A SHAIL KUMARI DEVI & ANR.

v.

KRISHAN BHAGWAN PATHAK @ KISHUN B. PATHAK

(Civil Appeal No.4666 of 2008)

JULY 28, 2008

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[C.K. THAKKER AND D.K. JAIN, JJ.]

Code of Criminal Procedure, 1973 – s. 125:

Maintenance – Entitlement to – From date of application C *or from date of order – Held: Maintenance can be awarded from the date of order, or, if so ordered, from the date of application for maintenance, as the case may be – For awarding maintenance from date of application, express order is necessary – No special reasons, however, are required to be re-*D *corded by the Court – No such requirement can be read in sub section (1) of s.125 in absence of express provision to that effect.*

Maintenance – Quantum of – Family Court granted maintenance to wife as well as minor daughter at the rate of Rs.2000/ E *- and Rs. 1000/- respectively from date of application i.e. July 21, 1997 – Challenge to – Held: Before amendment of 2001, the ceiling was Rs.500/- – Therefore, the Family Court could not have granted maintenance exceeding Rs.500/- p.m either to wife or minor daughter from date of application i.e. July* F *21, 1997 – At the most, such an order could have been made effective from the date, the Amendment Act, 2001 (amending s.125) came into force.*

Interim maintenance – Grant of – Held: In absence of G *any express bar or prohibition, s.125 can be interpreted as conferring power by necessary implication to make interim order of maintenance subject to final outcome in the application for maintenance – In the present case, Magistrate was right and wholly justified in ordering interim maintenance –*

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Interim maintenance could have been granted by the Magistrate even before the amendment of s.125 in 2001.

Appellant No.1 is the wife of Respondent. On July 21, 1997, a case for maintenance under s.125 CrPC was filed whereunder Appellant No.1 claimed maintenance of Rs.500/- p.m. for herself and Rs.500/- p.m. for her minor daughter, Appellant No.2. It was the case of Appellant No.1 that Respondent had neglected to maintain her as also Appellant No.2. Subsequently, an application was filed by Appellants requesting the Court to grant 'interim' maintenance during pendency of proceedings before the Court. The Trial Court allowed the said application and fixed interim maintenance at the rate of Rs.300/- p.m. for each of the applicants. Later the case was transferred to the Family Court, which finally disposed of the matter on November 29, 2006 by directing Respondent to pay maintenance of Rs.2,000/- p.m. to Appellant No.1 and Rs.1,000/- p.m. to Appellant No.2 with effect from the date of application *i.e.* July 21, 1997. Appellants filed Criminal Revision in High Court, which reduced the amount of maintenance from Rs.2,000/- to Rs.750/- for Appellant No.1 and from Rs.1,000/- to Rs.750/- for Appellant No.2. The High Court also directed that the amount of maintenance would be payable to the Appellants not from the date of the application *i.e.* July 21, 1997 but from the date of the order *i.e.* November 29, 2006.

In appeal to this Court, the questions which arose for consideration are: 1) Whether the Family Court erred in granting maintenance to the Appellants from the date of application made by them under s.125 CrPC and was also wrong in allowing maintenance of more than Rs.500/- either to Appellant No.1 or to Appellant No.2 before 2001 when the relevant provisions of law (s.125 CrPC as it then stood), allowed Rs.500/- p.m. as maximum amount of maintenance; 2) Whether the High Court was justified in

A reducing the amount as also issuing direction to make payment from the date of the order passed by the Family Court; 3) Whether no 'interim' maintenance could have been awarded before the amendment in CrPC in 2001 and 4) Whether even on merits, the Family Court was not justified in ignoring the evidence on record and in granting maintenance to Appellant No.1 by observing that she was unable to maintain herself when the evidence clearly revealed that some of the properties of Respondent were with Appellant No.1 and she also inherited land from her father.

Partly allowing the appeal, the Court

HELD: 1.1. The ceiling which was fixed under the original enactment of 1973 (i.e. CrPC, 1973) of Rs.500/- p.m. has been removed and now it is open to a Court under the amended law to fix such amount as it 'thinks fit'. There is no substantial change so far as the date of payment is concerned. Under sub-section (2) as originally enacted, it was provided that such maintenance could be made payable from the date of the order or if so ordered, from the date of application. Even after the amendment of 2001, an order for payment of maintenance can be made by a Court either from the date of the order or where an express order is made to pay maintenance from the date of application, then the amount of maintenance can be paid from that date, *i.e.* from the date of application. [Paras 19, 20] [399-G, 400-A,B,C]

1.2. The High Court, in the present case, was not right in holding that as a *normal rule*, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. And if he intents to pass such an order, he is required to record reasons in support of such order. Duration of litigation is not within the power or in the hands of the applicant and entitlement to maintenance should not be left to the uncertain date of dis-

posal of the case. [Paras 44, 45] [410-G, 411-A,B]

