

**IN THE COURT OF DISTRICT AND SESSION JUDGE
LUCKNOW**

Criminal Appeal No. of 2019

Pushkar Raj Singh, aged about 44 years, son of Sri Kheem Singh Gailakoti, resident of Kamal Nayan near Jyoti Sweet House, Peeli Kothi, Badi Mukhani Haldwani, District Nainital, Uttrakhand.

.....Appellant

Versus

Smt Rakhi Gailakoti, aged about 40 years, wife of Pushkar Raj Gailakoti and daughter of late Hari Singh Negi, resident of House No.9/826, Sector-9, Indranagar, Lucknow.

.....Respondent

**APPEAL UNDER SECTION 29 OF THE PROTECTION OF
WOMEN FROM DOMESTIC VIOLENCE ACT 2005 AGAINST
THE ORDER DATED 13.03.2019 PASSED BY LEARNED
ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT
NO.32 LUCKNOW IN COMPLAINT CASE NO.3009 OF 2014
(SMT RAKHI GAILAKOTI V/S PUSHKAR RAJ SINGH AND
OTHERS) ISSUING RECOVERY WARRANT AS WELL AS
DIRECTION TO DISTRICT MAGISTRATE NAINITAL TO
AUCTION THE HOLDING OF THE APPELLANT SITUATED IN
DISTRICT NAINITAL UTTAKHAND FOR RECOVERY OF
AMOUNT OF MAINTENANCE AWARDED IN FAVOUR OF
RESPONDENT @ RS.12,000/- PER MONTH FOLLOWING
AMONG OTHER:-**

GROUND

(A) Because the marriage was solemnized on 21.05.2004 according to Hindu rites and custom at Haldwani and thereafter the respondent complainant and appellant lived together at Kamal Nayan near Jyoti Sweet House, Peeli

Kothi, Badi Mukhani Haldwani, District Nainital Uttrakhand and the domestic relationship between the parties always within the territorial jurisdiction at Haldwani District Nainital Uttrakhand beyond the territorial jurisdiction of the session division of this Hon'ble Court but the complaint under Section 12 of The Protection of Women from Domestic Violence Act has been submitted before the learned Trial Court at Lucknow.

- (B) Because the respondent on her own left the matrimonial home and even two minor sons have also been deserted by her and the appellant being the responsible father of the kids is already taking their proper care and both the minor sons are getting their education at Haldwani District Nainital in the reputed Educational institute but the respondent instead of performing her obligation as mother of her minor sons is now dragging the appellant from Haldwani to Lucknow due to which the appellant is facing serious inconvenience. Both minor sons are getting their proper school at Haldwani and the respondent is also creating hindrance in their schooling also.
- (C) Because the respondent has already filed Case No.402 of 2017 (Smt Rakhi Gailakoti v/s Pushkar Raj Singh) under Section 125 Cr.P.C for maintenance in the Court of learned Principle Judge Family Court Lucknow and she has been

awarded Rs.1500/- per month towards maintenance and she is also pressing maintenance under Section 21 of Act 43 of 2005 before the learned Trial Court causing financial disturbances with a sole object to deprive both the minor sons from their proper education at Haldwani.

- (D) Because the learned Trial Court in utter disregard of principle of natural justice and ignoring the pendency of criminal revision no.661 of 2018 pending before the Hon'ble High Court regarding the same subject matter passed the impugned recovery order against the appellant and now vide impugned order dated 13.03.2019 attachment order together with auction of holding order has been passed treating the appellants monthly income as Rs.80,000/- without any basis or evidence for which the appellant is already agitating the matter before the Hon'ble High Court as the respondent herself stated the monthly income of the appellant as Rs.30,000/- per month before the learned Principle Judge Family Court in Case No.402 of 2017(Smt Rakhi Gailakoti v/s Pushkar Raj) under Section 125 Cr.P.C and the learned Family court has been pleased to award Rs.1500/- per month as interim maintenance in favour of respondent and the said amount is being deposited regularly by the appellant but this important fact has been concealed by the respondent in her complaint and even

after placing the correct fact by the appellant before the learned trial court the same has not been considered though as per provisions of Section 26(3) of Act 43 of 2005 it is provided that the aggrieved shall bound to inform the Magistrate of grant the relief already allowed in her favour by the learned Family Court. Thus, the proceeding before the learned trial court is going on in contradiction of the Settled Principle of Law as such the same is without jurisdiction.

- (E) Because the order passed by learned Trial Court is not maintainable in the eyes of law which is based on conjecture and surmises and even without any evidence and the same is without jurisdiction also.
- (F) Because the respondent is engaged in the employment but she has concealed her status though the appellant has already submitted the documentary evidence before the Hon'ble High Court in Criminal Revision No.661 of 2018 by placing Income Tax Return for the assessment year 2013-14 to 2018-19 which comes approximately monthly income as Rs.22764/- out of which the appellant is paying school fee, tuition fee, uniform and fooding for his two minor sons amounting Rs.15000/- per month, Rs.3000/- per month towards medicine expenses and Rs.7000/- per month is available to manage the kitchen as well as to look after his

old and ill parents however the appellant has shown his willingness to pay Rs.3500/- including Rs.1500/- per month which he is paying to the respondent per month under Section 125 Cr.P.C but the learned trial court has not given any opportunity of hearing to the appellant and now taking punitive steps to implement order of maintenance passed ex-parte against the appellant for which the criminal revision is already subjudice before the Hon'ble High Court.

