

Madhya Pradesh High Court

Smt. Krishna Jain vs Dharam Raj Jain on 4 January, 1991

Equivalent citations: 1992 CriLJ 1028

Author: P Pathak

Bench: P Pathak, S Chawla

JUDGMENT P.C. Pathak, J.

1. This is reference made by one of us (Pathak-J) to Division Bench to answer the following questions :--

(i) whether recording of reasons is sine qua non for awarding maintenance from the date of application?

(ii) If so, whether the order must be modified, making it payable from the date of order?

(iii) Whether the 'date of order' in Section 125(2) means the date of order of the Revisional Court also"?

2. Smt. Krishnabai was married to non-applicant Dharamraj 16 years before the date of petition in accordance with Hindu Rites. She alleged that when Ku. Kalpana applicant No. 2 was in the womb, the non-applicant snatched her ornaments and forced her to return to her parents. After the birth of the child, she requested him to take her back, but he gave no response. The applicant with her child continues to stay with her parents. On 4-6-1982 the applicant and her child filed petition Under Section 125, Cr. P.C. before the Chief Judicial Magistrate claiming maintenance @ Rs. 400/- per month to the mother and Rs. 200/- to the child from the date of application. The non-applicant filed his written statement on 30-9-1982. The trial Court allowed the application by order dated 24-4-1985, granting Rs. 200/- to the wife and Rs. 100/- to the child from the date of application.

3. The non-applicant filed, revision on 5-6-1985 before the Sessions Court. The Revisional Court held that Ku. Kalpana was not born from the cohabitation of the non-applicant but this does not affect his liability to maintain her as also his illegitimate child. There being no proof that the applicant was 'living' in adultery, the maintenance could not be denied to her also. Thus, both were held entitled to maintenance from the non-applicant. The Revisional Court further held that the normal rule is to award the maintenance from the date of order and if the maintenance is to be awarded from the date of application, the Court must record reasons. Since no reasons were given by the Magistrate, the award of the maintenance from the date of application, was set aside. The trial Court's order was modified only to the extent that the maintenance to both was allowed from the date of order of the trial Court i.e. 24-4-1985.

4. Aggrieved by the said order, the non-applicant filed M.Cr.C.No. 1096/86 while the applicants filed revision challenging the findings as to the legitimacy of Ku. Kalpana, so also that part of the order which set aside the grant from the date of application.

5. Counsel for both parties were heard. Shri Surendra Singh, Advocate, appears as amicus curiae.

6. The first question for decision is whether recording of reasons is sine qua non for awarding maintenance from the date of application. Section 125(2) of the Criminal P.C., 1974, runs as under:--

Such allowance shall be payable from the date of the order, or, if so ordered from the date of the application for maintenance.

Even in the Criminal P.C. (Act No. V of 1898) the analogous provision Section 488(2) was the same as will be clear from the following:--

Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

7. In *Lachhmani v. Ramu* (Cr. Re. No. 405/82, decided on 10-11-1982.), Shri M.D. Bhatt, J. held as under :--

Sub-section (2) of Section 125 shows that such allowance has to be normally payable, from the date of the order. In the alternative it could be equally ordered from the date of the application for maintenance. Reading the Sub-section, it clearly shows that the grant of allowance has normally to be, from the date of the order alone; and in case, this normal rule is not intended to be followed, then the Court concerned, may well grant the allowance from the date of the application; but, such order should be backed by some reason, to support the same Shri R.C. Shrivastava J. (Gwalior Bench), agreeing with view of Shri Bhatt J., in *Mohd. Inayatualla Khan v. Smt. Salma Bano*, M.Cr.C. No. 97/83, decided on 2nd April, 1985, held as under :--

There can be no dispute on the point that, ordinarily, payment of maintenance under Section 125 of the Criminal P.C. has to be ordered not from the date of the application but from the date of the order.

Thus, according to both the learned Judges, the normal rule is to award the maintenance from the date of order, but, if the award is from the date of application, it should be supported by reasons.

8. A contrary view of Shri U.L. Bhatt, J. in *C.M. Manai v. Esther Pachikara*, (1983) 1 DMC 409 : 1981 Cri LJ (NOG) 76 (Kerala), is that it is not necessary for the Court to record reasons for awarding maintenance from the date of petition. According to him, the Court may omit to mention the date from which the maintenance order is to take effect. In such case the amount is payable from the date of order. The Court may specifically direct the order to take effect from the date of the petition.

9. In *Makundum Ali v. Nargis Bano*, (1983) 1 DMC 40 : 1983 Cri LJ 111, it was held that there ought to be compelling reasons before the wife is deprived of maintenance from the date of the application. Since the two Courts failed to assign any such reason, the High Court set aside the order and allowed the maintenance from the date of application.