1.3. Again, maintenance is a right which accrues to a wife against her husband the minute the former gets married to the latter. It is not only a *moral* obligation but is also a *legal* duty cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the Court is called upon to consider is whether she was justified to live separately from her husband and still claim maintenance from him and if the reply is in the affirmative, she is entitled to claim maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of 'special reasons' though he must record reasons as envisaged by sub-section (6) of Section 354 of CrPC in support of the order passed by him. [Para 46] [411-C,D,E,F]

1.4. While deciding an application under Section 125 of CrPC, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court. No such requirement can be read in sub section (I) of Section 125 of the Code in absence of express provision to that effect. [Para 47] [411-F,G, 412-A]

1.5. So far as 'interim' maintenance is concerned, it is true that Section 125 of CrPC as it originally enacted did not expressly empower the Magistrate to make such order and direct payment of interim maintenance. But the Code equally did not prohibit the Magistrate from making such order. Now, having regard to the nature of proceedings, the primary object to secure relief to deserted and

destitute wives, discarded and neglected children and disabled and helpless parents and to ensure that no wife, child or parent is left beggared and destitute on the scrapheap of society so as to be tempted to commit crime or to tempt others to commit crime in regard to them, the Magistrate had *'implied power'* to make such order. The jurisdiction of the Magistrate under Chapter IX (Order for Maintenance of Wives, Children and Parents) is not *strictly* criminal in nature. Moreover, the remedy provided by Section 125 of the Code is a *summary remedy* for securing reasonable sum by way of maintenance subject to a decree passed by a competent civil Court. Hence, in absence of any express *bar* or *prohibition*, Section 125 could be interpreted as conferring power by necessary implication to make interim order of maintenance subject to final outcome in the application. In absence of prohibition to grant 'interim' maintenance such power could be read in the salutary provision of Section 125 of the Code ensuring maintenance to unable wife to maintain herself during the pendency of proceedings. Even Parliament took into account the reality and by the Amendment Act, 2001 express provision has been made for the purpose. The Magistrate in the present case was right and wholly justified in ordering interim maintenance. There is no infirmity in that part of the order and interim maintenance could have been granted by the Magistrate even before the amendment of s.125 in 2001. [Paras 21, 27, 45] [400-C,D,E,F,G, 404-D,E, 411-B,C]

1.6. In the present case, the Family Court granted maintenance to the appellants—wife as well as daughter—at the rate of Rs.2000/- and Rs. 1000/- respectively from the date of application *i.e.* July 21, 1997. Before the amendment of 2001, the ceiling was Rs.500/-. Therefore, the Family Court could not have granted maintenance exceeding Rs.500/- p.m either to appellant No.1 or appellant No.2 from the date of application *i.e.* July 21, 1997. At the most, such an order could have been made effective from

the date the Amendment Act, 2001 came into force. To that extent, therefore, the order passed by the Family Court was not in accordance with law. [Para 48] [412-B,C,D]

1.7. But even on merits, the Family Court was not right in fixing the amount of maintenance. From the material on record, it is clear that the appellant No.1-wife is residing in the house belonging to Respondent-husband and such finding has been recorded even by the Family Court. It is also in evidence that she was receiving income from the land in her possession which belonged to her husband-Respondent. It is true that Respondent could not state as to the actual amount received by the wife from the cultivation of the land. But it is also one of the considerations which is relevant and material while fixing the amount of maintenance. Moreover, Appellant No.1 has inherited some land from her father. [Para 49] [412-D,E,F,G]

1.8 In view of overall facts and circumstances, ends of justice would be served if it is held that both the Appellants are entitled to an amount of Rs.1000/- each per month as maintenance. Appellants would be entitled to the said amount of maintenance from the date the Amendment Act, 2001 came into force. i.e. September 24, 2001. So far as the order of payment of 'interim' maintenance passed by the Magistrate is concerned, the same was in consonance with law and no interference is called for. [Para 50] [412-G, 413-A]

Savitri v. Govind Singh Rawat **(1985) 4 SCC 337 – relied on.**

K. Sivaram v. K. Mangalamba & Ors., **1990 CrLJ 1880 (AP) – approved.**

Mohd. Inaytullah Khan v. Salma Bano, **1983 Jab LJ 55,** *Rameshwar v. Ramibai,* **1987 CrLJ 1952** *(MP), Lachhmani v. Ramu,* **(1983) 1 Crimes 590** *MP, Qamruddin v. Smt. Rashida,* **(1992) 1 WLC 305 (Raj),** *Shyamlal v. Mansha Bai,* **1998 CrLJ 2704 (Raj),** *Mohd. Ismail v. Bilquees Bano,* **1998 CrLJ 2803**

