

MANU/MP/3255/2024

IN THE HIGH COURT OF MADHYA PRADESH (INDORE BENCH)

Criminal Revision Nos. 3028 of 2019 and 3931 of 2022

Decided On: 10.09.2024

Shikha **Vs.** Avaneesh Mahodaya

and

Avaneesh Mahodaya **Vs.** Shikha Mahodaya

Hon'ble Judges/Coram:

Prem Narayan Singh, J.

Counsel:

For Appellant/Petitioner/Plaintiff: Syed Asif Ali Warsi, Learned Counsel

For Respondents/Defendant: Rajat Raghuwanshi, Learned Counsel

Case Category:

CRIMINAL MATTERS - MATTERS RELATING TO MAINTENANCE UNDER SECTION 125 CR.P.C.

ORDER

Prem Narayan Singh, J.

1. Both the Criminal Revisions are arising out of the same order and hence both the revisions are being heard and decided with this common order analogously.

2. These criminal revisions have been preferred under Section 19(4) of the Family Courts Act, 1984, r/w S. 397 and 401 of Cr.P.C. by the the Husband and Wife respectively being aggrieved by the order dated 15.05.2019 passed by the learned Principal Judge, Family Court, Indore in M.Cr.C No.295/2015 whereby learned Principal Judge allowed the application under Section 125 of Cr.P.C. filed by the wife by directing the husband to pay interim maintenance of Rs.60,000/- to the wife, per month.

3. Brief facts of the case are that, the wife has filed an application under Section 125 of Cr.P.C. before the Family Court, Indore seeking maintenance from the husband. As per her application, she got married with her husband by Hindu rights and rituals on 27.11.2023. She stayed with her husband and her in-laws at Pune, Abu-Dhabi and Dubai, wherein she was performing her duty as an ideal wife and always taken care of her husband and his family members. It has been alleged in the application that the husband has not taken care of her and used to harass her physically and mentally. In the year 2006 wife got pregnant and at that time also the petitioner used to harass her and subjected her to perform heavy house hold work due to which she suffered a miscarriage. She was continuously subjected to torture due to which many a times she was compelled to stay at her maternal house. Husband has also refused to take her to Dubai so also he threatened her to kill if she comes to Dubai, Thereafter, she started residing in her maternal house. It is further alleged in the application that the husband is working as vice president in Citi Bank, Dubai and earning 1,60,000 Diram per annum i.e. 13,333/- Diram per month and in addition to that income he earns Rs.50,000/-,

hence in order to live a life in accordance with standard of living of her husband, she filed an application under Section 125 of Cr.P.C seeking maintenance of Rs.60,000/- per month.

4. The aforesaid facts were denied by the husband in his reply to the application by stating that the wife is living separately from the husband without any sufficient cause. She used to doubt about the character of her husband and used to create disputes with him. Wife is a well educated lady employed in a Bank at Dubai and used to earn AED 3500/- (Rs.75000/- in Indian Currency) per month. At Indore also she was earning Rs.50,000/- by running a coaching center and beauty parlour. The wife is unnecessarily threatening the husband to rope him in false cases, while leaving her matrimonial house. The husband has the responsibility of his parents who are aged about 80 years hence she is not entitled for any maintenance.

5. Learned trial Court, on due consideration of the evidence adduced by the parties, allowed the application vide the impugned order and awarded monthly maintenance of Rs.60000/- per month to the wife from the date of the order. Being aggrieved by the aforesaid judgment parties have preferred this revision petitions.

6. Learned counsel for the wife has pleaded in his argument that the learned Family Court has passed the order only on the basis of husband's averments, the trial Court did not pay any heed on the evidence available on record. As per salary certificate (June 2018) of husband (Ex. D/7) the husband is receiving total salary of 35364/- Diram per month and after deduction of house rent allowance and other allowances he is receiving 19834/- Diram and he is also entitled for the rental allowance of 15,500/- Diram out of which he was paying only 6000 Dirams as house rent and 9000 Diram was his savings which fact the trial Court has ignored while awarding maintenance. In addition he is earning Rs.50000/- as rental income from his houses at Pune and Andheri, Mumbai, therefore, considering all proper perspectives of ongoing expenditures nowadays, the maintenance amount awarded is insufficient and hence the same needs to be enhanced.

