

A JAIMINIBEN HIRENBHAI VYAS & ANR.

v.

HIRENBHAI RAMESHCHANDRA VYAS & ANR.

(Criminal Appeal No. 2435 of 2014)

B

NOVEMBER 19, 2014

**[J. CHELAMESWAR AND S.A. BOBDE, JJ.]**

C *Code of Criminal Procedure, 1973 – ss. 125 and 354(6)*  
– *Grant of maintenance – Effective date – Held: s. 125*  
D *enables the court to grant maintenance from the date of the*  
*order or from the date of the application – Said final order*  
*must contain reasons for such decision – On facts, High Court*  
*granted maintenance to wife from the date of order, without*  
*giving any reason for not granting maintenance from the date*  
*of application – Circumstances justified grant of maintenance*  
*with effect from the date of application for maintenance – Thus,*  
*order passed by the High Court set aside.*

E **Allowing the appeal, the Court**

F **HELD: Section 125 Cr.P.C. impliedly requires the**  
**Court to consider making the order for maintenance**  
**effective from either of the two dates, the date of the order**  
**or from the date of the application, having regard to the**  
**relevant facts. Every final order u/s.125 [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. On facts, the**  
**High Court did not give any reason for not granting**  
**G maintenance from the date of the application. The**  
**circumstances eminently justified grant of maintenance**  
**with effect from the date of the application. The order of**  
**the High Court is set aside and the respondent is directed**  
**H to pay the amount of maintenance found payable from**

the date of the application for maintenance. [Paras 6, 7, 9][578-F-H; 579-G-H; 580-A-B]

*Shail Kumari Devi v. Krishan Bhagwan Pathak*  
(2008) 9 SCC 632 : 2008 (11) SCR 386 – referred  
to.

**Case Law Reference:**

**2008 (11) SCR 386 referred to Para 8**

CRIMINAL APPELLATE JURISDICTION: Criminal  
Appeal No. 2435 of 2014.

From the Judgment and Order dated 28-10-2010 of the  
High Court of Gujarat at Ahmedabad in Criminal Revision No.  
378 of 2009.

I.C. Sharma, Daya Krishan Sharma, Hemant Mudgil,  
Advs. for the Appellants.

Ms. Hemantika Wahi, Adv. for the Respondents.

The Judgment of the Court was delivered by

**S. A. BOBDE, J. 1.** Leave granted.

2. This appeal has been preferred by a wife and a minor  
daughter. The Family Court directed payment of interim  
maintenance to wife and minor daughter @ Rs. 6,000/- per  
month under Section 125 of the Code of Criminal Procedure,  
1973 (hereinafter referred to as the 'Cr.P.C.'). Interim  
maintenance was also ordered under Section 24 of the Hindu  
Marriage Act, 1955 (hereinafter referred to as the 'H.M. Act')  
@ 3,000/- per month payable to both. Eventually, the Family  
Court disposed the maintenance proceedings finally by the  
Order dated 31.01.2009. By this Order the Family Court  
granted maintenance in favour of daughter @ Rs. 5,000/- per  
month from the date of judgment. The Family Court, however,  
took the view that the appellant – wife would not be entitled to

A receive any amount more than the interim maintenance which she is receiving under the H.M. Act.

B 3. On the Appellant's application for maintenance made for herself and her children, the Family Court granted maintenance in the sum of Rs 5,000/- only to her daughter under Section 125 Cr.P.C. The son was living with the father who was maintaining him and was therefore not granted maintenance. The main ground for denying maintenance to the Appellant was that she was found to have been working before her marriage and the Family Court was of the view that she could earn her living even now after the separation and therefore she was denied maintenance. This view did not find favour with the High Court, which noted that the Appellant had stopped working after her marriage and had given birth to two children. She had been only looking after the family and had therefore stopped working. The High Court thus reversed the Order of the Family Court and granted maintenance in the sum of Rs. 5,000/-. This was however granted from the date of the order.

E 4. We have given our anxious consideration to the Order of the High Court but find it difficult to uphold the direction that the maintenance should be paid only from the date of the Order. The High Court has not given any reason why it has not directed maintenance from the date of the application for maintenance.

F 5. The relevant part of Section 125 reads as follows:

**"125. Order for maintenance of wives, children and parents.**

G (1) If any person having sufficient means neglects 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 A

(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, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: B C

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: D

Provided further that the Magistrate may, during the pendency 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: E F

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. G

Explanation.- For the purposes of this Chapter,-

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

C (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."

D 6. The provision expressly enables the Court to grant maintenance from the date of the order or from the date of the application. However, Section 125 of the Cr.P.C. must be construed with sub-section (6) of Section 354 of the Cr.P.C. which reads thus:

E *"354 (6) Language and contents of judgment - 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."*

F Therefore, every final order under Section 125 of the Cr.P.C. [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. In other words, Section 125 and Section 354 (6) must be read together.

G 7. Section 125 of the Cr.P.C., therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its

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order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354 (6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case.

8. In *Shail Kumari Devi v. Krishan Bhagwan Pathak*,<sup>1</sup> this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In *Shail Kumar Devi*, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold 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. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such Order. Thus, 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.

9. In the case before us, the High Court has not given any reason for not granting maintenance from the date of the application. We are of the view that the circumstances eminently justified grant of maintenance with effect from the date of the application in view of the finding that the Appellant had worked before marriage and had not done so during her

<sup>1</sup> (2008) 9 SCC 632; Para's 39 - 41.

- A marriage. There was no evidence of her income during the period the parties lived as man and wife. We, therefore reverse the Order of the High Court in this regard and direct that the respondent shall pay the amount of maintenance found payable from the date of the application for maintenance. As far as
- B maintenance granted under Section 24 of the H.M. Act by the Courts below is concerned, it shall remain unaltered.

10. Accordingly, the appeal is allowed.

Nidhi Jain

Appeal allowed.