PRAYER

It is, therefore, most respectfully prayed that the Hon'ble Court be pleased to set aside the order dated 13.03.2019 passed by learned Additional Chief Judicial Magistrate, Court No.32 Lucknow in Complaint Case No.3009 of 2014 (Smt Rakhi Gailakoti v/s Pushkar Raj Singh and others) after summoning the record of learned Trial Court and further be pleased to stay the implementation of impugned order during the pendency of Criminal Appeal before this Hon'ble Court.

The Appellant shall ever pray for this act of kindness.

Lucknow

Dated:25.03.2019

(x)

Advocate
Counsel for Appellant

**IN THE COURT OF DISTRICT AND SESSION JUDGE
LUCKNOW**

Criminal Appeal No. of 2019

Pushkar Raj Singh, aged about 44 years, son of Sri Kheem Singh Gailakoti, resident of Kamal Nayan near Jyoti Sweet House, Peeli Kothi, Badi Mukhani Haldwani, District Nainital, Uttrakhand.

.....Appellant

Versus

Smt Rakhi Gailakoti, aged about 40 years, wife of Pushkar Raj Gailakoti and daughter of late Hari Singh Negi, resident of House No.9/826, Sector-9, Indranagar, Lucknow.

.....Respondent

APPLICATION FOR STAY

The appellant most humbly and respectfully submits as under:-

1. That the appellant has this day filed the above noted criminal appeal against the order dated 13.03.2019 passed by learned Trial Court and there is every hope of success of appeal.
2. That the respondent has filed complaint under Section 12 of The Protection of Women from Domestic Violence Act 2005 on false and frivolous ground showing the place of marriage ceremony, domestic relationship as well as occurrence at Haldwani District Nainital Uttrakhand which is beyond the territorial jurisdiction of the criminal division of Lucknow Judgeship.
3. That the learned Trial Court has rejected the appellant's application under Section 177 Criminal Procedure Code 1973

on 30.05.2017 against which the Criminal Appeal No.197 of 2017 (Pushkar Raj Singh v/s Smt Rakhi Gailakoti) is already admitted by this Hon'ble Court and the same is pending for hearing in which the important question regarding jurisdiction of learned Trial Court is involved.

4. That the respondent has already filed an application under Section 125 Cr.P.C in the Court of learned Principle Judge Family Court and she has been awarded Rs.1500/- per month as maintenance. But the respondent has concealed this important fact before the learned Trial Court that she has been awarded Rs.1500/- per month as interim maintenance and on this ground also no interim maintenance can be granted.
5. That the applicants application dated 10.08.2018 for modification of order dated 08.08.2017 has been dismissed and on 17.01.2019 issued recovery order against the applicant and thereafter adopting coercive measure and no opportunity of hearing has been provided to the applicant though the respondent had left the matrimonial home herself without any reasonable excuse deserting the applicant as well as his two minor sons.
6. That the respondent is already getting Rs.1500/- per month as interim maintenance under Section 125 Cr.P.C as per order passed by learned Principle Judge Family Court Lucknow.
7. That the respondent has also got registered Crime No.40/2017 under Section 498-A, 323, 504 I.P.C and 3/4 Dowry Provision Act in Mahila Thana Lucknow impleading the applicant and his relatives by showing the alleged occurrence at Haldwani District Nainital Uttrakhand which clearly shows the malafide intention of the respondent for harassing the applicant for his no fault as well as she is

playing with the future of her two minor sons who are living with applicant at Haldwani but the respondent is creating obstacle for their proper maintenance and schooling at Haldwani by dragging the applicant into frivolous litigation at Lucknow for which the applicant has to travel from Haldwani to Lucknow in short interval.

8. That it is expedient in the interest of justice that the implementation of impugned order dated 13.03.2019 passed by learned trial court in Complaint Case No.3009 of 2014 deserves to be stayed during the pendency of this appeal before this Hon'ble Court.

PRAYER

It is, therefore, most respectfully prayed that the Hon'ble Court be pleased to stay the operation of impugned order dated 13.03.2019 passed by learned Trial Court in Complaint Case No.3009 of 2014 (Smt Rakhi Gailakoti v/s Pushkar Raj Singh) during the pendency of the criminal appeal before this Hon'ble Court.

The Appellant shall ever pray for this act of kindness.

Lucknow

Dated:25.03.2019

(x)

Advocate
Counsel for Appellant

**IN THE COURT OF DISTRICT AND SESSION JUDGE
LUCKNOW**

Criminal Appeal No. of 2019

Pushkar Raj SinghAppellant

Versus

Smt Rakhi GailakotiRespondent

AFFIDAVIT IN SUPPORT OF APPLICATION FOR STAY

I, Pushkar Raj Singh, aged about 44 years, son of Sri Kheem Singh Gailakoti, resident of Kamal Nayan near Jyoti Sweet House, Peeli Kothi, Badi Mukhani Haldwani, District Nainital, Uttrakhand, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is appellant himself as such he is fully conversant with the facts deposed.
2. That the contents of para 1 to 8 of the application are true to my personal knowledge.

Lucknow

Dated:25.03.2019

Deponent

VERIFICATION

I, the deponent do hereby verify that the contents of para 1 and 2 of the affidavit are true to my personal knowledge.

Signed and Verified this 25th day of March 2019 at Lucknow.

Lucknow

Dated:25.03.2019

Deponent

I identify the deponent who has signed before me

Advocate

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Pushkar Raj SinghAppellant

Versus

Smt Rakhi GailakotiRespondent

REGISTERED ADDRESS OF APPELLANT

**Pushkar Raj Singh,
son of Sri Kheem Singh Gailakoti,
resident of Kamal Nayan
near Jyoti Sweet House,
Peeli Kothi,
Badi Mukhani Haldwani,
District Nainital,
Uttarakhand.**

Lucknow

Dated:25.03.2019

Appellant