

THE HIGH COURT OF MADHYA PRADESH
CRR No.2376/2020
(AMAR SINGH VS. SMT. VIMLA)
Through Video Conferencing

Gwalior, Dated : 22/06/2021

Shri Brijesh Kumar Tyagi, learned counsel for the applicant.

None for the respondent though served.

This criminal revision under Section 397/401 of Cr.P.C. r/w Section 19(4) of Family Court Act has been filed against the order dated 10/10/2020 passed by Principal Judge, Family Court Guna in case MJC No.72/2018, by which the application filed by the respondent under Section 125 of Cr.P.C. has been allowed and the applicant has been directed to pay Rs.7,000/- per month from the date of the order.

The necessary facts for disposal of present revision in short are that, the respondent filed an application under Section 125 of Cr.P.C. on the ground that she got married to the applicant on 25/05/2013 in accordance of Hindu Rites and Rituals. Since, the applicant and her in-laws were not satisfied with the dowry, therefore, they used to beat her, harass her for demand of a four wheeler and cash amount. About seven months prior to filing of the application i.e. in the month of September, 2017, the respondent was ousted from her matrimonial house and thereafter, she is residing in her parental home. In the meanwhile, neither the applicant came to take her back nor made any efforts to lookafter her. The respondent is on the verge of starvation.

Her father is poor and is not in position to bear her expenses and accordingly, it was prayed that for meeting out necessary expenses, the applicant be directed to pay Rs.15,000/- per month by way of maintenance amount. It was further pleaded that the applicant belongs to a rich family and is having 50 bigha of agriculture land with two tube wells. The applicant has cattles, tractor and other agriculture equipments. He has a house and accordingly, the yearly income of the applicant is Rs.50,00,000/-.

The applicant filed his reply to the application filed under Section 125 of Cr.P.C. He admitted that he got married to the respondent on 25/05/2013. It was claimed that since, both the parties are poor and since they were not in a position to bear the expenses of marriage and therefore, the marriage was performed in *Sammelan*. The marriage was performed without any dowry. The allegation of harassment due to non fulfillment of demand of four wheeler and cash amount was denied. It was also denied that the respondent was ousted from her matrimonial house about seven months prior to the filing of application. It was pleaded that for the first time the respondent had resided in her matrimonial house for a period of four days and during this period her behavior towards her in-laws was cruel. It was further pleaded that the respondent never allowed the applicant to consummate the marriage and she was continuously challenging the potency of the applicant in the society. The respondent is an expert in stitching and is also running beauty parlor

and earning rupees thirty to forty thousand per month. She is maintaining her parents out of her own income that is why the parents of the respondent are not permitting her to come to her matrimonial home. It was further pleaded that in fact the parents of the respondent are insisting that the applicant should reside in the parental home of the respondent as *Gharjamai*. When the applicant refused to do so, then a false criminal case under Section 498-A of IPC was instituted against the applicant and his family members. Later on the applicant and his family members were acquitted. It was further denied that the applicant is having any agriculture land, house, two tube wells, tractor and agricultural equipments. He also denied that he had any cattles, it was also denied that yearly income of the applicant is Rs.50,00,000/-. It was further pleaded that the applicant is a student and is working on a part time basis in a shop from where he is getting Rs.2,000/- per month and apart from that, the applicant has no source of income. It was further pleaded that after the marriage, when the applicant went to the parental home of the respondent to take her back, then for half an hour, the respondent and her family members did not open the door and thereafter, they insisted that the respondent should be permitted to reside in her parental home for next 8 to 10 days. Accordingly, the applicant came back from the door of the parental home of the respondent. Thereafter, the applicant again went to the parental home of the respondent to take her back. However, although the respondent was

permitted to come back to her matrimonial home but the applicant was disrespected. Whenever the applicant informed the parents of the respondent about her cruel behavior then every time they replied that if the applicant wants to leave the respondent then he can do so but he has to pay an amount of Rs.15 to 20 Lacs. In reply several allegations were made against the respondent and her parents about cruel behavior.

