

IN THE HIGH COURT OF JHARKHAND, RANCHI
C.M.P. No. 457 of 2024

[REDACTED]

[REDACTED]

[REDACTED] ¹ **Petitioner**

-- Versus --

[REDACTED]

[REDACTED]

[REDACTED] **Opposite Party**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	:-	Mr. Baibhaw Gahlaut, Advocate
	:-	Mr. Rajiv Ranjan, Advocate
	:-	Mr. Subhneet Jha, Advocate
	:-	Mr. Sudhanshu Shekhar, Advocate
For the O.P.	:-	Mr. Kaustav Roy, Advocate

06/18.03.2025 Heard learned counsel appearing for the petitioner and learned counsel appearing for the sole opposite party.

2. This petition has been filed under Article 227 of the Constitution of India for quashing of the order dated 08.01.2024 passed in Original Suit No.708 of 2022 by learned Principal Judge, Family Court, Bokaro whereby the learned Principal Judge directed the petitioner to pay a sum of Rs.2,000/- per month as *pendente lite*.

3. When this matter was taken up, learned counsel appearing for the sole opposite party raised a question about the maintainability of the petition under Article 227 of the Constitution of India on the ground that since the order is passed of interim maintenance by the Family Court, Bokaro under Section 24 of the Hindu Marriage Act, 1955 and it was pointed out that in light of Section 19 of Family Court's Act only appeal will lie against the said order. He submits that petition was filed under

Section 20(3) of the Hindu Adoption and Maintenance Act, 1956. However, in the impugned order Section 24 of the Hindu Marriage Act, 1955 is reflected.

4. In view of his such preliminary objection, the learned counsel appearing for the sole opposite party was called upon to first address the Court on the issue of maintainability and in view of that he submits that Section 19 of the Family Court's Act provides remedy of appeal and in light of that the said order is appealable and the petition under Article 227 of the Constitution of India is not maintainable. According to him, the nature of order is final, as such only appeal can be maintained under the said section of Family Court's Act. To buttress this argument, he relied in the case of ***Jayanti Prasad Gautam versus Pragya Gautam reported in (2018) SCC OnLine Del 11535*** and he placed reliance upon paragraph No.7 of the said judgment which is as under :-

7. Once the Legislature has provided the remedy of appeal, that too to the Division Bench against the impugned order, the principle enshrined in large number of judgments discussed in dicta of the Division Bench of this Court in Dinkar Kumar v. Union of India, 2014 SCC OnLine Del 2288 relating to writ jurisdiction would apply i.e. that the writ court should abstain from exercising jurisdiction when alternative statutory remedy is available. It is not the case that the challenge to the impugned order made in this writ petition cannot be made in appeal under Section 19 of the Family Courts Act.

5. Relying on the above judgment, he submits that this petition is not maintainable under Article 227 of the Constitution of India and in view of that this issue may kindly be decided in favour of the sole opposite party and the petitioner may take his further remedy in light of the provision made under Section 19 of Family Court's Act.

6. On the other hand, Mr. Baibhaw Gahlaut, learned counsel

appearing for the petitioner submits that the contention of learned counsel appearing for the sole opposite party is not correct as the order itself speaks of interim maintenance and in view of that it is an interlocutory order, as such only petition under Article 227 of the Constitution of India can be maintained. He relied in a Full Bench Judgment of Hon'ble Patna High Court in the case of ***Neelam Kumari Sinha versus Prashant Kumar reported in (2010) 0 Supreme (Pat) 1299***, and he placed reliance upon paragraph No.3 of the said judgment which is as under :-

3. An order passed under Section 24 of the 1955 Act was appealable under Section 28 of the 1955 Act. After the amendment in the year 1976, Section 28 of the 1955 Act had undergone a sea change. The unamended Section 28 of the 1955 Act reads as follows :-

"28. All decrees and orders made by the Court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in exercise of the original civil jurisdiction are enforced and may be appealed from under any law for the time being in force; Provided that there shall be no appeal on the subject of costs only."