10. A plain reading of Sub-section (2) of P. 125 shows that the allowance is payable from the date of order where the Court omits to specify the date from which it is payable. The Court has power to make it payable from the date of application. See *Sampat Kumar v. Shanti Devi*, 1986 MPLJ Note 4. Thus, it is open to the Court to allow the maintenance either from the date of order or from the date of application. The view in *Lachhmani's* case (*supra*) that the grant of allowance has 'normally' to be, from the date of order and in case, this 'normal rule' is not intended to be followed the grant from the date of the application should be backed by some reason is nothing but to strain the plain words of the Sub-section. It is an attempt to insert something more in the Sub-section, which the legislature never intended. We are unable to read in the Sub-section laying down any normal rule to award from the date of order or that the grant from the date of

application an exception. Both the aforesaid decisions do not lay down correct law, and must be overruled. It is the discretion of the Magistrate to direct payment either from the date of application or from the date of order.

11. Next question for decision is whether it is essential to record reasons, if the allowance is made payable from the date of application which implies reasons need not be recorded if the same is allowed from the date of order. In our opinion, reasons have to be recorded in both the situations. Section 354(6) of the Code provides that every final order Under Section 125 and certain other sections, shall contain points for determination, the decisions there on and the reasons for the decisions. In a petition Under Section 125, the last point for determination is the date from which the maintenance ought to be granted. This depends on the pleadings in the case. The wife may claim the allowance from the date of application and the husband may deny it. In such a case the question has to be framed and decision on it has to be supported by reasons based on evidence led by both parties in support of their claims. Yet, in other case the husband may omit to deny the wife's claim from the date of application. In such cases, the question may be answered in wife's favour, on the short ground that there is no denial in the written statement and this may satisfy the requirement of Section 354(6). It is well settled that a party cannot be allowed to set up altogether a new case in revision, not set up altogether a new case in revision, not set up in the pleadings. See *Jodhan Sahu v. Mst. Kulwantikher*, 49 Cri LJ 323 (Pat): AIR 1948 Patna 285. Therefore, where the husband fails to contest the claim from the date of application by raising specific objections in the written statement, he has no right to urge that the allowance should have been from the date of order and not from the date of application. A Revisional Court should be slow to entertain any objection against the Magistrate's order allowing the maintenance from the date of application, when the husband fails to contest the claim in the lower Court.

12. Next question for decision is what is the effect of non-supply of reasons for awarding maintenance from the date of application? Section 465 of the Code provides that no omissions, errors, or irregularities in any proceeding will entail a reversal or alteration in appeal or in revision of any finding, sentence or order, unless such error, omission of irregularity has occasioned a failure of justice. Mere technicalities in respect of matter which are not vital or important or significant in a trial should not be allowed to frustrate the ends of justice. *Chittaranjan Das v. State of West Bengal*, AIR 1963 SC 1696 : 1963 (2) Cri LJ 534.

13. I came across several cases in which the Revisional Courts, following *Lachhmani's* case, on a finding as to the absence of reasons to award the maintenance from the date of application, modified the Magistrate's order mechanically directing payment only from the date of Magistrate's order. Such a short cut approach to dispose of the revision, cannot be called judicious. The Revisional Court is obliged to scan the evidence on record to satisfy itself and supply the reasons in support of the Magistrate's order and the order impugned may not call for any interference. If the material on record is absent or insufficient, it may resort to an order of remand with or without retaining seisin of the revision as the interest of justice and early disposal may demand. Patna High Court in 1971 Pat LJR 666 held that the section should be construed liberally and beneficially to the applicant while deciding the date from which the maintenance is to be granted. A blanket interference with the Magistrate's order in the manner aforesaid, may result in grave injustice and untold miseries to the claimants who may have managed to survive, during pendency of proceedings, on loans or by sale of ornaments etc. or subscriptions from relations and sympathisers. In *Makudum v. Nargis Bano*, 1982 Mat LJ 366, it was held that where the wife and the child had been neglected, they were entitled to maintenance from the date of application. Following this decision, in *Sunita Bhutani v. Satpal*, 1985(2) Crimes 1007, the modification by the Additional Sessions Judge without assigning reason, directing payment from the date of order, was held to be unwarranted and the order of the Magistrate granting-maintenance from the date of application was restored.

