

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

CRIMINAL REVISION No. 984 of 2011

BETWEEN:-

**1. SMT. NEELIMA CHOURE AND ANR.
W/O VIJAY R. CHOURE,
AGED ABOUT 44 YEARS,
OCCUPATION: PVT.SERVICE
R/O. 214-K, SCH. NO.71-A, INDORE
(MADHYA PRADESH)**

**2. KU. TARINEE
D/O DR. VIJAY R. CHOURE,
AGED ABOUT 16 YEARS,
OCCUPATION: STUDENT
R/O. 214-K. SCH. NO. 71,-A INDORE
(MADHYA PRADESH)**

.....PETITIONER

(SHRI KAUSTUBH FADNIS - ADVOCATE)

AND

**VIJAY CHOURE S/O RAMCHANDRA CHOURE,
AGED ABOUT 52 YEARS,
OCCUPATION: PROFESSOR
R/O. 2603, SECTOR E SUDAMA NAGAR
INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI YASHPAL RATHORE – ADVOCATE)

Reserved on - 30.06.2023

Delivered on - 10.07.2023

This revision coming on for hearing this day, the court passed the following:

ORDER

1. This criminal revision under Section 397/401 Cr.P.C. is preferred against the order dated 03.08.2011 passed by Principal Judge, Family Court, Indore in M.Cr.C No.737/2010 whereby the maintenance amount was enhanced under Section 127 of Cr.P.C for the petitioner no.1 from Rs.3,000/- to Rs.5,000/- and for petitioner no.2 from Rs.1,000/- to Rs.10,000/-
2. Filtering the unnecessary details, the facts which are requisite to be frescoed for the present revision are that by order dated 12.07.2004 passed in MJCNo.117/2002, the learned trial Court on the basis of compromise awarded a maintenance amount in favour of the petitioners respectively as Rs.3,000/- and Rs.1,000/-. Following that an application under Section 127 of Cr.P.C was moved for enhancement of maintenance amount, before the learned trial Court. Having considered the evidence and factual matrix of the case, learned Court below allowed the application and thereby enhanced the maintenance amount as aforesaid.
3. Being crestfallen by the impugned order petitioner No.1. Smr. Neelima Choure and petitioner no.2-Ku. Tarinee Choure have challenged the said order before this Court submitting that the learned

judge should have considered that the respondent is getting a net salary of Rs.68,663/- per month after deductions, therefore, the maintenance awarded by the trial Court is on lower side, in as much as, the petitioners are entitled to get one third amount of the monthly salary, hence prayed that the maintenance amount be modified accordingly. Learned counsel for the petitioners has submitted that in the meantime, the monthly salary is also enhanced, therefore, he prayed for enhancement of maintenance amount awarded to the petitioners.

4. Per contra, learned counsel for the respondent vehemently contended that since the earlier order regarding maintenance award was passed on the basis of compromise, therefore, the application under Section 127 of Cr.P.C is not maintainable. It is further submitted that this petition against the impugned order is devoid of merits and the same be rejected. During the arguments, counsel also entreated that if the Court is inclined to allow the petition, the enhancement/modification of the maintenance awarded be made effective from the date of order.

5. In the back drop of the revision petition and arguments advanced by learned counsel for the parties, the points for determination are as follows:-

- i. Whether the application of the petitioner under Section 127 of Cr.P.C is maintainable regarding the order which was passed on compromise?
- ii. Whether the amount enhanced by the learned trial Court is apposite and proper in the eyes of law and facts?

6. With regard to the maintainability of the petition under Section 127 of Cr.P.C learned counsel for the respondent has relied upon the judgment of *Syed Abbas Razavi vs. Smt. Kaneeze Sakina and Anr.*

reported as 1976 CRI LJ 47 and submitted that once the order passed under Section 125 of Cr.P.C regarding maintenance on the basis of compromise it cannot be changed because the compromise has been arrived at between only when both the parties had settled their matter amicably. Hon'ble Bombay High Court in the case of *Syed Abbas Razavi (Supra)* relying upon another judgment passed by Calcutta High Court has opined as under:

“Where, in an application under Section 488, the parties arrive at a compromise, the proper course for the Court is to dismiss the application leaving the parties to enforce the compromise in the Civil Courts. Such a compromise is a bar to an application under S.489. An order of maintenance passed in accordance with a compromise cannot be enforced by a Criminal Court.”

