

**HIGH COURT OF MADHYA PRADESH****BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Misc. Criminal Case No.7202/2013****Vijendra Tyagi****-Vs-****Smt. Rekha Sharma**

---

Shri R.K.Sharma, Advocate with Shri Anand Bhardwaj,  
counsel for the applicant.

Shri Devendra Sharma, counsel for the respondent.

---

**J U D G M E N T**  
**(06/02/2017)**

This petition under Section 482 of CrPC has been filed against the order dated 28/06/2013 passed by V<sup>th</sup> Additional Sessions Judge, Bhind in Criminal Revision No.76/2013 arising out of order dated 11/03/2013 passed by ACJM, Mehgaon, District-Bhind in M.Cr.C. No.37/2007.

The undisputed facts are that the respondent filed an application under Section 125 of CrPC against the applicant. The said application was rejected by the Magistrate by order dated 11/03/2013 on the ground that the respondent is residing separately without there being any reasonable reason and, therefore, she is not entitled for maintenance.

Being aggrieved by the order of the Magistrate, the respondent filed the criminal revision which has been allowed by order dated 28/06/2013 and the Revisional Court has awarded an amount of Rs.3,000/- per month by way of maintenance with effect from 11/03/2013.

Challenging the correctness and propriety of the order

dated 28/06/2013, the counsel for the applicant submitted that there is no evidence available on record to show that the respondent is residing separately because of any sufficient reason and, further, it is submitted that the Revisional Court in arbitrary manner and without adjudicating upon the monthly income of the applicant, has fixed an amount of Rs.3,000/- per month by way of maintenance. It was further submitted by the counsel for the applicant that the applicant has also filed a petition for divorce against the respondent.

*Per contra*, the counsel for the respondent submitted that the applicant, in his reply to the petition under Section 125 of CrPC, has admitted that he and his relatives are facing trial for offence punishable under Section 498-A of IPC. It is further submitted by the counsel for the respondent that the findings given by the Magistrate to the effect that the respondent was not residing separately because of sufficient reason, was perverse and, therefore, it was rightly set aside by the Revisional Court. It is further submitted that the applicant has not paid the maintenance amount so directed by the Revisional Court so far.

On 11/01/2017, during the course of arguments, it was expressed by the parties that there is a possibility of compromise and, therefore, the matter be placed before the Mediation Centre for mediation. Accordingly, Shri Padam Singh, Advocate, who is a trained mediator, was appointed as Mediator and the applicant as well as respondent were directed to appear before the mediator on 27/01/2017.

From the note-sheet dated 27/01/2017, recorded by the mediator, it is clear that the applicant and his counsel did not appear before the mediator whereas the respondent Smt. Rekha Sharma was present. In view of the absence of the applicant, the mediator directed for issuance of fresh notice to the applicant and fixed the case for mediation on 30/01/2017.

From note-sheet dated 30/01/2017, it is clear that even on the said date, the applicant did not appear before the mediator and the respondent Smt. Rekha Sharma was present from 11:00AM to 02:00 PM. Neither the applicant nor his counsel appeared before the Magistrate and, accordingly, it was observed by the Magistrate that mediation, in absence of the applicant, is not possible.

Looking to the conduct of the appellant in not appearing before the mediator which clearly shows that he is not interested in reconciliation proceedings and, therefore, the hope expressed by his counsel on 11/01/2017 was proved a futile attempt.

Looking to the facts of the case, it is clear from the record of the Trial Court that the applicant, in his reply to the application filed under Section 125 of CrPC, has admitted that on the report of the respondent, he and his family members are facing trial for offence punishable under Section 498-A of IPC. In reply to paragraph 5 of the application filed under Section 125 of CrPC which dealt with the income of the applicant, it was merely replied by the applicant that he is not having any agricultural land or any vehicle and he is completely dependent upon his father and his brothers for his own survival. It is also mentioned in the reply that even earlier also the applicant was not able to maintain the respondent. By showing his generosity, it was mentioned in the reply that if the respondent comes back to the applicant, then he may try to maintain her as per his financial status. He has mentioned that he do not have any income and is completely dependent on his father and his brother. Thus, by showing the good gestures in reply to the paragraph 5, he has tried to show that even if the respondent comes back to her matrimonial house, then she has to starve as he do not have any income to maintain her. Such a stand taken by the

applicant cannot be appreciated. If he was not having any source of income, then he should not have married a girl. Once knowing-fully well that it is the duty of the husband to maintain his wife, then he cannot disown his duty merely by showing that he is dependent on his father and his brother. Even otherwise, there is nothing on record to show that the applicant is not a healthy person. Whether the person is having any independent source of income or not is immaterial. once he marry a girl, then he has to maintain her in accordance with his status.

It is contended by the counsel for the applicant that the respondent has not produced any document to show that the applicant is having any independent source of income or is having any agricultural land or vehicle.

It is well established principle of law that a person who is in possession of best evidence, if fails to produce the same, then an adverse inference can be drawn against him.

The applicant, in support of his contention, had not produced the revenue record to show that the land is either in the name of his father or his brothers. Except making a bald denial, no attempt was made by the counsel for the applicant to disclose his income. Furthermore, in his evidence, the applicant has not stated a single word about his income. Neither he stated that he do not have any source of income nor he has stated about his income. Therefore, in absence of any evidence given by the applicant with regard to his income, this Court is left with no other option but to accept the contention of the respondent to the effect that the monthly income of the applicant from all sources is approximately Rs.30,000/- per month.

Apart from that, in paragraph 9 of his evidence, the applicant has admitted that the minimum expenses for day to day expenditures of a person are around Rs.2,000 -2,500/-

per month and a further amount of Rs.300-400/- per month is required towards accommodation rent. Thus, even according to the applicant himself, the minimum amount of Rs.3,000/- is required for survival of a person.

In view of the fact that the applicant and his family members are facing trial for offence punishable under Section 498-A as well as coupled with the allegations made in the application under Section 125 of CrPC that the respondent was being treated with cruelty and she was being harassed on non-fulfillment of demand of dowry, this Court is of the view that the findings recorded by the Magistrate to the effect that the respondent is not entitled for maintenance under Section 125 of CrPC, because she is residing separately without any reasonable reason, was perverse and the Revisional Court did not commit any mistake in reversing that finding. Even otherwise in exercise of power under Section 482 of CrPC, finding of fact cannot be interfered with unless and until it is shown to be perverse. No perversity could be pointed out by the counsel for the applicant during the arguments. Thus, it is held that the respondent is entitled for maintenance under Section 125 of CrPC.

Now the question is with regard to the quantum of maintenance.

The Revisional Court, after considering the various aspects of the life, has fixed an amount of Rs.3,000/- per month towards maintenance. In view of the specific admission made by the applicant in paragraph 9 of his evidence, it is clear that even according to the applicant, a minimum amount of Rs.3,000/- per month is required for the mere survival of the person.

Under these circumstances, it cannot be held that the amount of Rs.3,000/-, so fixed by the Revisional Court, is on a higher side. Even otherwise, considering the price index and

the inflation, an amount of Rs.3,000/- per month towards the monthly maintenance, cannot be said to be a higher side.

It is contended by the counsel for the respondent that the applicant has not paid a single payment towards the maintenance amount.

Considering the totality of the circumstances, this Court is of the view that the Revisional Court did not commit any mistake by reversing the order passed by the Magistrate and directing for grant of maintenance to the respondent at a rate of Rs.3,000/- per month.

Accordingly, this petition fails and is hereby **dismissed**.

**AKS**

**(G.S. AHLUWALIA)**  
**Judge**