The respondent in support of her case examined herself. In cross-examination, she admitted that the applicant was acquitted for offence under Section 498-A of IPC. However, she denied that the marriage was performed without any dowry. She further admitted the suggestion given by the applicant that the applicant and his mother did not like the food prepared by the respondent. It was further denied that she did not allow the applicant to consummate marriage. She further denied that the applicant was detained in her parental home. She further denied that the applicant is a land less laborer. She further accepted that the marriage has not been consummated so far. She Further denied that she is doing the work of stitching or beauty parlor. She further denied that she is running a beauty parlor in the name of Sunena beauty parlor and Sunena Ladies Tailor. She further denied that she is earning Rupees 30 to 40 thousand per month. She further denied that the applicant is doing a part time job in a shop on monthly income of Rs.2,000/-

The respondent examined her father Kedari as P.W.2.

The applicant examined himself in his defence and apart from alleging the allegations of cruelty by the respondent and her parents, it was claimed by the respondent that he does not have any property or land or agriculture equipments. He also denied that the respondent was ever harassed for demand of four wheeler and an amount of ten lacs. He further claimed that the marriage has not been consummated however, he denied that because of non consummation of marriage, he had started beating the respondent.

The Court below after considering the totality of the facts and circumstances of the case, came to a conclusion that it cannot be said that the respondent is residing separately without any reasonable reason. It was further held that the applicant is an able bodied person and certain allegations have been made by the applicant, which have not been proved by him. It was also found that the respondent is not doing any work and she is unable to maintain herself.

So far as the question of quantum of maintenance amount is concerned, it was held that according to the respondent, the applicant is having 12 bigha of land whereas his father is having 38 bighas of land. He is the only son of his parents. Kedari P.W.2 has also claimed that the applicant is having forty to fifty bigha of land.

On the contrary, it was the claim of the applicant that he is a student and is working as a part time job in a shop from where he is earning Rs.2,000/- per month.

The Court below after considering the evidence came to a

conclusion that although, the respondent has failed to prove that the applicant is having any agriculture land but from the pleadings as well as evidence of the parties, it appears that the applicant belongs to a financially sound family and accordingly, he is in a position of maintaining the respondent. Accordingly, an amount of Rs.7,000/- has been awarded by way of monthly maintenance.

Challenging the order passed by the Court below, it is submitted by the counsel for the applicant since the applicant was acquitted for offence under Section 498-A of IPC, therefore, the Court below has committed material illegality by holding that the respondent is residing separately because of reasonable reason. It is further submitted that the respondent has failed to prove the monthly income of the applicant, therefore, the maintenance amount of Rs.7,000/- per month is on higher side.

None for the respondent though served.

Heard the learned counsel for the petitioner.

It is true that the applicant has been acquitted for offence under Section 498-A of IPC. However, it is equally true that the applicant had leveled serious allegations against the respondent and her parents. However, the applicant did not file even a single document to show that he had ever lodged any report regarding the illegal confinement or mal-treatment by the respondent her parents. Leveling serious allegations and failing to prove the same, may also amount to cruelty. Undisputedly the marriage between parties could

not be consummated. On one hand the applicant has claimed that the respondent is defaming him in the society by alleging that he is impotent but he did not bring any evidence on record to show that he is not impotent. Further, the applicant had leveled a false allegation that the respondent is running a beauty parlor as well as a stitching center. He did not even file the photographs of the shops.

Under these circumstances, this Court of the considered opinion that after having leveled serious allegations against her and her parents and having failed to prove the same, it cannot be said that the respondent is residing separately without any reasonable reason. Furthermore, it is not the case of the applicant that he had ever tried to take the respondent back from her parental home. Thus, it is also clear that the applicant has deserted the respondent and he cannot take advantage of his own wrong. Further, compelling a married women to live in her parental home, is also a cruelty. Accordingly, it is held that it cannot be said that the respondent is residing separately without any reasonable reason.

So far as the question of quantum of maintenance amount is concerned, the Supreme Court in the case of **Shamima Farooqui v. Shahid Khan** reported in **(2015) 5 SCC 705** has held as under:-

“14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs 17,654. The High Court, without indicating any

reason, has reduced the monthly maintenance allowance to Rs 2000. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs 2000 per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.”

