenance. This right has been recognised realising the fact that irrespective of the speedy remedy provided through Section 125 of the Code, more often than not, proceedings for maintenance last sufficiently long for one reason or the other. In other words, emergency of the situation in the interest of the Weaker section of the society, particularly when their subsistence is involved and the Respondent owes moral obligation to maintain them which right of maintenance of the said section recognizably has already accrued and is continuous, has been recognised by the highest court of this Republic and the order of interim maintenance when made even if it operates from the date of that order is bound to precede the order in the main application the date of operation of which order alone is regulated by Sub-section (2) of Section 125 of the Code.

4. In the light of the above discussion Sub-section (2) *ibid* in our considered opinion cannot be interpreted in a manner so as to conclude that normal rule is to make maintenance allowance payable from the date of the order and to make the same payable from the date of the application amounts to an exception to the said rule. A reading of the said sub-section would, on the other hand, show that it is discretionary with the trial Court either to grant the allowance from the date of the order or from the date of application. There is no indication whatsoever in the language used by the legislation that if maintenance is allowed from the date of the application, some special reasons have to be given for the purpose. That sub-section simply makes it discretionary for the Magistrate to award maintenance either from the date of order or from the date of application. It only provides outer, limits so as to conclude that the Magistrate cannot fix future date for example two months subsequent to the passing of the order for payment of maintenance allowance nor earlier to the date of application, i.e., with retrospective effect. It is, therefore, not obligatory for the Court to give special reasons for granting maintenance/interim maintenance u/s 125 of the Code, from the date of the application which is purely within its discretion.

5. However, we would like to mention here that by force of rule of jurisprudence every order had to be reasoned. Section 354 of the Code deals with contents of judgments and in Clause (b) of Sub-section (1) thereof it is clearly mentioned that a judgment shall contain the point or points for determination, the decision there of and the reasons for the decision. To that extent) the Court is required to support its decision on every point for determination with reasons and may give reasons in each of the two eventualities. Otherwise no special reasons are called for, for granting maintenance/interim maintenance u/s 125 of the Code from the date of the application. We have said and it needs to be said again that Section 125 of the Code is, intended to serve a social purpose and provides a machinery for summary enforcement of the moral obligations of a man towards his wife and children so that they may not, out, of sheer destitution become a hazard to the well-being of orderly society. Question of giving special reasons for enforcement of said moral obligations during the pendency of a lis therefore, does not arise. The reference

accordingly is answered in negative.

6. The case be now listed before learned Single Judge for decision.