7. Learned counsel for the husband has submitted that though the husband is employed in a reputed organization, however, due to false complaint of wife, he has lost his job and has no source of income. Thereafter he has shifted to Singapore where is manages to fetch only 12555/- Singapore Dollars per month and in return his expenses runs to 12417/- Dollars per moth. He is responsible for his old aged parents and their medication. Wife is a well educated lady employed in a Bank at Dubai and used to earn AED 3500/- (Rs.75000/- in Indian Currency) per month. At Indore also she was earning Rs.50,000/- by running a coaching center and beauty parlour. Counsel submitted that the rental allowance is included in the total salary of 35364/- Diram per month and after deduction of the same his net salary is 19834/- Diram. Out of 35364 Dirams 15500/- Dirams is deducted as rental allowance wherein 6000 Diram was being paid as rent. Trial Court has already considered the aforesaid facts Husband has already paid a sum of Rs.21,75,000/-towards permanent alimony in May 2022, hence looking to the facts and circumstances and the current situation the monthly maintenance awarded by the amount Rs.60,000/ awarded to the wife is of on higher side, therefore, he prayed that the same be reduced.

8. On due consideration of the arguments advanced by learned counsel for the parties and on perusal of record it is evident from the statement of Shika (P.W.1), the wife that she has been left by her husband and due to which she is entitled for getting maintenance from her husband. On the contrary as per statement of Avneesh (D.W.1) the husband, he is leading a life in Dubai as an unemployed person. Actually the

statement of husband that he is living in Dubai without any job does not inspire confidence. After considering all these facts learned trial Court has found the husband liable for maintenance. On this aspect, the law laid down by Hon'ble Apex Court in the case of Shamima Farooqui vs. Shahid Khan reported as MANU/SC/0380/2015 : 2015:INSC:283 : AIR 2015 SC 2025 is condign to quote hereunder:

"18. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance."

9. In the aforesaid case, concerning High Court has reduced the amount of maintenance from Rs.4000/- to Rs.2000/- only on the basis that the husband has been retired from his job actually the maintenance amount is awarded on the basis of ability. Once it is proved that the husband is having the ability to earn the amount, on the basis of retirement from service he cannot be eschewed to give maintenance to the wife. Hence the order of learned trial Court with regard to award maintenance in favour of wife is infallible in the eyes of law. In the course of arguments, both the counsel for the parties have confined their arguments on the quantum of income of the husband as well as quantum of maintenance to wife.

10. In this case, the husband has filed his salary slip as Ex.D/7 which shows the gross pay as 35, 364.17 Dirams from which after prepaid housing deductions from Citiclub the net pay is mentioned as 19,834.17 Dirams. On that basis learned Principle Judge of Family Court has articulated the income of husband as Rs.3,96,680/- per month i.e. approximately Rs.4.00 lakhs. Further learned trial Court has also considered that since the husband is residing in foreign country 50% of the aforesaid income would be expended on domestic expenses in foreign countries. It is well known fact that the persons who are residing in foreign countries are generally required to spend their 50% amount in the same country. On this aspect learned trial Court has assumed that actual income of husband will be Rs.2.00 to Rs.2.50 lakhs per month and thereafter the same was divided by 1/3rd and Rs.60,000/- was awarded as monthly maintenance to the wife. Now the question is whether 1/3rd amount should be given to the wife/petitioner in Cr.R. No.3028/2019.

11. It is also revealed from the record that wife is a well educated lady and she has also earned 3500/- Dirams. She has masters degree in commerce and in para 31 of her cross examination she has admitted that when she was living in Dubai she has completed the course of Shipping and trade forwarding diploma forwarding course. Further in para -32 she has stated that thereafter she was earning 3500 AED as monthly income (i.e.) nearly about Rs.75,000/- per month, that means she has the ability to earn her livelihood. In this regard the law laid down by Hon'ble Apex Court in the case of Jasbir Kaur Sehgal vs. District Judge Dehradun and Ors. reported as MANU/SC/0835/1997 : 1997:INSC:620 : AIR 1997 SC 3397 is condign to be quoted here:-

