

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

CRIMINAL REVISION No. 4004 of 2019

<u>BETWEEN:-</u>	
MAMTA @ DIMPLE W/O MANISH BAGGA, AGED ABOUT 39 YEARS, OCCUPATION: HOUSEWIFE SHANKAR NATH BUILDING, RANI SATI GATE, Y.N. ROAD, INDORE (MADHYA PRADESH)PETITIONER
<i>(BY SHRI SULABH SAMAIYA, ADVOCATE)</i>	
<u>AND</u>	
MANISH S/O GURUCHARAN BAGGA, AGED ABOUT 46 YEARS, OCCUPATION: BUSINESS DASHPUR KUNJ ROAD, MANDSAUR (MADHYA PRADESH)RESPONDENT
<i>(BY SHRI PADMNABH SAXENA, ADVOCATE)</i>	

CRIMINAL REVISION No. 3357 of 2019

<u>BETWEEN:-</u>	
MANISH S/O GURUCHARAN BAGGA, AGED ABOUT 47 YEARS, OCCUPATION: BUSINESS DASHPURKUNJ ROAD (MADHYA PRADESH)PETITIONER
<i>(BY SHRI PADMNABH SAXENA, ADVOCATE)</i>	
<u>AND</u>	

MAMTA @ DIMPLE W/O MANISHA BAGGA, AGED ABOUT 39 YEARS, OCCUPATION: HOUSE WIFE SHANKARNATH BUILDING RANI SATI GATE Y.N. ROAD INDORE (MADHYA PRADESH)
.....RESPONDENT
(BY SHRI SULABH SAMAIYA, ADVOCATE)

Reserved : 11.08.2023

Delivered : 22.08.2023

These revisions coming on for orders this day, the court passed the following:

ORDER

Since both criminal revisions have been preferred under Section 19(4) of the Family Courts Act, against the order dated 25.05.2019 passed in Miscellaneous Criminal Case No. 620/2014 by the learned First Additional Principal Judge, Family Court, Indore (M.P.), both the Criminal Revisions are being heard and decided by this common order analogously.

2. In this case, the learned Family Court has prima-facie examined the pleadings as well as the evidence came on record and decided the application of petitioner-Mamta @ Dimple and adjudicated that she is entitled to get Rs.15,000/- per month as maintenance from her husband namely-Manish. Further, the wife-Mamta @ Dimple will be addressed as petitioner while husband-Manish will be addressed as respondent in the following paragraphs of this order.

3. The Criminal Revision No. 4004/2019 has been filed by Mamta @ Dimple/petitioner for enhancement of maintenance

amount from Rs.15,000/- to Rs.30,000/- as the maintenance awarded by the learned trial Court, on the ground that the same is on the lower side as compared to the income of the husband and maintenance amount be granted from the date of filing of the application under Section 127 of Cr.P.C. While the Criminal Revision No. 3357/2019 has been filed by Manish/respondent being dissatisfied with the amount of maintenance as on higher side and set aside the impugned order.

4. Regarding these revision petitions, it is undisputed fact that the marriage between petitioner and respondent was solemnized on 28.11.2000.

5. Learned counsel appearing for petitioner-wife, submits that looking to the income sources of the respondent/husband, the amount of Rs.15,000/- as maintenance, is on the lower side. The standard of living of the deserted wife should be at par with the standard of living of the husband, hence she entitled to get the maintenance according to the income of the husband.

6. It is also submitted by counsel for the petitioner that in Para 45 of the judgment, the learned trial Court, relied upon the judgment rendered in *Jai Kumar Meena Vs. Smt. Radha Meena [(2017) Cr.Law Journal 3166]* in which there is specific order that the maintenance be given from the date of application. Hon'ble High Court has upheld the said findings stating that the provisions of 127 of Cr.P.C. be read as mentioned 125(2) of Cr.P.C., wherein there is no order that the maintenance be given from the date of filing of application or from the date of passing of the order, it can be decided only on the basis of circumstances,

therefore, the petitioner was awarded maintenance of Rs.15,000/- per month from the date of order which should be from the date of filing of the application.

7. During the course of hearing, learned counsel for the respondent submits that the petitioner was granted a sum of Rs.8,000/- as maintenance vide order dated 02.02.2008 passed in MJC No. 309/2005. The same was challenged by the respondent as Criminal Revision No. 254/2008, in which order dated 15.07.2009 was passed and matter was remanded back to the learned Family Court to re-decide the matter after taking evidence of both parties and also awarded interim maintenance of Rs.3,000/- per month. Thereafter, vide order dated 29.09.2010, learned trial Court directed the respondent to pay a sum of Rs.3,000/- per month to the petitioner as maintenance. Further, the petitioner has filed an application under Section 127 of Cr.P.C. for enhancement of maintenance amount and vide order dated 25.05.2019 passed by the learned First Additional Principal Judge, Family Court, Indore has awarded Rs.15,000/- as maintenance to the petitioner by the respondent against which this revision has been filed by husband also.