A **(All),** *Nitha Ranjan Chakraborty v. Smt. Kalpana Chakraborty,* **2002 CrLJ 4768 (Cal),** *Samaydin v. State of U.P. & Anr.,* **2001 CrLJ 2064 (All);** *Bijay Kapri v. Smt. Kanishta Devi & Anr.,* **(2000) 2 PLJR 241**; *Gnanaselvi & Ors. v. Illavarasan,* **(1999) 1 Crimes 22 (Mad);** *P.N. Duda v. P. Shiv Shankar,* **(1988) 3**
B **SCC 167 39;** *Amarjit Kaur v. Sartaz Zingh,* **1996 CriLJ 4476 (P&H) and** *Krishna Jain v. Dharam Raj Jain,* **1992 CriLJ 1028 (MP) – referred to.**

Case Law Reference

C	**(1985) 4 SCC 337**	**relied on**	**Para 22**
	1983 Jab LJ 55	**referred to**	**Para 34**
	1987 CrLJ 1952 (MP)	**referred to**	**Para 34**
	(1983) 1 Crimes 590 MP	**referred to**	**Para 34**
D	**(1992) 1 WLC 305 (Raj)**	**referred to**	**Para 34**
	1998 CrLJ 2704 (Raj)	**referred to**	**Para 34**
	1998 CrLJ 2803 (All)	**referred to**	**Para 34**
E	**2002 CrLJ 4768 (Cal)**	**referred to**	**Para 34**
	2001 CrLJ 2064 (All)	**referred to**	**Para 34**
	(2000) 2 PLJR 241	**referred to**	**Para 35**
F	**(1999) 1 Crimes 22 (Mad)**	**referred to**	**Para 38**
	(1988) 3 SCC 167	**referred to**	**Para 38**
	1996 CriLJ 4476 (P&H)	**referred to**	**Para 39**
	1992 CriLJ 1028 (MP)	**referred to**	**Para 40**
G	**1990 CrLJ 1880 (AP)**	**approved**	**Para 43**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4666 of 2008

From the final Judgment and Order dated 3.5.2007 of the
H High Court of Judicature of Patna in C.R. No. 67 of 2007

Abhinav Prakash and Kanhaiya Priyadarshi for the Appellants. A

Kumar Rajesh Singh and Niranjana Singh for the Respondent.

The Judgment of the Court was delivered by B

C.K. THAKKER, J. 1. Leave granted.

2. The present appeal is filed by appellant No.1-wife and appellant No.2-daughter of respondent herein-Krishan Bhagwan Pathak. The appellants have approached this Court being aggrieved by the judgment and order passed by the High Court of Judicature at Patna on May 3, 2007 in Criminal Revision No. 67 of 2007. By the said order, the High Court partly allowed the revision filed by the respondent-husband and modified the order passed by the Court of Principal Judge, Family Court, Bhojpur on October 30, 2006 in Miscellaneous Case No. 280 of 1997, renumbered as No.1 of 2005. C D

3. Shortly stated the facts of the case are that the marriage between appellant No.1 and the respondent was solemnized according to Hindu rites, customs and ceremonies before more than three decades. From the said wedlock, nine children were born. Appellant No.2-Kumari Babli is the youngest among all and she is the only child staying with her mother-appellant No.1. At the time of filing of the application, she was of twelve years. E F

4. On July 21, 1997, the appellants filed a case for maintenance in the Court of Chief Judicial Magistrate, Bhojpur under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') (Misc. Case No. 280 of 1997) claiming maintenance of Rs.500/- p.m. for appellant No.1 and Rs.500/- p.m. for appellant No.2. It was the case of the appellant No.1 that her husband had neglected to maintain his wife-appellant No.1 as also his legitimate daughter-appellant No.2. On November 20, 1999, an application was filed by the appellants requesting the Court to grant 'interim' maintenance during G H

A the pendency of proceedings before the Court. The learned Chief Judicial Magistrate allowed the said application, granted the prayer and fixed interim maintenance at the rate of Rs.300/- p.m. for each of the applicants with effect from February 12, 1998. The parties, thereafter, led the evidence which was closed B on September 3, 2001 and the case was adjourned for final arguments. During the pendency of proceedings, however, Family Court came to be established and the case was transferred to the Principal Judge, Family Court, Bhojpur.

5. From the evidence, it was clear that the respondent was C working as Cashier with the State Bank of India, Bihita Branch and was getting gross salary of Rs.18,508-98. After deduction, his pay packet was of Rs.9,831-76. The respondent retired from service in January, 2006. The appellants filed a petition on September 12, 2006 with a prayer to direct the respondent to pay D arrears of maintenance which came to Rs.11,600/- and the Family Court on October 30, 2006, allowed the application and directed the respondent to pay the entire amount of the arrears in lump sum by the next date of hearing.