"The Court has to consider the status of the parties, their respective needs,

capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those; he is obliged under the law and statutory but involuntary payments or deductions. Amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

12. In this regard, the law laid down by Hon'ble Supreme Court in the case of Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy (MANU/SC/0457/2017 : 2017:INSC:370 : AIR 2017 SC 2383), wife is entitled to get 25% of the income of the husband. Hon'ble High Court of M.P., endorsing the aforesaid citation in the case of Amit Pandey vs. Manisha Pandey reported as MANU/MP/0077/2020 : 2020 Law Suit (M.P) 1098, adumbrated as under:-

"The Hon'ble Apex Court in the case of Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy (MANU/SC/0457/2017 : 2017:INSC:370 : AIR 2017 SC 2383), has held that 25% of the income of the husband would be just and proper and not more than that. So, apart from that when ex-parte order was passed in favour of the respondent/ wife, then learned trial Court should have awarded 25% of the net income of the petitioner/non- applicant as maintenance and not more than that. So, it is appropriate to reduce the awarded maintenance amount of Rs.10,000/- per month to Rs.7,000/- per month which would be paid by the petitioner/non-applicant to the respondent/wife. The decisions in Deb Narayan Halder Vs. Smt. Anushree Halder (MANU/SC/0629/2003 : AIR 2003 SC 3174) and Chandrakalabai Vs. Bhagwan Singh (MANU/MP/0634/2002 : 2002 Cr.L.J. 3970) are not at all applicable in the case of petitioner/non- applicant."

13. On this aspect the para 12 & 13 of order dated 22.08.2023 pronounced by this Court in the case of Mamta Dimple vs. Manish (Cr.R. No.4004/2019) is worth to quote hereunder:-

2. On this aspect, it is asserted in Badshah Vs. Sou. Urmila Badshah Godse [MANU/SC/1084/2013 : AIR (2014) SCW 256], the purposive interpretation needs to be given to provision of Section 125 of Cr.P.C. and it is bounden duty of Courts to advance cause of social justice. It is time honoured principal that the wife is entitled to a financial status equivalent to that of the husband. Under Section 125 Cr.P.C. the test is whether the wife is in a position to maintain herself in the way she used to live with her husband. In Bhagwan v. Kamla Devi (MANU/SC/0205/1974 : 1974:INSC:213 : AIR 1975 SC 83) it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C."

13. At this juncture, the following excerpts of Rajnesh Vs. Neha and Ors. (Supra) is reproduced below:-

The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meager that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

14. In the upshot of the aforesaid views laid down by Hon'ble Apex Court and this Court, this Court is of the considered opinion that a well qualified spouses should not be left idle or to remain idle basing on their maintenance amount received from their husband. Nevertheless, Section 125 of Cr.P.C has not been constituted to create an army of idle or inactive people waiting for maintenance to be awarded from the income of the other spouse. In the case at hand, the wife is well qualified, she has Masters degree in Commerce and also done Shipping and Trading Diploma Course, thus she has earning capacity and therefore the exorbitant maintenance should not be awarded to her. It can be assumed that she can easily earn a good income by indulging herself in any work or business. Neither a married woman is debarred from doing job, nor a married woman living separately and also obtaining maintenance from her husband is prevented to employ herself and to earn some income for her livelihood.

15. In view of aforesaid analysis in entirety and the law laid down by Hon'ble Apex Court, looking to the income of the husband so also his liabilities and the fact that wife is a well educated lady, she also has her own source of income, this Court is of the considered opinion that the maintenance amount of Rs.60,000/- per month is on the higher side and the same is required to be reduced to Rs.40,000/- per month.

16. Accordingly, Cr.R. No.3028/2019 filed by wife-Shikha is hereby dismissed and Cr.R. No.3931/2019 filed by the husband-Avaneesh is partly allowed with the directions that the maintenance amount awarded in favour of wife-Shikha be reduced from Rs.60,000/- to Rs.40,000/- per month. Remaining part of the order of family Court shall remain intact.

17. Registry is directed to send a copy of this order to the trial Court concerned for information and necessary action.

18. With the aforesaid, both the revision petitions stands disposed of.

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