7. Relying on the above judgment, he submits that since the order is there and in view of that the matter was referred by Single Bench to decide on the issue and in view of that three judges Bench has decided the said issue and held that petition under Article 227 of the Constitution of India is maintainable as it is an interlocutory order, and he placed reliance upon paragraph Nos.14 & 15 of the said judgment which is as under :-

14. A Full Bench of this Court in Durga Devi v. Vijay Kumar Poddar and Ors. and other connected matters decided on 27-4-2010 : (AIR 2010 Pat 126) has held that when an order is interlocutory in nature, no civil revision would lie as the acid test has to be that it could have finally disposed of the suit or other proceeding. In the

said decision, it has been held that a writ petition under Art. 227 of the Constitution of India would be maintainable. It has been further held therein that the civil revision which is pending can be converted into a writ petition on fulfillment of the other conditions.

15. *In view of the aforesaid analysis, it is held that an order passed by the learned Principal Judge, Family Court under Section 24 of the 1955 Act would be amenable to writ jurisdiction under Art. 227 of the Constitution of India. Thus, the conclusion recorded in M. A. No. 654 of 2009 does not lay down the law correctly and is hereby overruled.*

8. He further submits that identical view taken by the Division Bench of Hon'ble Patna High Court in the case of ***Md. Akil Ahmad versus the State of Bihar & Anr. in Criminal Miscellaneous No.22165 of 2016***, which was decided by the judgment dated 16.09.2016 and he refers to paragraph No.15 of the said judgment which is as under :-

15. *As per Black's Law Dictionary (1990) P. 814, the word "interim" means "for the time being", "in the meantime", "meanwhile", "temporary", "provisional", "not final", "intervening". The word "interim" means "intervening" when it is used as a noun and when used as an adjective it means "temporary" or "provisional". As per advanced law lexicon (2005) Vol. II "interlocutory" means, not that which decides the cause, but that which only settles some intervening matter relating to the cause; a decree or judgment given provisionally during the course of legal action. The expression "interlocutory order" has not been defined but the term is used in a restricted sense. It denotes orders of a purely interim or temporary nature, which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the right of the parties is not an interlocutory order, the word "interlocutory order" being not converse to final order. Thus, interim or interlocutory orders are those orders passed by a Court during the pendency of a proceeding, which do not determine the 'issue' finally.*

9. Relying on the above judgment, he submits that the Hon'ble Division Bench of Patna High Court has also held that Article 227 of the

Constitution of India is the only remedy. He further submits that however another Division Bench of Hon'ble Patna High Court in the case of ***Dr. Dilip Kumar @ Dr. Dilip Kumar Sharma @ Dilip Sharma versus State of Bihar and Another reported in (2019) 6 BLJ 118*** again referred the matter to the larger Bench forming the issue as to whether it is an interlocutory order or final order and further the Full Bench of Patna High Court answered the same considering the provision under Section 125 of Cr.P.C. it has been held that the order in question is an intermediate/quasi final order and in view of that criminal revision is maintainable. He submits that, however, the Full Court judgment of the Patna High Court still holds the field on the issue that Article 227 of the Constitution of India is maintainable and interim maintenance is granted by the Full Bench.

10. He further submits that another High Courts have taken the view that the said order is an interlocutory order and he firstly relied in the case of ***Uttam Kumar Choubey versus Kiran Devi @ Kumari Kiran of Jharkhand High Court reported in 2005 4 JLJR 202***, wherein at paragraph No.11 it has been held as under :-

11. From the above discussions, it appears that Chapter IX of the Code of Criminal Procedure contains summary and quick remedy for securing some reasonable amount by way of maintenance to protect to destitute wife from starvation. Section 125, Cr PC does not provide for full and final determination of the personal rights of the parties. The jurisdiction conferred by that provision is more in the nature of preventive, rather than a remedial jurisdiction. It is certainly not punitive one. The Court is empowered either to modify or even to cancel the order passed by him earlier. Therefore, granting interim maintenance, pending proceeding under Section 125, Cr PC can either be modified or even be cancelled at subsequent stage and, therefore, it cannot be said that the interim order of maintenance is a final order.

According, it is held that the grant of interim maintenance pending proceeding under Section 125, Cr PC is an interlocutory order and thus no revision is maintainable in view of bar under Section 397(2) of the Cr PC.

Accordingly, this revision application is dismissed as not maintainable.