6. The matter was finally disposed of by the Family Court E on November 29, 2006 and the learned Principal Judge of the Family Court directed the respondent to pay maintenance of Rs.2,000/- p.m. to applicant-appellant No.1-wife and Rs.1,000/- p.m. to applicant-appellant No.2-minor daughter with effect from the date of application *i.e.* July 21, 1997 with further order F to pay arrears within three months of the order after deducting the amount which had already been paid under the interim order passed by the Court earlier.

7. The appellant was dissatisfied with the order passed G by the Principal Judge of the Family Court and preferred Criminal Revision No. 67 of 2007 in the High Court.

8. The High Court partly allowed the Revision and modified the direction issued by the Family Court. The High Court reduced the amount of maintenance from Rs.2,000/- to Rs.750/- H - to appellant No.1-wife and from Rs.1,000/- to Rs.750/- to ap-

pellant No.2-daughter. The High Court also directed that the amount of maintenance would be payable to the applicants-appellants not from the date of the application *i.e.* July 21, 1997 but from the date of the order *i.e.* November 29, 2006. The said order is challenged by the appellants in the present appeal.

9. On September 5, 2007, the matter was placed for admission hearing. Delay of eight days in filing Special Leave Petition was condoned and notice was issued to the respondent. Considering the nature of the litigation, the Registry was directed by an order dated April 16, 2008 to place the matter for final disposal on a non-miscellaneous day and that is how the matter is placed before us.

10. We have heard learned counsel for the parties.

11. Learned counsel for the appellants contended that the High Court was wrong in partly allowing Revision filed by the respondent and in modifying the directions issued by the Family Court. It was submitted that the High Court was in clear error in reducing the amount of maintenance to appellant No.1-wife and appellant No.2-daughter. Similarly, the High Court was in error in holding that the appellants were not entitled to maintenance from the date of application but only from the date of order passed by the Court. It was, therefore, submitted that the order passed by the High Court deserves to be set aside by restoring the order of the Family Court.

12. The learned counsel for the respondent, on the other hand, supported the order passed by the High Court. It was urged that the Family Court was not right in granting maintenance to the appellants from the date of application. It was submitted that the Family Court was again wrong in allowing maintenance of more than Rs.500/- either to appellant No.1-wife or to appellant No.2-daughter before 2001 when the relevant provisions of law (Section 125 of the Code as it then stood), allowed Rs.500/- p.m. as maximum amount of maintenance. The High Court was, therefore, justified in reducing the amount as also issuing direction to make payment from the date of the

A order. It was also urged that no 'interim' maintenance could have been awarded before the amendment in the Code in 2001.

13. The counsel submitted that even on merits, the Family Court was not justified in ignoring the evidence on record and in granting maintenance to wife observing that appellant No.1 B was unable to maintain herself. The evidence clearly revealed, submitted the counsel, that some of the properties of the respondent-husband were with the appellant No.1-wife. She has also inherited land from her father. Those facts, therefore, ought to have been taken into account by the Family Court in fixing C the amount of compensation. On all these grounds, it was submitted that no interference in the order passed by the High Court is called for in exercise of discretionary jurisdiction under Article 136 of the Constitution and the appeal deserves to be dismissed.

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14. Three questions arise for our consideration; (i) whether interim maintenance could be awarded in absence of specific and express provision in the Code; (ii) whether the applicant-wife and her daughter are entitled to maintenance from the date of the order passed by the Family Court or from the date of E application made by them under Section 125 of the Code; and (iii) what could be the amount of maintenance which could be awarded by the Court.

15. Before we proceed to consider these questions, it F would be appropriate if we examine the relevant provisions of law. Sub-sections (1) and (2) of Section 125 of the Code, as they were originally enacted in 1973, read thus:

125.Order for maintenance of wives, children and parents.- (1) If any person having sufficient means neglects G or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

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(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, *at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit*, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation.- For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875(9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

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

(emphasis supplied)

16. Bare reading of sub-section (1) of Section 125 leaves no room for doubt that if any person having sufficient means, neglects or refuses to maintain his wife who is unable to main-

A tain herself or his legitimate (or illegitimate) child (children) unable to maintain itself (themselves), or his father, or mother, unable to maintain himself or herself, a Court, upon proof of negligence or refusal, order such person to pay maintenance to his wife or child (children) or parents, as the case may be. It is also
B clear that maximum amount which could be ordered to be paid was Rs.500/- p.m. which was clear from the expression "not exceeding Rs.500/- in the whole".

17. It is further clear that under sub-section (2), such maintenance can be made payable "from the date of order" or "if so
C ordered, from the date of the application for maintenance".

