

**Indore, Dated: 03/08/2018**

Shri Mohan Sharma, Counsel for the applicant.

Heard on the question of admission.

This criminal revision under Section 19(4) of Family Courts Act, read with Section 397,401 of Cr.P.C. has been filed calling in question the order dated 14-12-2017 passed by 2nd Additional Principal Judge, Indore, in M.Cr.C. No. 777/2015, by which the Court below has awarded Rs. 2,000/- per month to the respondent no.1 and Rs. 1,500/- per month, to each of the respondents, by way of interim maintenance.

The necessary facts for the disposal of the present revision in short are that the respondents filed an application under Section 125 of Cr.P.C. for grant of maintenance, alleging that the applicant used to harass the respondent no.1 because of demand of dowry. It was also alleged that the respondents no. 2 to 4 are the children, born out of the wedlock of the applicant and the respondent no.1. The applicant has neglected and refused to maintain the respondents and the respondent no.1 was turned out of the matrimonial house along with the other respondents. The respondent no.1 is unemployed having no source of income and she is unable to maintain herself and her children i.e., respondents no. 2 to 4.

It appears that the applicant filed an application under Section 91 of Cr.P.C., seeking a direction to the respondents to produce the birth certificates of the respondents no. 2 to 4. However, it appears the said application is still pending.

It is submitted that the respondent no.2 is major and therefore, is not entitled for maintenance under Section 125 of Cr.P.C., however, without deciding the application under Section 91 of Cr.P.C., the Court below has decided the application for grant of interim maintenance.

Heard the learned Counsel for the applicant.

Although the application filed by the applicant under Section 91 of Cr.P.C. is not on record, but at the request of the Court, the Counsel for the applicant had provided the copy of the application filed by the applicant under Section 91 of Cr.P.C. It appears from the said application that the applicant had claimed that all the three respondents i.e., No. 2 to 4 are major and are not entitled to maintenance. However, the applicant had not given the date of birth of the respondents no. 2 to 4. The applicant is the father of the respondents no. 2 to 4, therefore, it was expected that he must be knowing the date of birth of each of his children, but he did not utter a single word with regard to the date of birth of his children. Even otherwise, in the application filed under Section 91 of Cr.P.C., the applicant had alleged that all the three children, i.e., respondents no. 2 to 4 are major, but during the course of arguments, it was submitted by the Counsel for the applicant that only respondent no.2 is major.

Be that whatever it may.

The question is that the applicant has not disputed the paternity of the respondents no. 2 to 4. At a later stage, if it is found that any of the respondent was major on the date of the application, then the maintenance amount so awarded to the said respondent can always be

either recovered or adjusted. Further more, the applicant himself is the father of the respondents no. 2 to 4, therefore, he is also expected to be in possession of the birth certificates of his children. But the applicant did not care to mention even the date of birth of the children in the application filed under Section 91 of Cr.P.C. Thus, it is clear that the application under Section 91 of Cr.P.C. was filed in order to delay the disposal of the application for grant of interim maintenance. The wife and the children cannot be compelled to live the life of a destitute by giving preference to technical objections.

Under these circumstances, this Court is of the considered opinion, that the Trial Court, did not commit any mistake in deciding the application filed by the respondents for grant of interim maintenance, without deciding the application filed under Section 91 of Cr.P.C. Even otherwise, no irreparable loss would be caused to the applicant merely because the application filed under Section 91 of Cr.P.C. was not decided prior to deciding the application for grant of interim maintenance.

It is next contended by the Counsel for the applicant that a decree for restitution of conjugal rights has been passed against the applicant no.1 and still She has not obeyed the same and therefore, the applicant is residing separately without any sufficient cause and therefore, is not entitled for interim maintenance amount. Although the copy of the decree for restitution of conjugal rights has not been filed, but it is submitted by the Counsel for the applicant, that an *ex-parte* decree was passed. However, it is accepted by the Counsel for the applicant that no efforts

were made by the applicant to get the said decree enforced. He has also admitted that no application under Order 21 Rule 32 of C.P.C. was ever filed by the applicant for enforcement of decree of restitution of conjugal rights. Thus, it is clear that after obtaining an *ex-parte* decree, the applicant was under an impression that now he is absolved from all his liabilities, but unless and until, it is proved by the applicant that inspite of his best efforts, the respondent no.1 is not willing to join his company and is residing separately without any sufficient cause, in the considered opinion of this Court, the applicant cannot take advantage of an *ex-parte* decree of restitution of conjugal rights.

Under the facts and circumstances of the case, this Court is of the considered opinion that the Trial Court did not commit any mistake in awarding the interim maintenance to the tune of Rs. 2000/- per month to the respondent no.1 and Rs. 1,500/- per month to each of the respondents no. 2 to 4.

Accordingly, the order dated 14-1-2017 passed by 2nd Additional Principal Judge, Indore in M.Cr.C. No. 777/2015 is hereby affirmed.

The revision fails and is hereby **dismissed**.

**(G.S.Ahluwalia)**  
**Judge**