

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.

SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA

M.Cr.C. No.7697/2017

Smt. Roshani and others

Vs.

Rahul Bubne

Shri Ajay Mishra, learned counsel for the applicants.

Smt. Sudha Shrivastava, learned counsel for the respondent.

ORDER

(Passed on 10/04/2017)

This application under Section 482 Cr.P.C. is directed against the order passed by the learned First Additional Principal Judge, Family Court, Indore in Miscellaneous Judicial Case No.1105/2015 dated 12.07.2016 by which the learned Judge of the Family Court partly dismissed an application filed under Section 91 of Cr.P.C.

2. The relevant facts are that the respondent is husband of applicant No.1. The applicant No.1 filed an application under Section 125 Cr.P.C. for maintenance for herself and her minor children/applicants No.2 and 3. This application is pending before the Family Court in which an application under Section 91 of Cr.P.C. was filed by which it was prayed that the present respondent be directed to discover on oath his income from two companies,

who are working in the name of Micronics Company and Yugma Company. It is alleged that the respondent is a member of a joint family, and therefore, the income of his father from such companies and other business of the family should also be disclosed on affidavit. The learned Judge of the Family Court partly allowed the application and directed to respondent to discover on affidavit his income and his income tax return for 3 years and also turn over of Yugma Company, and income, he receives from this company.

3. Aggrieved by the impugned order, this application under Section 482 Cr.P.C. is filed on the ground that the respondent and his father are joint owners of the company, and therefore, the prayer regarding income of his father should not have been declined.

4. The applicants produced certain judgments of this Court in which it was held that income of the whole family should be considered for award of maintenance, and therefore, the trial Court erred in not allowing his prayer in respect of income of his father. The trial Court has not assigned any reason for not allowing his prayer in respect of income of father of the respondent, and therefore, it is prayed that the application should be allowed and the respondent be directed to disclose income of his father also from the companies.

5. Learned counsel for the respondent vehemently opposes the prayer and placed reliance on judgment of coordinate Bench of

this Court in case of Meenakshi Jatav and others vs. Seema Sehar and another; 2013(1) M.P.L.J. (Cri.) 459. The counsel for the applicants relies on the judgment of High Court of Bombay passed in Criminal Writ Petition No.1953/2015 dated 13.01.2016.

6. I have considered rival contentions of both the counsels. The income of the family as a whole is considered only when there is no direct evidence of income of the husband, in that situation, the social status of the family should be taken into consideration while considering quantum of maintenance to the wife. It is needless to say that under the provisions of Section 125 Cr.P.C., husband only is liable for payment of maintenance to his wife when he is having income individually. His personal income should be seen. In case of limited companies, the directors and other persons managing the affairs of the company get their salary and wages which form their personal income. This apart, if they hold any share in the companies, they may also receive dividends, some income by way of dividend, if the companies declare his dividend when they earn sufficient profit, all these income are shown in the income tax return of every individual, and therefore, when the present applicants earned income individually from the company which is shown in the income tax return, income earned by his father in his individual capacity is immaterial.

7. In this view of the matter, view taken by the learned trial

Court is correct. No further interference is called for. The application is devoid of any force and liable to be dismissed and dismissed accordingly.

(ALOK VERMA)

JUDGE

Kafeel