11. He submits that in that case wherein it has been held that it is an interlocutory order and in view of that revision under Section 397 of Cr.P.C. is not maintainable. He further submits that the Kerala High Court in the case of ***Azeef C.A. versus Yasmin Azeef and Ors. reported in 2024 0 KER 11738 ; 2024 4 KHC 501*** has also taken the same view that order is interlocutory in nature and the same view has been taken by Rajasthan High Court in the case of ***Vishal Kochar & Ors. versus Smt. Pulkit Sahni & Ors. reported in 2022 0 Supreme (Raj) 2250*** and he refers to paragraph Nos.21 to 24 of the said judgment which is as under :-

21. *In the light of above-mentioned legal prepositions regarding law of precedents and their binding force, judgments of other High Court/s have only persuasive force and not binding force. This Court is bound by the decision of the Division Bench of this court in Anu vs Ratanlal, reported in RLR 1993(1) 125 and judgments of Co-ordinate Bench of this Court in Chhotu Singh vs Basanti Devi and Others, reported in RLW 2003(1)114 and Anshul Kulshreshth vs Smt Swarnima, reported in RLW 2019(1)610, wherein it was categorically held that the order of interim maintenance passed in pending application under Section 125 of CrPC is an interlocutory order.*

22. *It is also pertinent to mention here that Section 19 (1) & (4) of the Family Courts Act, 1984 provides that no appeal or revision shall lie against any interlocutory order passed by Family Court. The impugned order dated 27.01.2021 is passed by the Family Court No.2, Jaipur empowered under the Family (13 of 13) [CRLR-462/2021] Courts Act, 1984, therefore such revision petitions are not maintainable in the light of these provisions also.*

23. *An order of interim maintenance passed under Sec. 125 of*

Cr.P.C by any Family Court or Magistrate, during the pendency of the proceeding, remains effective up to the final order only and does not decide the rights and liabilities of the parties in finality.

24. *As per above discussion and settled legal position, this Court arrives at the conclusion that the impugned order dated 27.01.2021, regarding interim maintenance under Section 125 Cr.P.C., is an interlocutory order, hence both the revision petitions being not maintainable, either under Section 397/401 Cr.P.C. or under Section 19 of the Family Courts Act, are accordingly dismissed.*

12. He further submits that Madras High Court has also taken the same view in the case of ***N. Balasubramanian versus V. Chitra reported in 1992 0 Supreme (Mad) 242.*** He further submits that the Delhi High Court in another case in the case of ***Manish Kumar versus The State & Anr. reported in 2023 0 Supreme (Del) 1368*** has further held that the order in question is an interlocutory order and that view was further taken by the Calcutta High Court in the case of ***Fatema Bibi versus Ali Hossain Mondal reported in 2010 0 Supreme (Cal) 675.***

13. Relying on the above judgments, he submits that in light of these judgments the order in question is interlocutory and only Article 227 of the Constitution of India is the remedy available to the petitioner. He further submits that the issue was further subject matter before the Division Bench of the Madras High Court in the case of ***S. Menaka versus K.S.K. Nepolian Socraties in C.M.P. No.18729 of 2023 and other matters reported in 2024 MHC 1405*** wherein it has been further held that Article 227 of the Constitution of India is maintainable, if the interim maintenance *pendente lite* is passed under Section 24 of the Hindu Marriage Act. On this ground, he submits that the petition has been correctly filed under Article 227 of the Constitution of India and in

view of that this petition is maintainable before this Court.

14. In view of above submission of learned counsel appearing for the parties, the following question is required to be considered by this Court whether an appeal will be available under Section 19(1) of Family Court's Act, 1984 against an order passed under Section 24 of the Hindu Marriage Act, 1955 or under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956.

15. By the impugned order, learned Principal Judge, Family court, Bokaro has directed to pay a sum of Rs.2,000/- to the sole opposite party being the *pendente lite* order. Section 19 of the Family Court's Act, 1984 provides for filing an appeal and revision in the following terms :-

19. Appeal :-

(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) 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 the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion 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 (2 of 1974) 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.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

16. Section 24 of Hindu Marriage Act, 1955 deals with the maintenance *pendente lite* and expenses proceeding in the following terms :-

24. Maintenance pendente lite and expenses of proceedings :-

Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.

