

Reserved on : 11.01.2024

Delivered on : 29.01.2024

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This appeal having been heard and reserved for judgment, coming on for pronouncement this day, the Court pronounced the following:

JUDGMENT

Petitioners have filed present revision under Sections 397/401 of the Cr.P.C. against order dated 07.05.2022 in MJCR No.242/2014 passed by First Additional Principal Judge, Family Court, District Jabalpur.

2. Petitioners had filed an application under Section 125 of the Cr.P.C. for grant of maintenance. In said proceedings, the Court proceeded *ex-parte* against respondent as he did not appear before the Court after service of notice.

3. Petitioner No.1 was married to respondent on 05.06.1994 as per Muslims Rites and Rituals. From said *Nikah*, petitioner No.1 was blessed with son and daughter i.e. petitioners No.2 & 3. Respondent started harassing the petitioners as he was having illicit relationship with other woman. Respondent forced the petitioner in executing an agreement by which she agreed that respondent will pay maintenance of Rs.2,000/- with annual increment of 10% and further make available one acre land for agriculture and also given her *Bidi Bundles*

containing 2000 *Bidies*. She separated from respondent believing agreement dated 11.07.2019 but he violated the agreement. Respondent is having sufficient agricultural land and his annual income is about Rs.20/- lacs. The Court below dismissed the application for grant of maintenance on the ground that petitioner is living separately on the basis of mutual agreement. Since petitioner is living separately from non-applicant with her consent, therefore, her application for maintenance under Section 125(5) was dismissed and she was given liberty to assail agreement/letter in accordance with law.

4. Learned counsel appearing for petitioners submitted that agreement is unregistered documents and not binding on the parties. There is no legal separation by competent Court of law from petitioner and non-applicant. In absence of any order by competent Court, the mutual consent does not have any value in the eye of law. Respondent was mentally and physically harassing the petitioners. Respondent did not comply with the terms of the agreement and was not maintaining the petitioners. Respondent is having sufficient piece of land and is neglecting the petitioners. In these circumstances, order passed by the Court below be set aside. The Family Court wrongly relied upon the Provisions of Section 125(5) of the Cr.P.C. In these circumstances, impugned order be set aside and petitioner No.1 be granted the

maintenance of Rs.10,000/-, whereas the petitioners No.2 and 3 be granted the maintenance of Rs.7500/- per month.

5. None appeared for respondent. It was ordered on 24.08.2023 that, if respondent does not appear on the next date of hearing, matter shall be heard *ex-parte*. On 11.01.2024, also none appeared for respondent. Respondent is proceeded *ex-parte*.

6. Relevant Provision of Section 125 (4) of Cr.P.C.1973 is quoted as under:-

“No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

7. As per said Provision, if wife is living separately by mutual consent then she is not entitled for allowance of maintenance under Section 125 of Cr.P.C.

8. On going through the records, it is found that petitioner No.1 has stated in her application that she is not being maintained by her husband and no maintenance is paid to her despite agreement between

them. She was victim of conspiracy and believing said agreement was living separately. *Nikah* is proved before the trial Court by filing documents and existence of dispute was also proved. She has deposed before the trial Court that respondent is having sufficient income to maintain the petitioner No.1 and her children. Allegation of harassment was also made against respondent. She has also deposed that consent agreement dated 11.07.2019 was not followed by respondent and no amount of maintenance has been paid. Petitioner No.1 agreed to live separately on the basis of promises made in the agreement. Since respondent resiled from promises made in the agreement therefore, it cannot be said that petitioner is living separately by mutual consent. In these circumstances, Court below has committed an error in dismissing the application for grant of maintenance relying upon under Section 125(4) of the Cr.P.C. In these circumstances, order passed by the Court below dated 07.05.2022 is set aside.

9. Non-applicant is directed to pay the maintenance of Rs.5,000/- per month to the petitioner No.1 and Rs.2500/- each per month be paid to the petitioners No.2 and 3. Said maintenance is payable from the date of filing of application. Non-applicant is also directed to pay arrears within six months from date of order.

10. With the aforesaid directions, present revision is *allowed and disposed off*.

11. Copy of this order be sent to the trial Court for information and necessary compliance.

(VISHAL DHAGAT)
JUDGE

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