

MCRC.5451/2014

Smt. Kamlesh
V.
Santoshi

17/04/2017

Shri Ankur Maheshwari, counsel for the applicant.

Shri M.K.Chaudhary, counsel for the respondent.

This application under Section 482 of CrPC has been filed against the order dated 09/08/2011 passed by Ist Additional Sessions Judge Sabalgarh in Criminal Revision No.39/2011 by which the revision filed by the respondent was partly allowed and the order dated 01/03/2011 passed by JMFC, Sabalgarh, District Morena in MCRC No.26/2010 was modified.

The necessary facts for the disposal for the present application in short are that the applicant filed an application under Section 125 of CrPC against the respondent for grant of maintenance. As both the Courts below have held that the applicant was married to respondent and she is residing separately because of sufficient reason and the only question of controversy in the present application is the quantum of maintenance, therefore, the facts of the case are not being reproduced.

After considering the averments made by the parties and the evidence led by the parties, the Magistrate came to the conclusion that the applicant is working as Asha Worker and is earning about 200-500/- per month but this amount is not sufficient for her maintenance, therefore, considering the income of the applicant, the Magistrate directed the respondent to pay maintenance at the rate of Rs.2000 per month.

Being aggrieved by the order dated 01/03/2011,

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the respondent filed a criminal revision and challenged the findings. The Revisional Court also affirmed the findings of the Court of Magistrate with regard to the entitlement of the applicant to receive the maintenance amount. However, modified the order of the Trial Magistrate and reduced the maintenance amount from Rs.2000/- to Rs.700/- per month.

Being aggrieved by the reduction amount by the Revisional Court, this application under Section 482 of CrPC has been filed.

It is submitted by the counsel for the applicant that although she is working as Asha Worker and is earning about Rs.200-500 per month but her income depends on the total numbers of deliveries of child which takes place in a month because she gets Rs.250-500/- per delivery, therefore, it cannot be said that she is regularly getting the income of Rs.250-500/- per month. Sometimes, she even do not receive any amount in a month. Further it is submitted that considering the price index and inflation, it cannot be said that an amount of Rs.2,000/- granted by the Magistrate was on a higher side and the Revisional Court committed material illegality by interfering with the maintenance amount so awarded by the Trial Court.

Per contra, it is submitted by the counsel for the respondent that the Revisional Court did not commit any mistake by reducing the maintenance amount. The respondent is an unskilled laborer and is hardly getting Rs.3,000/- per month and, therefore, the order passed

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by the Revisional Court may be interfered with.

Heard the learned counsel for the parties.

When the wife has been turned out of her matrimonial house and she is compelled to stay in her parents house, then it cannot be said that the applicant is not liable to maintain his wife. When the wife is ousted from her matrimonial house, she may not only suffer physical hardships but she may also suffer mental hardships. She also loses the company of a person on whom she had deposed faith and had decided to live with him as his wife. Marriage is not a mere formality or a ritual. Marriage is a ceremony where two souls get united and the wife, in the company of her husband, feels protected from all odds and when she is deprived of the company of her husband, then she may suffer mental harassment. The obligation of the husband to maintain his wife does not come to an end even after the separation because of disputes between him and his wife. The husband is under obligation to provide the maintenance so that his wife may enjoy the same comfort which she would have otherwise got in her matrimonial house. Thus, the social status of the parties, specifically of the husband, comes into play and that is one of the guiding factor for the determination of the maintenance amount. So long as wife is entitled to get maintenance amount, then it has to be ensured that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to face the situation of starvation. At the same time, if the husband

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is healthy and capable of earning, then he cannot get rid of his personal obligation to maintain his wife by merely saying that his income is less.

In the present case, it is alleged by the respondent that he is a laborer and his income is only Rs.3,000/- per month.

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 Cr.P.C. 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. Mrs. Veena Kaushal and Ors.* (AIR 1978 SC 1807) falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution'). 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

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Savitaben Somabhai Bhatiya v. State of Gujarat and Ors. (2005 (2) Supreme 503).

Thus, it is clear that the husband cannot be permitted to plead that because of his financial constraints, he is unable to provide adequate maintenance which is required to maintain the same level of comfort and dignity which the wife would have got in her matrimonial house.

In the present case, it is not the case of the respondent that he is physically handicapped person and is not able to earn money.

Considering the price index and the inflation as well as considering the fact that the applicant is also earning Rs.200-500/- per month, the Trial Court had awarded a maintenance amount of Rs.2,000/- per month to the applicant which would mean that even after including the personal income of the applicant, she would be getting only Rs.2200-2500/- per month for her survival. By no stretch of imagination, this amount can be said to be on a higher side because the wife not only requires food and clothing but she also requires residential accommodation.

Under these circumstances, this Court is of the view that the Revisional Court committed a material illegality by reducing the maintenance amount from Rs.2,000/- to Rs.700/- per month. Even if the Revisional Court was of the view that the amount which is personally earned by the applicant is liable to be adjusted, then the maintenance amount could have been brought down to Rs.1,700/- only but without assigning any reason, the

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Revisional Court has reduced the maintenance amount to Rs.700/- per month and this Court is of the view that an amount of Rs.700/- per month is not sufficient to bear the expenses for meeting out the bare necessities.

Under the facts and circumstances of the case, this Court is of the view that the Revisional Court committed material illegality by reducing the maintenance amount.

Accordingly, the order passed by the Revisional Court is set aside and the order dated 01/03/2011 passed by the Magistrate is restored.

The application succeeds and is hereby **allowed**.

(G.S.Ahluwalia)
Judge

AKS