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THE HIGH COURT OF MADHYA PRADESH
CRR No.3519/2018
(SMT. RASHI GUPTA & ORS. VS. GAURAV GUPTA)

Gwalior, Dated : 29/04/2022

Shri Rohit Bansal, learned counsel for the applicants.

Shri S.S.Kushwah, learned counsel for the respondent.

On 22/07/2019, the following order has been passed:-

“Shri D.D.Bansal, learned counsel for the petitioners.

Shri M.M.Tripathi, learned counsel for the respondent.

Counsel for the respondent sought time to file reply.

Same is opposed by counsel for the petitioner. It is submitted that as a dilatory tactic, respondent is making attempts to delay the matter. As per the order of Principal Judge, Family Court, Gwalior, Rs. 18,000/- in total per month is to be given to petitioners as maintenance.

Counsel for the respondent is directed to file reply within two weeks positively, else matter should be heard without reply. It is further expected that respondent shall submit the appropriate documents in support of his submission regarding the salary structure of respondent. It is also expected that respondent shall pay regular maintenance amount to petitioner, who are his wife and children.

List the matter **on 8/8/2019.**”

In response to the aforesaid order, the respondent has filed his reply but has not filed the salary slip on the ground that compelling the husband to file the salary slip in the maintenance proceedings would be contrary to the protection given under Article 21 of the Constitution of India.

Article 21 of the Constitution of India reads as under:-

“21. Protection of life and personal liberty.-

THE HIGH COURT OF MADHYA PRADESH
CRR No.3519/2018
(SMT. RASHI GUPTA & ORS. VS. GAURAV GUPTA)

No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Giving an opportunity to the husband to file his salary slip for effective adjudication of the maintenance proceedings cannot be said to be depriving him from his life and personal liberty. Even otherwise, it is clear from the Article 21 of the Constitution of India that the life and liberty of a person can be deprived in accordance with procedure established by law.

The respondent has also taken the defence of Article 20 of the Constitution of India and submitted that no one can be compelled to give evidence against himself.

Article 20 of the Constitution of India reads as under:-

“20. Protection in respect of conviction for offences.-

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.”

The present revision arises out of the proceedings registered under Section 125 of Cr.P.C. There is no question of conviction of the respondent. Article 20(3) of the Constitution of India provides that no

THE HIGH COURT OF MADHYA PRADESH
CRR No.3519/2018
(SMT. RASHI GUPTA & ORS. VS. GAURAV GUPTA)

person/accused of any offence shall be compelled of the witness against him. Admittedly, the respondent is not an accused. The protection granted under Article 20(3) of the Constitution of India does not apply to the respondent.

This Court by order dated 12/04/2022 also had granted time to the respondent to comply the order dated 22/07/2019, but it is submitted by Shri Kushwah that he cannot be compelled to file the salary slip of the respondent.

It is further submitted by the counsel for the respondent that compelling the respondent to disclose his income is violative his right of privacy, which is also embodied under Article 21 of the Constitution of India.

The next question for consideration is as to whether the respondent can be compelled to file his salary slip in order to effectively adjudicate the dispute under Section 125 of Cr.P.C. or arising out of any other maintenance proceedings or not.

The Supreme Court in the case of **Shamima Farooqui Vs. Shahid Khan** reported in (2015) 5 SCC 705 has held that a wife is entitled for enjoying the same status, which she would have otherwise enjoyed in her matrimonial house.

The Supreme Court in the case of **Rajnish Vs. Neha and Another** reported in (2021) 2 SCC 324 has held that while

THE HIGH COURT OF MADHYA PRADESH
CRR No.3519/2018
(SMT. RASHI GUPTA & ORS. VS. GAURAV GUPTA)

adjudicating the quantum of maintenance, the status of the parties is also one of the important consideration.

Furthermore, in the case of **Rajnesh (supra)** it has been held as under:-

“80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [*Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339].

81. A careful and just balance must be drawn between all relevant factors. 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. [*Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] 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 meagre 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.

83.Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable,

THE HIGH COURT OF MADHYA PRADESH
CRR No.3519/2018
(SMT. RASHI GUPTA & ORS. VS. GAURAV GUPTA)

and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

84. The Delhi High Court in *Bharat Hegde v. Saroj Hegde* [*Bharat Hegde v. Saroj Hegde*, 2007 SCC OnLine Del 622 : (2007) 140 DLT 16] laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)

- “1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.
11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”

90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Parkash v. Shila Rani* [*Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] . The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference

THE HIGH COURT OF MADHYA PRADESH
CRR No.3519/2018
(SMT. RASHI GUPTA & ORS. VS. GAURAV GUPTA)

may be drawn by the court.