18. By the Code of Criminal Procedure (Amendment) Act, 2001 (Act 50 of 2001), sub-sections (1) and (2) came to be amended with effect from September 24, 2001. The amended
D sub-sections now read thus:

125. Order for maintenance of wives, children and parents. - (1) If any person having sufficient means neglects or refuses to maintain-

E (a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child
F is by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

G a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, *at such monthly rate, as such Magistrate thinks fit,* and to pay the same to such person as the
H Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pungency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.- For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875(9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) *Any such allowance* for the maintenance or interim maintenance and expenses of proceeding *shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance* or interim maintenance and expenses of proceeding, as the case may be.

(emphasis supplied)

19. It is apparent that the ceiling which was fixed under the original enactment of 1973 of Rs.500/- p.m. has been removed

A and now it is open to a Court under the amended law to fix such amount as it 'thinks fit'.

20. Again, there is no substantial change so far as the date of payment is concerned. Under sub-section (2) as originally enacted, it was provided that such maintenance could be B made payable from the date of the order or if so ordered, from the date of application. Even after the amendment of 2001, an order for payment of maintenance can be made by a Court either from the date of the order or where an express order is made to pay maintenance from the date of application, then the C amount of maintenance can be paid from that date, *i.e.* from the date of application.

21. So far as 'interim' maintenance is concerned, it is true that Section 125 of the Code as it originally enacted did not expressly empower the Magistrate to make such order and di- D rect payment of interim maintenance. But the Code equally did not prohibit the Magistrate from making such order. Now, having regard to the nature of proceedings, the primary object to secure relief to deserted and destitute wives, discarded and neglected children and disabled and helpless parents and to E ensure that no wife, child or parent is left beggared and destitute on the scrap-heap of society so as to be tempted to commit crime or to tempt others to commit crime in regard to them, it was held that the Magistrate had '*implied power*' to make such order. The jurisdiction of the Magistrate under Chapter IX F (Order for Maintenance of Wives, Children and Parents) is not *strictly* criminal in nature. Moreover, the remedy provided by Section 125 of the Code is a *summary remedy* for securing reasonable sum by way of maintenance subject to a decree passed by a competent civil Court. Hence, in absence of any G express *bar* or *prohibition*, Section 125 could be interpreted as conferring power by necessary implication to make interim order of maintenance subject to final outcome in the application.

22. A direct question came up for consideration before H

this Court in *Savitri v. Govind Singh Rawat,* (1985) 4 SCC 337 : 1986 CriLJ 41. The Court considered that though there was no specific provision for grant of interim maintenance, considering the object underlying the provision and social purpose behind the legislation, such a power must be conceded to the Court.

23. Speaking for the Court, Venkataramaiah, J. (as His Lordship then was) observed;

> "It is true that there is no express provision in the Code which authorises a magistrate to make an interim order directing payment of maintenance pending disposal of an application for maintenance. The Code does not also expressly prohibit the making of such an order. The question is whether such a power can be implied to be vested in a magistrate having regard to the nature of the proceedings under Section 125 and other cognate provisions found in Chapter IX of the Code which is entitled "Order For Maintenance of Wives, Children and Parents". Section 125 of the Code confers power on a magistrate of the first class to direct a person having sufficient means but who neglects or refuses to maintain (i) his wife, unable to maintain herself, or (ii) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (iii) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself or (iv) his father or mother, unable to maintain himself or herself, upon proof of such neglect or refusal, to pay a monthly allowance for the maintenance of his wife or such child, father or mother, as the case may be, at such monthly rate not exceeding five hundred rupees in the whole as such magistrate thinks fit. Such allowance shall be payable from the date of the order, or, if so ordered from the date of the application for maintenance".

24. Interpreting the relevant provisions of the Code, put-

A ting emphasis on the duty of a person liable to pay maintenance and applying the principle of 'social justice', His Lordship proceeded to state;

> "In view of the foregoing it is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way
B that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the magistrate to direct the person against whom an
C application is made under Section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made under Section 125 of the Code also take several months for being disposed
D of finally. In order to enjoy the fruits of the proceedings under Section 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. Every court
E must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim *ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest* (Where anything is conceded, there is conceded
F also anything without which the thing itself cannot exist.) (Vide Earl Jowitt's Dictionary of English Law 1959 Edn. P. 1797). Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done
G then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is
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passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The magistrate, may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim orders on affidavits, there is no reason why a magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. *Having regard to the nature of the jurisdiction exercised by a magistrate under Section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to there pending final disposal of the application*".

(emphasis supplied)

25. Parliament considered the object of the legislation, the decision of this Court in *Savitri* and the fact that though the remedy is of a summary nature, the applicant who is unable to

A maintain herself may have to wait for 'several years' for getting such relief. It, therefore, amended the provision expressly authorizing the Magistrate to grant interim maintenance.

