

HIGH COURT OF JUDICATURE FOR RAJASTHAN

BENCH AT JAIPUR

S.B. Criminal Revision No. 483/2018

Anshul Kulshreshtha S/o Late Shri Anil Kulshreshtha Aged about 35 years, B/c Kayasth, R/o 14/90, Sector 34, Noida, Uttar Pradesh Presently Residing At 397 Second Floor Palam Vihar Near Mcd Gurgaon.

----Petitioner

Versus

Smt. Swarnima Kulshreshtha @ Soni W/o Anshul Kulshreshtha D/o Shri Dinesh Kumar Kulshreshtha, Aged about 29 years, R/o Gurgaon Presently Residing At Plot No. 314 Katewa Nagar, Jaipur.

Dharya S/o Shri Ashul Kulshreshtha B/c Kayastha Minor Through His Guardian Mother Petitioner No. 1, Aged 1 year 6 months, R/o Gurgaon Presently Residing At Plot No. 314 Katewa Nagar Jaipur.

----Respondents



For Petitioner(s) : Mr. Shrey Gaharana
For Respondent(s) : Mr. Ram Babu Sharma

HON'BLE MR. JUSTICE PANKAJ BHANDARI

Judgment / Order

31/08/2018

REPORTABLE

1. Petitioner has preferred this revision petition aggrieved by order dated 05.03.2018 passed by Family Court No.1, Jaipur, vide which Court has allowed the application for interim maintenance and has awarded Rs.15,000/- per month to respondent No. 1 (wife) and Rs.10,000/- to respondent No.2 for son of couple.
2. Preliminary objection is raised by counsel for the respondent that revision petition is not maintainable. His contention is that there being a bar of Sub-section (2) of Section 397 of the Cr.P.C., the powers of revision cannot be exercised in relation to any

interlocutory order passed in any appeal, inquiry, trial or other proceeding.

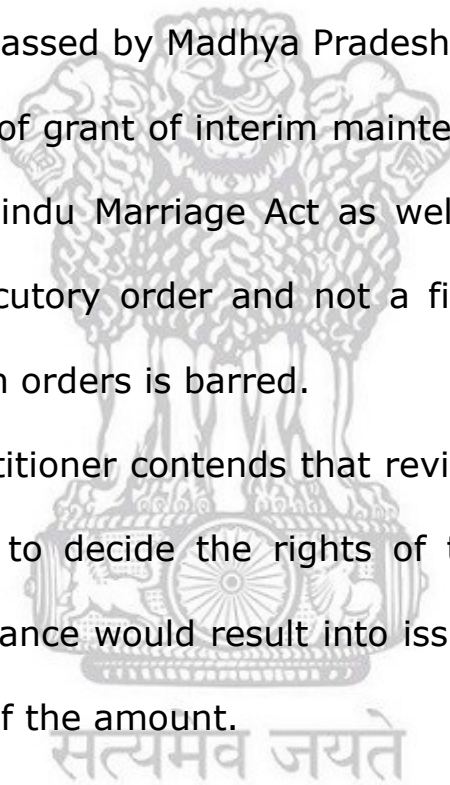
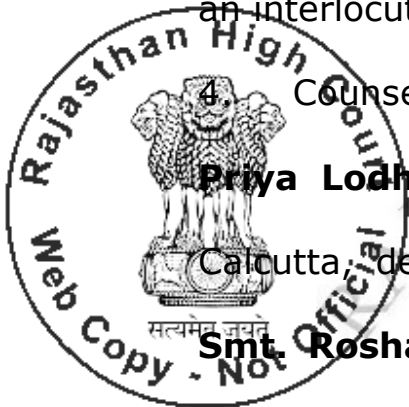
3. It is also contended that the application under Section 125 Cr.P.C. is pending adjudication before the concerned Court and rights of parties is to be decided only after a decision on the application filed under Section 125 Cr.P.C., hence, interim order is an interlocutory order.