Thus, if the husband is healthy and is an able bodied person, then he is under legal obligation to support his wife. It is the claim of the applicant that he is working on a part time basis in a shop and is earning Rs.2,000/- per month. The applicant has not examined owner of the shop in support of his claim. The applicant has also not examined his father to establish that the applicant does not belongs to a financially sound family. The applicant has not filed any document to show that he is a student. Under these circumstances, this Court is of the considered opinion that since the applicant is a healthy and able bodied person therefore, he cannot run away from his legal obligation to support the respondent.

So far as the question of quantum of maintenance is concerned, the Supreme Court in the case of **Jasbir Kaur Sehgal v. Distt.**

Judge, Dehradun reported in (1997) 7 SCC 7 has held as under:-

“8. The wife has no fixed abode of residence. She says she is living in a Gurdwara with her eldest daughter for safety. On the other hand the husband has sufficient income and a house to himself. The wife has not claimed any litigation expenses in this appeal. She is aggrieved only because of the paltry amount of maintenance fixed by the courts. No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The 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. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs 5000 per month payable by the respondent-husband to the appellant-wife.”

The Supreme Court in the case of *Chaturbhuj v. Sita Bai* reported in (2008) 2 SCC 316 has held as under:-

“6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase “unable to maintain herself” in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal* [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* [(2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503].”

Thus, it is clear that the applicant has made every effort to suppress his income as well as the financial condition of his family. It is well established principle of law that a wife is entitled to enjoy the

same status, which she would have enjoyed in her matrimonial house.

The Wife cannot be compelled to leave the life of restitude.

The Supreme Court in the case of *Reema Salkan v. Sumer*

Singh Salkan reported in (2019) 12 SCC 303 has held as under:-

“16. The principle invoked by the High Court for determination of monthly maintenance amount payable to the appellant on the basis of notional minimum income of the respondent as per the current minimum wages in Delhi, in our opinion, is untenable. We are of the considered opinion that regard must be had to the living standard of the respondent and his family, his past conduct in successfully protracting the disposal of the maintenance petition filed in the year 2003, until 2015; coupled with the fact that a specious and unsubstantiated plea has been taken by him that he is unemployed from 2010, despite the fact that he is highly qualified and an able-bodied person; his monthly income while working in Canada in the year 2010 was over Rs 1,77,364; and that this Court in *Reema Salkan v. Sumer Singh Salkan* [*Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 312] has prima facie found that the cause of justice would be subserved if the appellant is granted an interim maintenance of Rs 20,000 per month commencing from 1-11-2014. At this distance of time, keeping in mind the spiraling inflation rate and high cost of living index today, to do complete justice between the parties, we are inclined to direct that the respondent shall pay a sum of Rs 20,000 per month to the appellant towards the maintenance amount with effect from January 2010 and at the rate of Rs 25,000 per month with effect from 1-6-2018 until further orders. We order accordingly.”

The Supreme Court in the case of *Bhuvan Mohan Singh v.*

Meena reported in (2015) 6 SCC 353 has held as under:-

“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her

matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”

Considering the totality facts and circumstances of the case as well as price index and the cost of the goods of daily need, this Court is of the considered opinion that by no stretch of imagination, it can be said that the amount of Rs.7,000/- awarded by Court below is on a higher side.

It is next contended by the counsel for the applicant that the Trial Court should not have awarded maintenance from the date of application.

The Supreme Court in the case of **Rajnesh v. Neha** reported in

(2021) 2 SCC 324 has laid down guide lines for determining the quantum of maintenance and has held as under:-

“113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.”

Accordingly, this Court is of the considered opinion that Court below did not commit any mistake by awarding the maintenance from the date of the application.

Consequently, the order dated 10/10/2020 passed by Principal Judge, Family Court Guna in case MJC No.72/2018 is hereby affirmed.

It appears that by order dated 06/02/2019, Court had below awarded an amount of Rs.3,000/- by way of interim maintenance. Accordingly, it is directed that the amount paid by the applicant by way of interim maintenance is liable to be adjust in the arrears of maintenance amount.

With aforesaid observation, this petition is hereby **dismissed**.

Pj'S/-

(G.S. Ahluwalia)
Judge