8. Learned counsel for the respondent has also drawn attention of this Court of the order-sheet dated 20.03.2015 of the learned trial Court, in which, the petitioner has clearly stated that “उसे न्यायालय से न्याय मिलने में विश्वास नहीं है.” It is also contended that an application under Section 127 of Cr.P.C. for enhancement of maintenance has been filed by the petitioner without any change in circumstances of the case, which is against the law as

prescribed as it can be filed only when the circumstances are changed from the date of order of the trial Court. Learned counsel for the respondent/husband submits that the learned trial Court has wrongly awarded the maintenance in favour of the wife without considering the evidence available on record. It is further submitted that the wife has completely failed to prove the income of the husband before the trial Court, but even after such fact, the learned Court has awarded the maintenance in favour of wife. It is further submitted that in the application, she has only prayed for Rs.10000/- per month while the Court has wrongly awarded Rs,.15000/- per month. The learned trial court has completely overlooked the earlier findings of the Court below when the interim maintenance was awarded in favour of the wife only Rs.3000/- per month. It is further submitted that the wife is having own properties and five bank accounts and FDs in her name and she herself is having sufficient means of source of income. Hence, the present Criminal Revision filed by the respondent/husband be allowed and the impugned judgment dated 25.05.2019 be modified. Further, in support of his contention, counsel for the husband has also placed reliance upon the judgment of **Rajnish vs. Neha & Others [(2021 2 SCC 324)]** and submitted that the petitioner/wife has not filed proper details of income in compliance of the aforesaid judgment of Hon'ble Apex Court.

9. I have heard the counsel for the parties and perused the record.

10. From the face of record, it is revealed that the

respondent and his family are connected with mining business and he has also other sources of income. The document (Exhibit-P//1) is the renewal certificate, issued by In-charge Officer of Mining Department in favour of respondent. On this aspect on behalf of respondent, it is submitted by filing of an affidavit (Exhibit-D/5) of Suresh (Uncle of the respondent), but on the basis of such affidavit, ownership of land and mining rights cannot be transferred. In this way, the learned trial Court having considered each and every aspect of the matter after discussion of sources of income of both parties, passed the final judgment. Thereafter it cannot be said that the learned trial Court has wrongly passed the impugned judgment in favour of wife while granting maintenance.

11. In so far as, the submissions of respondent/husband that without any change in circumstances, the petition under Section 127 of Cr.P.C. cannot be filed within one year from the date of order of Hon'ble High Court passed on 13.09.2013. At this point, it is relevant that the original order of the learned trial Court was delivered on 29.09.2010. Certainly the adjudication of this Court came on 13.09.2013 but still on this ground, the maintainability of the petition cannot be disputed. Nevertheless, the petition was filed within a short span of one year i.e. on 26.04.2014 from final adjudication of High Court of Madhya Pradesh, passed on 13.09.2013, but still it was decided by the learned trial Court on 25.05.2019 that means, after more than five years and order of enhancement amount was effectuated only from the date of order rather than from the date of filing of application. It is settled principle of law that at any stage, the application under Section

127 of Cr.P.C. is well maintainable and any aggrieved party can knock the portal of the trial Court at any point of time in this regard. Therefore, this argument of counsel for the respondent/husband is having no force, hence, discarded.

12. Further, in view of the impugned order, it is crystal clear that the respondent/husband is living in his life style and maintaining the standards, therefore, as per the settled provisions of law, the wife is certainly entitled to live her life as per the standards of her husband. On this aspect, it is asserted in *Badshah Vs. Sou. Urmila Badshah Godse [AIR (2014) SCW 256]*, the purposive interpretation needs to be given to provision of Section 125 of Cr.P.C. and it is bounden duty of Courts to advance cause of social justice. It is time honoured principal that the wife is entitled to a financial status equivalent to that of the husband. Under Section 125 Cr.P.C. the test is whether the wife is in a position to maintain herself in the way she was used to live with her husband. In *Bhagwan v. Kamla Devi (AIR 1975 SC 83)* it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C.”

13. At this juncture, the following excerpts of **Rajnish Vs. Neha and Ors. (Supra)** is reproduced below :-

The test for determination of maintenance in matrimonial disputes depends on the financial status of the

respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

14. Therefore, in view of the aforesaid facts and circumstances and settled position of law, the learned trial Court has not committed any error while considering the socio-economic standard of wife as per the standard of her husband. Hence, the revision petition filed by the husband/respondent is having no merits and is hereby dismissed.

15. Now, turning to the contentions of wife's petition Criminal Revision No. 4004/2019, learned counsel for the petitioner relying upon judgment *Jai Kumar Meena (supra)* submitted that date of maintenance should be the date of filing of application. Here, it is poignant to point out that this petition was filed for enhancement of Rs.3,000/- to Rs.10,000/- on 26.06.2014. However, on the basis of evidence and other circumstances, learned trial Court has awarded the amount of maintenance of Rs.15,000/- per month subject to adjusting the maintenance amount awarded in other proceedings in view of law laid down in the case of *Sandeep Choudhary Vs. Radha Choudhary [AIR (1999) SC 536]*, learned trial Court having considered the view

expressed in *Jai Kumar Meena (supra)*, used his discretion in proper prospective in order to balance the claim and rights of both parties. Therefore, the view of learned trial Court regarding the date of maintenance as date of order has no infirmity and accordingly, no interference is warranted.

15. So far as the criminal revision filed regarding enhancement of the maintenance amount is concerned, the learned trial Court has correctly appreciated the income of the husband/respondent and awarded the maintenance in accordance with law after following the due ratio which is normally required to be considered by the Courts at the time of passing the orders of maintenance. Hence, the revision petition filed on behalf of petitioner-wife is also having no merits and the same is hereby dismissed.

16. In view of the aforesaid, both the petitions filed on behalf of husband as well as on behalf of wife, are dismissed.

17. A copy of this order be sent to the Court below concerned for information.

18. A copy of this order be placed in the record of CRR No. 3357/2019.

Certified copy as per rules.

(PREM NARAYAN SINGH)
JUDGE

vindesh