4. Counsel for the respondent has placed reliance on "**Smt. Priya Lodh vs Sri Subhankar Lodh**" 2016 CRLJ (NOC) 162 Calcutta, decided on 20.08.2015 and "**Vinod Kumar Pillai vs Smt. Roshani Pillai**" passed in Revision Petition No.399/2015, dated 29.07.2015, passed by Madhya Pradesh High Court, wherein it is held that order of grant of interim maintenance under Section 24 and 25 of the Hindu Marriage Act as well under Section 125 Cr.P.C. is an interlocutory order and not a final order, therefore, revision against such orders is barred.

5. Counsel for petitioner contends that revision is maintainable, as the order tends to decide the rights of the parties and non payment of maintenance would result into issuance of warrants of arrest for recovery of the amount.

6. It is further contended that petitioner was not given any opportunity to submit his documents and the Court in hot haste has decided the application for interim maintenance.

7. Counsel for the petitioner has placed reliance on "**Amar Nath etc. Vs. State of Haryana etc.,**" 1977 (4) SCC 137, **Sunil Kumar Sabharwal Vs. Mrs. Neelam Sabharwal**, 1991 (1) R.C.R. (Criminal) 332 & "**Mukesh Sharma Vs. Aditi Sharma**", 212 (22) R.C.R. (Criminal) 290 passed in Criminal Miscellaneous



No.2903/2010, decided on 03.12.2012, by the Punjab & Haryana High Court.

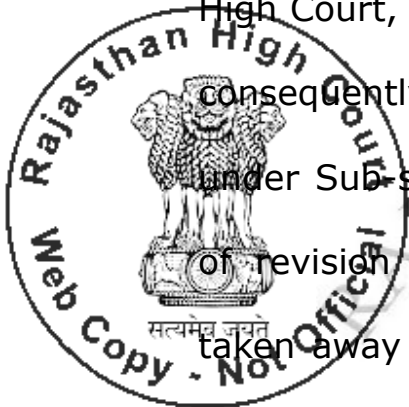
8. I have considered the contentions.

9. The concept of an interlocutory order qua the revisional jurisdiction of the High Court was completely foreign to the earlier Code, subsequently due to flooding of revision petitions before the High Court, Law Commission suggested revolutionary changes and consequently, in the new 1973 Code, restriction was imposed under Sub-section (2) of Section 397 Cr.P.C., wherein the powers of revision of the High Court against interlocutory order were taken away as it was found to be the main contributing factor in the delay of disposal of criminal cases.

10. The Apex Court in "**Amar Nath Vs. State of Haryana**," (supra) determined the connotation of the term "interlocutory order" as appearing in Sub-Section (2) of Section 397 Cr.P.C. The Apex Court while referring to Webster's New World Dictionary described the word "interlocutory" as an order other than final decision. The Court held that the term "interlocutory order" merely denotes orders of purely interim or temporary nature which do not decide or touch the important rights, or the liabilities of the parties.

11. Punjab and Haryana High Court in the judgment cited by the counsel for the petitioner has held that interim maintenance order is an interlocutory order, whereas Madhya Pradesh and Calcutta High Court have held that an order of interim maintenance is interlocutory order and revision does not lie from such order.

12. Rajasthan High Court in "**Minor Anu Vs. Ratan Lal Sharma**", RLR 1993 (1) 125 & "**Chhotu Sing Vs. Smt. Basanti**



& Ors.” RLW 2003 (1) RAJ 114, has held that order of interim maintenance is an interlocutory order.

13. There are differing views of different High Courts, Punjab & Haryana High Court are of view that interim maintenance order is not an interlocutory order, whereas Calcutta & Madhya Pradesh High Court are of the view that interim maintenance order is an

interlocutory order but this Court is bound by the decision of the

Rajasthan High Court "**Chhotu Sing Vs. Smt. Basanti & Ors.**"

(supra) & "**Minor Anu Vs. Ratan Lal Sharma**" (supra), wherein

grant of interim maintenance is held to be an interlocutory order.

14. Since the interim maintenance order continues till the final

decision of an application under Section 125 Cr.P.C. and the

decision of an interim application does not decide the rights and

liabilities of the parties, it cannot be considered to be a final order

so as to give rights to the parties to move a revision petition.

Hence, revision petition is not maintainable.

15. The revision petition is accordingly dismissed as not

maintainable. Stay application also stands disposed.

(PANKAJ BHANDARI),J