26. In the Statement of Objects and Reasons, it was stated;

B "It has been observed that an applicant, after filing application in a Court under Section 125 of the Code of Criminal Procedure, 1973, has to wait for several years for getting relief from the Court. It is, therefore, felt that express provisions should be made in the said Code for interim maintenance allowance to the aggrieved person under said C Section 125 of the Code. Accordingly, it is proposed that during the pendency of the proceedings, the Magistrate may order payment of interim maintenance allowance and such expenses of the proceedings as the Magistrate considers reasonable, to the aggrieved person. It is also D proposed that the order be made ordinarily within sixty days from the date of the service of the notice".

27. In view of the decision of this Court in *Savitri*, in our opinion, the learned Magistrate was right and wholly justified in ordering interim maintenance by an order dated November 20, E 1998. We see no infirmity in that part of the order and hold that interim maintenance could have been granted by the learned Magistrate even before the amendment of Section 125 in 2001.

28. Regarding date from which such amount should be F paid to the appellants, the Family Court held that the appellants would be entitled to claim maintenance from the date of application *i.e.* July 21, 1997.

29. The Family Court stated;

G "*This order will be effective from the date of application i.e. 21.7.1997.* The opposite party is directed to pay the arrears within three months of this order and shall pay the current monthly amount of maintenance by 15th of every succeeding months."

H (emphasis supplied)

30. The Family Court thus exercised the power under sub-section (2) of Section 125 which enables the Court to make an order whether the applicant would be entitled to maintenance from the date of the order or from the date of the application. The Family Court ordered payment of maintenance from the date of application.

31. The High Court, however, set aside that part of the order of the Family Court. It, *inter alia,* observed;

> "On a consideration of the aforesaid arguments of the parties, this Court finds that the court below has not considered the present matter in a proper manner and keeping in view the purpose of the provisions of Section 125 of the Code. As held in a catena of decisions, the purpose of the said provision is to prevent vagrancy and destitution and essentially to financially support the deserted wife or other to say that her own son has grabbed the property and that she will sit back and will take no steps in the matter. As a matter of fact, under Section 125 of the Code of Criminal Procedure itself, it is the duty of the son to maintain his father and mother, if they are unable to maintain themselves; whereas the court has not even considered the said fact. When the petitioner has raised the issue that the opposite party has income from the land and house of her matrimonial village, the same ought not to have been ignored by the Court in the manner, which has been done. It raises the strong suspicion that the Court below had made up its mind to disbelieve everything that was stated on behalf of the petitioner and believe the contention of the opposite party, which is not the correct way of looking at the evidence that comes in course of the said proceedings. It is for the court, in such matter, to consider the probability of the facts and then to come to a fair conclusion as to what is the real state of affairs. From the impugned order, it does not appear that any such attempt has been made by the Court below and even the important admission made by the opposite party

No.1 has been lost sight of by the Court below.

In the aforesaid view of the matter, this Court does not find that the Court below has rightly looked into the aspect of the matter. *The Court below has also not considered as to what was the justification for passing an order for maintenance from the date of application, which goes back to more than 9 years from the date of the order. As laid down in the decision of this Court such an order may be necessitated if the party shows the dire need of money for the purpose of maintaining herself, for which she had to raise debts, during the period when the application had been pending.* There is no such material on the record, rather the opposite party was getting interim maintenance from November, 1998 itself by order dated 20.11.1998 although as a matter of fact the provision for interim maintenance has been brought into existence for the first time by the Amendment Act, 2001 with effect from 24.9.2001. However, since the said order is not under challenge, therefore, this Court would not like to go into that issue any further. In any case, it is a relevant fact that right from 1998, opposite party Nos. 1 and 2, have been paid interim maintenance, by which they had managed to sustain themselves during that period and thus there is no reason for passing the order to pay maintenance with effect from the date of application going back more than 9 years from the date of passing of the said order."

(emphasis supplied)

32. The above observations manifestly show that according to the High Court, there must be *justification* on the part of the Court in making the order of maintenance from the date of the application rather than from the date of the order. As there was no such reason granting maintenance from the date of the application, the Family Court was not justified in doing so. To that extent, therefore, the order passed by the Family Court was vulnerable and accordingly, it was set aside by granting main-

tenance from the date of the order passed by the Family Court. A

33. Now, no direct decision of this Court is available on the point as to from which date a Magistrate may order payment of maintenance to wife, children or parents. We may, however, refer to decisions of some High Courts. B