7. The aforesaid case of law was pronounced on 01.08.1974, since then vast changes have been effectuated in the Code of Criminal Procedure. That apart the aforesaid proposition of law is not endorsed by this Court in many cases. In this regard the petitioners have relied upon the judgment in the case of *Praveen Tandy vs. Smt. Pallavi Singh (Cr.R. No.235/2017 vide order dated 28.03.2017)*, *Leela Bai vs. Ganapati & Anr.*, reported in *ILR (2015) MP 501* and *Ramesh vs Chandrakala* reported in *2016 SCC Online MP 2134*. In *Praveen Tandy (Supra)* this Court has pronounced as under:

“ It is not in dispute that the order dated 19-11-2011 awarding maintenance was passed on the basis of a compromise reached between the parties in Lok-Adalat. However, it is clear that in the compromise there was no condition to the effect that the respondent wife had surrendered her right to pray for enhancement of allowance in the case of change in material circumstances in future. Thus, it cannot be said that the respondent/wife had been

debarred from making an application under section 127 of Cr.P.C.”

8. Similar view has been adopted by this Court in the case of ***Ramesh vs Chandrakala*** reported in ***2016 SCC Online MP 2134***. Even when there is a stipulation regarding surrendering the rights of maintenance is incorporated in compromise, the wife is entitled to get modification in the maintenance order under Section 127 of Cr.P.C. It is in accordance with the law that if any agreement is done defeating any statute then such agreement cannot be considered as valid contract. This view has been adopted in ***Leela Bai vs. Ganapati (Supra)***.

9. In view of the aforesaid deliberations and settled position of law the maintainability of petitioners' application under Section 127 of Cr.P.C for enhancing the maintenance amount cannot be recorded as non-maintainable. Thus the stand of respondent regarding maintainability of the petition is found to be without leg.

10. So far as the request of enhancement of maintenance allowance is concerned, it is pertinent to note that the Hon'ble Apex Court in the case of ***Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy (AIR 2017 SC 2383)***, has held that 25% of the income of the husband would be just and proper. Hon'ble High Court of M.P., endorsing the aforesaid citation in the case of ***Amit Pandey vs. Manisha Pandey*** reported as ***2020 Law Suit (M.P) 1098***, adumbrated as under:-

“The Hon'ble Apex Court in the case of ***Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy (AIR 2017 SC 2383)***, has held that 25% of the income of the husband would be just and proper and not more than that. So, apart from that when ex-parte order was passed in favour of the respondent/ wife, then learned trial Court should have awarded 25% of the net income of the petitioner/non-applicant as maintenance and not more than that. So, it is appropriate to reduce the awarded maintenance amount of Rs.10,000/- per month to Rs.7,000/- per month which would be paid by the petitioner/non-applicant to the

respondent/wife. The decisions in Deb Narayan Halder Vs. Smt. Anushree Haldar (AIR 2003 SC 3174) and Chandrakalabai Vs. Bhagwan Singh (2002 Cr.L.J. 3970) are not at all applicable in the case of petitioner/non- applicant.”

11. In the present case, the learned Principal Judge has enhanced the maintenance amount of petitioner no.1 from Rs.3,000/- to Rs.5,000/- which seems to be a little bit on the lower side. In this regard it is unfolded that as per the record (Ex.-P/2) of the trial Court the petitioner was getting Rs.66,713/- as monthly payment, however, it is also worth mentioning that monthly payment of the petitioner is now enhanced and in this regard Annexure/C has been filed before this Court, which depicts that the monthly salary of the petitioner is Rs.84,463/- and after deductions, he is getting a net salary of Rs.68,663/-. Annexure-C has not been disputed before this Court by learned counsel for parties during their arguments. In view of the aforesaid observations, this Court is of the view that the petitioner no.1/wife is certainly entitled for standard life as of the respondent and in view of the socio-economic facts and circumstances of respondent as discussed in detail by learned Court below, the impugned order is liable to be modified to the extent of entitlement of maintenance to petitioner no.1/wife. So far as petitioner no.2 is concerned the amount is already sufficiently enhanced from Rs.1000/- to Rs.10000/-, therefore the same does not require any interference.

12. Accordingly, the criminal revision filed on behalf of the petitioners is **partly allowed**. The impugned order dated 03.08.2011 is modified to the extent that the maintenance amount awarded to the petitioner no.1/wife is hereby enhanced from Rs.5000/- to Rs.7000/-

from the date of this order. Rest of the conditions, if any of impugned order, stands confirmed.

13. With the aforesaid, the criminal revision stands partly allowed and disposed of.

14. A copy of this order be sent to the concerned Family Court for necessary information and compliance.

Certified copy, as per Rules.

(PREM NARAYAN SINGH)
JUDGE

sumathi