

First Appeal No.80 of 2024

Upendra Choudhary **Appellant**

Versus

Chinta Devi & Anr. **Respondents**

**CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD**

For the Appellant : Mr. Pankaj Srivastava, Advocate
Mr. Ashish Gautam, Advocate
For Res. No.1 : Ms. Kanika Sinha, Advocate

13/Dated: 21.08.2026

I.A. No.3108 of 2026

1. It is an appeal under Section 19(1) of the Family Court Act, 1984.
2. The matter has been admitted and posted for final hearing, as would be evident from the order dated 10.12.2024.
3. When the matter was heard on 27.11.2025, learned counsel appearing for the respondent has submitted by referring the conduct of the appellant that even in spite of the order passed by the competent court in Maintenance Case No.57 of 2016, an order was passed on 16.01.2019 to pay Rs.7,000/- per month as monthly allowance but the same has not been paid and as such, arrears mounted to Rs.4 lakhs approximately.
4. This Court has passed an order on 22.01.2026 by granting time to the appellant for making payment of first installment and if not paid, then the employer, Central Reserve Police Force will be impleaded as a party and the order shall be passed for recovery of the said amount from the salary of the appellant-husband, who is working as a Head Constable, as was reported by the learned

counsel for the appellant, for the ready reference, the order dated 22.01.2026 is being quoted as under:-

- “1. It is a case where we have taken note based upon the submission made on behalf of the respondent that the learned Family Judge has already passed an order in maintenance case being O.M. No. 57 of 2016 on 16.01.2019 directing to pay Rs. 7,000/- per month as monthly allowance to the respondent.*
- 2. It is the grievance of the respondent that the arrear of maintenance amount has now been mounted to Rs. 4 Lacs approximately.*
- 3. Learned counsel appearing for the appellant-husband has submitted that as of now the current maintenance amount of Rs.7,000/- is being paid alongwith Rs. 3,000/- against the arrear which has been mounted to Rs. 4 Lacs approximately.*
- 4. This Court is of the view that since Rs. 4 Lacs approximately is the mounted amount of arrear against the order passed in the Judicial side by the learned Family Judge in maintenance case being O.M. No. 57 of 2016 which is being paid to the tune of Rs. 3,000/- per month, then in clearing the amount of Rs. 4 Lacs it will take the period about four to five years.*
- 5. This Court, therefore, is of the view that since the wife is also in the need of money for her maintenance, hence, at least, the arrear against the maintenance amount is to be cleared soon.*
- 6. Therefore, the said amount of Rs. 4 Lacs is being directed to be cleared in two installments to be paid in maximum period of two months in addition to the maintenance amount of Rs. 7,000/- which is being said to be paid month-wise.*
- 7. Let the first installment be cleared within the period of one month.*
- 8. This Court is deferring the matter after a month on 25th February, 2026, making it clear that if the first installment will not be paid within the period of one month, then the employer, Central Reserve Police Force will be impleaded as a party and order shall be passed for recovery of the said amount from the salary of the appellant-husband, who is working as a Head Constable, as has been reported by the learned*

*counsel for the appellant himself, to be deposited directly to the account of the respondent-wife.
9. List this case on 25th February, 2026.”*

5. The present interlocutory application being I.A. No.3108 of 2026 has been filed for modification of order dated 22.01.2026.
6. Learned counsel for the appellant by pressing the said interlocutory application has given a proposal that the monthly maintenance amount of Rs.7,000/- will be paid regularly but so far as the arrears amounting to Rs.4 lakhs is concerned, in order to clear the dues, he is ready to make payment of Rs.22,000/- in total including Rs.7,000/- as has been stated at paragraph-9 of the affidavit.
7. The instant interlocutory application, therefore, has been filed to modify the order dated 22.01.2026 passed in this appeal on the pretext of making payment of Rs.22,000/- per month.
8. This Court has passed an order on 22.01.2026 by granting time to the appellant to clear dues by making payment at least by way of first installment within one month, failing which, the employer, Central Reserve Police Force will be impleaded as party, thereafter, the present interlocutory application has been filed to modify the order dated 22.01.2026, on the pretext of making payment of Rs.22,000/- per month including Rs.7,000/- per month.
9. This Court is of the view that whatever reason has been assigned in the instant interlocutory application, that has been invited by the appellant himself.