17. In the course of argument, it was pointed out that the petition has been filed by the sole opposite party under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956 and Section 20 of the said Act speaks as under :-

Section 20 in The Hindu Adoptions And Maintenance Act, 1956

20. Maintenance of children and aged parents —

(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property. Explanation.—In this section "parent" includes a childless step-mother.

18. However, the learned Court has passed the order under Section 24 of the Family Court's Act and it was pointed out that the sole opposite party is the daughter of the petitioner.

19. Hon'ble Supreme Court in the case of ***Capt. Ramesh Chandra Kaushal versus Veena Kaushal and Others reported in AIR 1987***

SC 1807 has held in paragraph No.6 which is as under :-

6. Broadly stated and as an abstract proposition, it is valid to assert, as Sri Desai did, that a final determination of a civil right by a civil court must prevail against a like decision by a criminal court. But here two factors make the principle inapplicable. Firstly, the direction by the civil court is not a final determination under the Hindu Adoptions and Maintenance Act but an order pendente lite, under Section 24 of the Hindu Marriage Act to pay the expenses of the proceeding, and monthly during the proceeding such sum as having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable. Secondly, this amount does not include the claim for maintenance of the children although the order does advert to the fact that the respondent has their custody. This incidental direction is no comprehensive adjudication.

20. In the said case, it has already held that incidental directions to pay maintenance *pendente lite* and expenses of proceeding does not amount to a comprehensive adjudication of any issue involved in the proceedings. In view of that it is well settled that the nature of order is required to be considered as to whether the final end to that order that proceeding has taken place or not.

21. An order to be a judgment or an order finally deciding any issue

it is necessary that such an order while not finally and conclusively deciding or determining the rights of the parties with regard to all or any matter in controversy may still have the ring of finality in the case it affects the vital and valuable rights and obligations of the parties involved in the proceedings. To put it differently, if any order passed by the Family Court decides any question between the parties which directly affects the decision in the main case or which finally decides any collateral issue in perpetuity, it would be a judgment or order which is appealable but if an order, though deciding an issue between the parties finally, is temporary and interim in nature and has no bearing or effect on the rights of the parties or the main issue involved in the case, it would fall within the parameters of an interlocutory order.

22. Looking into the order of learned Family Court which has been impugned herein in this petition, it transpires that the said application has not been finally decided and the right to claim maintenance still alive as by way of interim arrangement only the said order has been passed and in view of that the claim maintenance still remains alive.

23. Section 19 of the Family Court's Act clearly bars appeal if the order is interlocutory in nature and the only test of the order is interlocutory or final it has to be looked into whether the proceeding has come to an end or it is still alive and what has been discussed here-in-above it is crystal clear that the said order is interlocutory in nature as the maintenance case is still alive and if the order is interlocutory in nature a party cannot be left remediless as in view of the fact that under Section 19 of the Family Court's Act, 1984 appeal will lie, however at the same time the appeal is barred if the order is interlocutory in nature and

in light of that Article 227 of the Constitution of India are available to any person aggrieved by the order.

24. Even the submission of learned counsel appearing for the parties is accepted that the petition was filed under Section 20(3) of Hindu Adoption and Maintenance Act, 1956, however, the learned Court has passed the order treating this under Section 24 of Hindu Marriage Act. The tenor of the order clearly speaks that it was interim in nature as it was directed to pay Rs.2,000/- *pendente lite* to the sole opposite party.

25. In view of above discussions when the provisions of Section 19 of the Family Court's Act are interpreted keeping the aforesaid principles in mind, it is clear that no appeal against an order passed as an interlocutory order can be filed under Section 19 of the Family Court's Act and in view of that the petition under Article 227 of the Constitution of India is maintainable.

26. So far judgment relied by learned counsel appearing for the sole opposite party in the case of ***Jayanti Prasad Gautam versus Pragya Gautam (supra)*** is concerned the emphasis is not there to decide upon the nature of order whether it is interlocutory or final, as such that judgment is not helping the sole opposite party.