34. It seems that there is a cleavage of opinion on the question. According to one view, since sub-section (2) of Section 125 declares that maintenance shall be payable "from the date of the order", or, "if so ordered, from the date of application for maintenance", *normal rule* is that a Magistrate should C pass an order directing payment of maintenance only from the date of the order. If he decides to deviate that course and makes an order granting maintenance not from the date of the order but from the date of application for maintenance, he must record reasons in support of such order [*vide* Mohd. Inaytullah Khan v. D Salma Bano, *1983 Jab LJ 55,* Rameshwar v. Ramibai, *1987 CrLJ 1952 (MP),* Lachhmani v. Ramu, *(1983) 1 Crimes 590 MP,* Qamruddin v. Smt. Rashida, *(1992) 1 WLC 305 (Raj), Shyamlal v. Mansha Bai,* 1998 CrLJ 2704 (Raj), *Mohd. Ismail v. Bilquees Bano,* 1998 CrLJ 2803 (All), *Nitha Ranjan Chakraborty v. Smt. Kalpana Chakraborty,* 2002 CrLJ 4768 E (Cal), *Samaydin v. State of U.P. & Anr.,* 2001 CrLJ 2064 (All)].

35. The High Court, in the impugned order, also referred to a decision in *Bijay Kapri v. Smt. Kanishta Devi & Anr.,* (2000) 2 PLJR 241, wherein it was held that such order could be ne- F cessitated if the party shows 'dire need' of the money for the purpose of maintaining herself for which she had raised debts during the period when the application had been pending. No such material had been brought on record. Rather, the applicants were getting interim maintenance from November, 1998 G by an order passed by the Magistrate though such provision of interim maintenance had been brought in the statute book for the first time by the Amendment Act, 2001 with effect from September 24, 2001.

36. In *Samaydin,* the High Court of Allahabad observed H

A that there may not be a discussion of such circumstances which warranted the Court to allow it to grant maintenance from the date of application. But, no other inference is permissible in the light of the language of sub-section (2) of Section 125. The Court, by way of illustrative cases considered certain situations, such
B as, 'dilatory tactics adopted by the husband in the disposal of the proceeding', 'untold cruelty practised against wife', etc. In absence of special circumstances, however, maintenance cannot be ordered from the date of application.

37. Some other High Courts, have taken a contrary view. It
C was held that normally, maintenance should be granted from the date of the application and not from the date of the order. If the Magistrate is inclined to make an order granting maintenance from the date of the order and not from the date of application, he should record reasons to do so.

D

38. In *Gnanaselvi & Ors. v. Illavarasan,* (1999) 1 Crimes 22 (Mad), the High Court of Madras observed that when the wife approaches a Court claiming maintenance by filing application on the ground that she is not able to maintain herself, it is for her to prove such inability from the date of application. Hence,
E when the Court ultimately decides after conducting the inquiry that she is entitled to maintenance, the said decision must necessarily be based upon the material showing that the wife was unable to maintain herself when she filed an application. As a general rule, therefore, the Magistrate should pass an order di-
F recting maintenance from the date of application. It was also observed that the remedy is a speedy remedy and summary procedure is provided by the statute. Despite this, usually, in such proceedings, the Court notices that the husband does not allow the proceedings to go on by raising one objection or the
G other. The Court is required to deal with all such objections, which takes time. Again, even after the order is passed, the husband rushes to the higher forum and challenges it. Sometimes, he obtains interim orders which results in further delay. The deserted wife and children are the sufferers who seek shel-
H ter of the protective umbrella provided by Section 125 of the

Code. If maintenance is not granted from the date of application, the weaker sections are sure to lose confidence in the justice delivery system. The Court noted the deep concern expressed by this Court in *P.N. Duda v. P. Shiv Shankar,* (1988) 3 SCC 167 that "justice cries in silence for long, far too long".

39. In *Amarjit Kaur v. Sartaz Zingh,* 1996 CriLJ 4476 (P&H), the High Court of Punjab & Haryana held that sub-section (2) of Section 125 does not require the Magistrate to record special reasons for granting maintenance from the date of application. What it says is that if the order is silent as to the date from which such maintenance is payable, it has to be paid from the date of the order. Where, however, the maintenance is to be paid from the date of the application itself, then there should be a specific order in that behalf by the Court. There is nothing in the statutory provision to hold that the Magistrate must record special reasons if he is to order that maintenance shall be payable from the date of application.

40. In *Krishna Jain v. Dharam Raj Jain,* 1992 CriLJ 1028 (MP), the Division Bench of High Court of Madhya Pradesh considered the ambit and scope of sub-section (2) of Section 125 in the light of other provisions of the Code. It overruled *Mohd. Inaytullah Khan, Rameshwar* and *Lachhmani* referred to above and held that plain reading of sub-section (2) of Section 125 makes it clear that allowance of maintenance can be awarded from the date of the order or from the date of the application. To hold that, normally maintenance should be made payable from the date of the order and not from the date of the application unless such order is backed by reasons would amount to inserting something more in the sub-section which the Legislature never intended. The Court observed that it was unable to read in sub-section (2) laying down any rule to award maintenance from the date of the order or that the grant from the date of the application is an exception.