10. The maintenance case in which the order was passed on 16.01.2019 in O.M. No.57 of 2016 directing to pay Rs.7,000/- per month was on contest and the appellant has accepted that order and even thereafter, not paid the amount of Rs.7,000/- per month years together amounting to arrears of Rs.4 lakhs. Now, he is showing his financial difficulty in making payment, therefore, he has given proposal of making payment of Rs.15,000/- in clearing of arrears of amount of Rs.4 lakhs in addition to Rs.7,000/-, which would be paid per month, as directed by the learned court vide order dated 16.01.2019.

11. This Court, therefore, is of the view that the order of maintenance has got some meaning as per the intent of the statutory provision as referred under Section 125 of the Cr.P.C. The statutory mandate is to provide, as an ad-interim measure, then, maintenance amount for the purpose sustenance of lady, who all of a sudden has come in destitute due to parting away or any reason whatsoever from the husband, which is the intent of Section 125 Cr.P.C. and if the order was passed by the competent court having jurisdiction, then, it was well available for the appellant to challenge. On the other hand, not making payment is nothing but defiance of the court's order.

12. The appellant is a public servant working as Head Constable in Central Reserve Police Force, as such, it is not expected from him to act contrary to his conduct defying the order passed by the competent court of law.

13. This Court for the aforesaid reason, is of the view that there is no material available in the present interlocutory application to modify the order dated 22.01.2026 for the reason particularly that if the order will be modified, then, a wrong doer will be allowed to take advantage of its own wrong, which is contrary to the proposition of law, based upon the principle that, a wrong doer cannot be allowed to take advantage of its own wrong, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Kusheshwar Prasad Singh Vrs. State of Bihar & Ors., (2007) 11 SCC 447*** wherein it has been held at paragraph-14 to 16 that: -

"14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).

15. ... This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated: "It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on

elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".

14. This Court, after taking into consideration the aforesaid reason, is of the view that the prayer made in the instant application is fit to be rejected.

15. Accordingly, I.A. No.3108 of 2026 stands rejected.

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16. We have already passed an order on 22.01.2026 granting time to the appellant to make payment of Rs.4 lakhs which was directed to be paid in two installments within the maximum period of two months in addition to the maintenance amount of Rs.7,000/- which is said to be paid month-wise, as would be evident from paragraph-6 of the order dated 22.01.2026 but he has failed to make payment and as per the observation if the first installment will not be paid within the period of one month, then the employer, Central Reserve Police Force will be impleaded as

party.

17. This Court, in view of the aforesaid observation already made, is of the view that the Director General, through the Central Reserve Police Force is required to be impleaded as party.
18. Let necessary addition be made in the array of respondent by impleading the Director General, Central Reserve Police Force as respondent no.2.
19. Mr. Prashant Pallav, learned ASGI waives notice on behalf of the newly impleaded respondent no.2.
20. The respondent no.2 is directed to recover an amount of Rs.4 lakhs in two installments as per the observation already made at paragraph-6 of the order dated 22.01.2026 by transmitting the said amount in the saving bank account of the respondent.
21. This Court, considering the conduct of the petitioner that due to non-payment of the maintenance amount of Rs.7,000/- per month since 16.01.2019, is of the view that a further direction is required to be passed for transmitting the amount of Rs.7,000/- by deducting from the salary of the appellant on month-to-month basis in the account of the respondent.
22. Awaiting the compliance of the said order, the matter is being listed for further hearing on 07.09.2026.
23. List on **07.09.2026**.
24. The newly impleaded respondent no.2 is directed to file affidavit to that effect.
25. Let the name of Mr. Prashant Pallav, learned ASGI be reflected

in the daily cause list.

- 26.** Let the copy of memo of appeal be served to Ms. Shreya Shukla, learned counsel associated with the office of learned ASGI.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

21.08.2026
Rohit/-