27. The Full Court's judgment of Hon'ble Patna High Court in the case of ***Neelam Kumari Sinha versus Prashant Kumar (supra)*** and another Full Court's judgment of Madhya Pradesh High Court in the case of ***Anup Kumar versus Reena @ Renu reported in 2020(2) MPLJ 467*** also taken the same view.

28. In view of the above, there are direct judgment of Hon'ble Supreme Court in the case of ***Capt. Ramesh Chandra Kaushal versus***

Veena Kaushal and Others (supra) as well two Full Courts Judgments of Hon'ble Patna High Court and Madhya Pradesh High Court which clearly held that if an order is interlocutory, the appeal under Section 19 of Family Court's Act will not lie and only remedy is under Article 227 of the Constitution of India and it is further well settled that if a Full Court's judgment is there that is binding upon other High Courts as has been held by Hon'ble Supreme Court in the case of ***Central Board of Dawoodi Bohra Community v. State of Maharashtra, reported in (2005) 2 SCC 673.***

29. In view of above facts, reasons and analysis the Court finds that since the order in question is interlocutory the petition under Article 227 of the Constitution of India is maintainable. The above question is answered accordingly.

30. After the maintainability issue has been decided, learned counsel appearing for the parties has been called upon to address the matter on merit of the interim order.

31. Learned counsel appearing for the petitioner submits that admittedly the petitioner is the father of the sole opposite party and the petitioner is suffering from cancer in which he is spending much amount for his treatment. He further submits that a petition under Section 23 of the Domestic Violence Act under Protection of Women from Domestic Violence Act, 2005 was filed before the Court of learned Judicial Magistrate 1st Class, Bokaro which was numbered as C.P. Case No.1451/2022 and by the judgment dated 28.07.2023 that Court has already held that sole opposite party is not entitled for maintenance as she was found to be educated lady and she was working in Mumbai and

was earning there. He submits that the said order was not challenged before any higher court and that order has attained finality and during the pendency of the petition under the Domestic Violence Act another petition under the Hindu Adoption and Maintenance Act, 1956 was filed and the learned Court has directed to pay the maintenance. On this ground, he submits that the impugned order may kindly be set aside.

32. Learned counsel appearing for the sole opposite party opposes the prayer and submits that the learned Court has rightly passed the order and there is provision under Section 20(3) of Hindu Adoption and Maintenance Act, 1956 to pay the maintenance, as such there is no illegality in the impugned order.

33. It is an admitted position which has not been denied by the learned counsel appearing for the sole opposite party that opposite party has instituted the petition under Section 23 of Protection of Women from Domestic Violence Act, 2005 which was decided by the learned Court by judgment dated 28.07.2023 holding that the petitioner herein is suffering from Cancer which has been proved by way of medical documents and he is undergoing his treatment since the year 2016 and the criteria of interim maintenance is that if the claimant is having no means of livelihood and not able to maintain herself then only the maintenance can be granted and in the complaint itself the sole opposite party has admitted that she was residing at Mumbai and was earning her livelihood. The Court has also held that she is capable of maintaining herself for her livelihood and in view of that claim under the Domestic Violence Act has been rejected and that order has not been challenged and that order has attained finality. During the pendency of that petition

itself another petition under Hindu Adoption and Maintenance Act, 1956 has been filed which is still pending and the learned Court has passed interim order of maintenance *pendente lite* to the tune of Rs.2,000/- per month.

34. It is well settled that once the party chosen his remedy under the particular statute, he is required to take remedy under that statute and at early stage the remedy cannot be altered as has been held by Hon'ble Supreme Court in the case of ***Nivedita Sharma v. Cellular Operators Association of India and others, reported in [(2011) 14 SCC 337]*** that the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.

35. In view of the above, the impugned order dated 08.01.2024 is hereby set aside.

36. The learned court will now decide the application pending before that Court under the Hindu Adoption and Maintenance Act, 1956 incorporating the further issue as to whether the party who has chosen his remedy can alter the remedy further by way of choosing another statute or not.

37. In view of the above, the question of maintainability of Article 227 of the Constitution of India is decided as discussed here-in-above and the order challenged in this writ petition is set aside for the above reasons. As such, this petition is disposed of.

(Sanjay Kumar Dwivedi, J.)

Sangam/

A.F.R.