41. Regarding recording of reasons, the Bench observed that in either case *i.e* grant of maintenance from the date of the

order or from the date of the application, the Court is required to record reasons. The Court referred to sub-section (6) of Section 354 of the Code which reads thus:

> (6) *Every order* under Section 117 or sub-section (2) of Section 138 and every final order made *under Section 125*, Section 145 or Section 147 *shall contain the point or points for determination, the decision thereon and the reasons for the decision.*
>
> (emphasis supplied)

42. It was, therefore, observed that every final order under Section 125 of the Code [and other Sections referred to in sub section (c) of Section 354] must contain points for determination, the decision thereon and the reasons for such decision.

43. Our attention was also invited to a decision in *K. Sivaram v. K. Mangalamba & Ors.,* 1990 CrLJ 1880 (AP). In *K. Sivaram,* a single Judge of the High Court of Andhra Pradesh negatived the argument on behalf of the husband that the maintenance could be awarded from the date of the order and such maintenance could be granted from the date of the application only by recording special reasons. The Court held that it is the discretion conferred on the Court by the Code to award maintenance either from the date of the order or from the date of the petition as per the circumstances of the case. The Code also noted that wherever Parliament wanted special reasons to be recorded for passing a particular order, specific provision has been made to that effect [See sub-section (3) of Section 167 of the Code (default bail), Section 361 (refusal to grant probation) etc].

44. In our considered opinion, the High Court is not right in holding that as a *normal rule*, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. And if he intents to pass such an order, he is required to record reasons in support of such order. As observed in *K. Sivaram,* reasons have to be recorded

in both the eventualities. The Court was also right in observing that wherever Parliament intended the Court to record special reasons, care had been taken to make such provision by requiring the Court to record such reasons.

45. Moreover, duration of litigation is not within the power or in the hands of the applicant and entitlement to maintenance should not be left to the uncertain date of disposal of the case. Keeping in view this hard reality, this Court in *Savitri* held that in absence of prohibition to grant 'interim' maintenance such power could be read in the salutary provision of Section 125 of the Code ensuring maintenance to unable wife to maintain herself during the pendency of proceedings. Even Parliament took into account the reality and by the Amendment Act, 2001 express provision has been made for the purpose.

46. Again, maintenance is a right which accrues to a wife against her husband the minute the former gets married to the latter. It is not only a *moral* obligation but is also a *legal* duty cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the Court is called upon to consider is whether she was justified to live separately from her husband and still claim maintenance from him? If the reply is in the affirmative, she is entitled to claim maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of 'special reasons' though he must record reasons as envisaged by sub-section (6) of Section 354 of the Code in support of the order passed by him.

47. We, therefore, hold that while deciding an application under Section 125 of the code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is

A necessary. No special reasons, however, are required to be recorded by the Court. In our Judgment, no such requirement can be read in sub section (I) of Section 125 of the Code in absence of express provision to that effect.

48. The last question relates to quantum of amount of maintenance. The Family Court granted maintenance to the appellants—wife as well as daughter—at the rate of Rs.2000/- and Rs. 1000/- respectively from the date of application *i.e.* July 21, 1997. We have reproduced the relevant part of Section 125 as originally enacted and as amended by the Amendment Act, 2001. Before the amendment of 2001, the ceiling was Rs.500/-. In our opinion, therefore, the Family Court could not have granted maintenance exceeding Rs.500/- p.m either to appellant No.1 or appellant No.2 from the date of application *i.e.* July 21, 1997. At the most, such an order could have been made effective from the date the Amendment Act, 2001 came into force. To that extent, therefore, the order passed by the Family Court was not in accordance with law.

49. But even on merits, the Family court was not right in fixing the amount of maintenance. The learned counsel for the respondent took us to the evidence adduced by the parties. From the material on record, it is clear that the appellant No.1-wife is residing in the house belonging to the respondent-husband and such finding has been recorded even by the Family Court. It is also in evidence that she was receiving income from the land in her possession which belonged to her husband-respondent herein. It is true that the respondent could not state as to the actual amount received by the wife from the cultivation of the land. But it is also one of the considerations which is relevant and material while fixing the amount of maintenance. Moreover, appellant No.1 has inherited some land from her father.

50. In view of overall facts and circumstances, in our opinion, ends of justice would be served if we hold that both the appellants are entitled to an amount of Rs.1000/- each per month as maintenance. As already clarified, the appellants would be

entitled to the said amount of maintenance from the date the Amendment Act, 2001 came into force. i.e. September 24, 2001. So far as the order of payment of 'interim' maintenance passed by the Magistrate is concerned, the same was in consonance with law and no interference is called for. A

51. For the foregoing reasons, the appeal deserves to be partly allowed and is accordingly allowed to the extent indicated above. B

B.B.B. Appeal partly allowed.