90.5. This Court in *Shamima Farooqui v. Shahid Khan* [*Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785] cited the judgment in *Chander Parkash* [*Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

(d) Maintenance of minor children

91. The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.

(e) Serious disability or ill health

Further, the wife cannot be held to be a stranger and she is entitled to know the salary of her husband.

The Division Bench of this Court in the case of **Smt. Sunita Jain Vs. Pawan Kumar Jain and others in W.A.No.168/2015** by order dated **15/05/2018 (Principal Bench)** has held as under:-

“The controversy involved in the present writ appeal is whether the information sought is exempt under Section 8(1)(j) of the Act or it is covered by Section 4(1)(b)(x) which obliges the public authorities to display on public domain the monthly remuneration received by each of its officers and employees.

For ready reference, Section 4(1)(b)(x) of the Act reads as under:-

THE HIGH COURT OF MADHYA PRADESH
CRR No.3519/2018
(SMT. RASHI GUPTA & ORS. VS. GAURAV GUPTA)

“4. Obligations of public authorities.- (1) Every public authority shall-

(b). publish within one hundred and twenty days from the enactment of this Act.-

(i) xxxxxxxxxxxx

(ii) xxxxxxxxxxxx

(iii) xxxxxxxxxxxx

(iv) xxxxxxxxxxxx

(v) xxxxxxxxxxxx

(vi) xxxxxxxxxxxx

(vii) xxxxxxxxxxxx

(viii) xxxxxxxxxxxx

(ix) xxxxxxxxxxxx

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations.”

The question of consideration is whether such information is exempt Section 8(1)(j) of the Act, which reads as under:-

“8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen.-

(a) xxxxxxxxxxxx

(b) xxxxxxxxxxxx

(c) xxxxxxxxxxxx

(d) xxxxxxxxxxxx

(e) xxxxxxxxxxxx

(f) xxxxxxxxxxxx

(g) xxxxxxxxxxxx

(h) xxxxxxxxxxxx

(i) xxxxxxxxxxxx

(j) Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.”

THE HIGH COURT OF MADHYA PRADESH
CRR No.3519/2018
(SMT. RASHI GUPTA & ORS. VS. GAURAV GUPTA)

The question is whether information sought is a personal information, the disclosure of which has no relationship to any public activity or interest or would cause unwarranted invasion of privacy of Shri Pawan Kumar Jain.

In Strouds Judicial Dictionary, Vol.IV (4th edn.) ‘public interest’ is defined thus:

“Public interest – 1. A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”

In Black’s Law Dictionary (6th edn.). ‘public interest’ is defined as follows:

“Public Interest – Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government...”

While dealing with the Section 8(1)(j) of the Act, we cannot lose sight of the fact that the appellant and the respondent No.1 are husband and wife and as a wife she is entitled to know what remuneration the respondent No.1 is getting.

Present case is distinguishable from the case of **Girish Ramchandra Deshpande** (supra) and therefore the law laid down by their Lordships in the case of **Girish Ramchandra Deshpande** (supra) are not applicable in the present case.

In view of the foregoing discussion, we allow the appeal and set aside the order passed by the Writ Court in W.P. No.341/2008. Similarly, the W.A. No.170/2015 is also allowed and the impugned order passed in W.P. No.1647/2008 is set aside.

A copy of the order be retained in the file of W.A.No.170/2015.

There shall be no order as to the costs.”

THE HIGH COURT OF MADHYA PRADESH
CRR No.3519/2018
(SMT. RASHI GUPTA & ORS. VS. GAURAV GUPTA)

Under these circumstances, where financial status of the parties is one of the relevant consideration for adjudicating the *lis*, then asking the husband to produce his salary slip cannot be termed as violation of his privacy. Since, the respondent has refused to place his salary slip on record, therefore, it is held that under these circumstances, this Court may draw an adverse inference against the respondent.

Under these circumstances, Shri Bansal prays for an adjournment to argue the matter finally.

As prayed by the counsel for the applicants, list this case in the **week commencing 20/06/2022** for final hearing at motion stage.

Pj'S/-

(G.S. Ahluwalia)
Judge



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