14. The claimants have now been relieved by the decisions of Supreme Court in *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945 : (1985 Cri LJ 875) and *Smt. Savitri v. Govind Singh*

Rawat, AIR 1986 SC 984 : 1986 Cri LJ 41, laying down that the Magistrate can grant interim maintenance. In the absence of any such order, it is essential for the magistrate to enquire the source from which the wife maintained herself and her child, if any, the conduct of parties during the proceedings and other relevant matter so as to properly decide the date from which the maintenance may be payable. Where the wife maintained herself and children by selling ornaments and collecting funds from the relations, the Court awarded maintenance from the date of application. S.A. Kaiser v. Noor Sahan, 1980 Cri LJ 611 (Cal).

15. Next question for decision is whether the 'date of order' in Sub-section (2) of Section 125 could also be the date of revisional order? It is settled by catena of cases that maintenance can be granted either from the date of order of the Magistrate or from the date of application before him. The Magistrate has no discretion to allow it from a third date. There is also no provision for awarding maintenance prior to the date of application. Rosa Cracker v. Emperor, AIR 1928 Mad 899, Abdul Rahim v. Mst. Amir Begum, AIR 1926 Lah 532 : 27 Cri LJ 610 and Enamul Haque v. Bibi Taimnissa, AIR 1967 Pat 344 : 1967 Cri LJ 1364. Thus, the Court cannot award maintenance from the date of child's birth : Janamma v. Kuthappa Panicker, AIR 1959 Ker 366 : 1959 Cri LJ 1328.

16. In Gafoor Ahmed v. Amnabi, Cr. R. No. 22 of 1983 (Indore) decided on 7-8-1986, V.D. Gyani, J. held as under (at page 392 (of 86 DMC) :--

So far as the question of making the order retrospective, the learned Sessions Judge in his order has not indicated any reason, for doing so. No doubt, it is within the discretion of the Court making the order of maintenance to award a sum either from the date of application or from the date on which the order is passed. In such matters, it is expected of the Revisional Court to take realistic view of the matter as the proceeding, at times, consume considerable time before an order is passed, accumulation of arrears of maintenance allowance, in case the order is made retrospective in effect, at times results in great deal of hardship. To avoid this, the Court should consider awarding of interim maintenance, which has now been held to be awardable by the Supreme Court, if such interim maintenance is not asked for and awarded, at least the Revisional Court should, in the event of making the order retrospective in effect, record reasons for doing so, lest it results in not merely a great deal of hardship to the husband but also deprives forums of granting, the grounds or reasons on the basis of which a retrospective maintenance order is passed. As in this case, no reasons are indicated, the ends of justice would sufficiently be met if the order is made effective from the date, it was made by the learned Sessions Judge.

17. In the aforesaid case (Gafoor Ahmed's case), the trial Court had dismissed the application Under Section 125. The Revisional Court granted maintenance from the date of application. In order to avoid hardship to the husband due to accumulated arrears, Gyani, J. held that reasons must be recorded for granting maintenance from the date of application. Since no reasons were given by the revisional Court, he directed the maintenance to be payable from the date of Revisional Court's order. Thus, he carved out a third date, not stipulated in Section 125(2). This was beyond the scope of Section 125(2).

18. With utmost respect to Gyani, J., we are of the opinion that accumulation of large arrears is hardly a ground to deny the wife if she makes out a case for grant of maintenance from the date of application. We may refer to 1965 Pun LJ 170 : (1965) 67 Punjab Law Reporter 263, wherein it was held (at page 268 (of 65 Pun LR)) :--

The fact that arrears have accumulated is no justification for writing them off. The argument that the petitioner-wife had somehow been managing to earn some amount to make her both ends meet during the interval is inconclusive. That the husband has all these years been neglecting the wife and has also been persisting in denying his marriage with her and their living together, in his efforts to avoid his liability, is also not irrelevant and may well be kept in view. It is not a matter of

favour to the petitioner-wife, nor is she begging for any charity. It is her right which is being enforced by the Court and indulgence to the respondent husband in this respect can only be at the cost of the petitioner wife's right".

In Hemibai v. Kundibai, AIR 1940 Sind 222, the opposite party was found to have behaved badly, so as not to deserve any sympathy or consideration, it was held that the maintenance should be awarded from the date of application.

19. In view of the foregoing discussion, we hold that the 'date of order' in Section 125(2) means the date of order of the Magistrate and not the date of revisional order. Gafoor Ahmed's case so far it directs payment of allowance from the date of order of the revisional Court, is not good law.

The answers to the questions referred are:--

(i) Recording of reasons is essential in either case namely when the maintenance is granted from the date of application or from the date of order.

(ii) In the absence of reasons, it does not automatically follow that the maintenance should be awarded from the "date of order".

(iii) The "date of order" in Section 125(2) means the date of Magistrate's order and not the revisional order.

The record be placed before the single Judge for disposal of the revisions.