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

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

ON THE 19th OF OCTOBER, 2023

CRIMINAL REVISION No. 825 of 2020

BETWEEN:-

**SANDEEP KUMRAWAT S/O SITARAMJI KUMRAWAT,
AGED ABOUT 41 YEARS,
OCCUPATION: UNEMPLOYED
R/O. VILLAGE BEDIYA TEHSIL BARWAHA
KHARGONE (MADHYA PRADESH)**

.....PETITIONER

(SHRI PANKAJ SONI - ADVOCATE)

AND

**SMT ANTIMA KUMRAWAT
W/O SANDEEP KUMRAWAT,
AGED ABOUT 37 YEARS,
OCCUPATION: SERVICE (PROFESSOR)
R/O. D-15 RAJ ROYAL ENCLAVE INNER RING ROAD
(AHEAD DARU GODAM)
PS CHIMANGANJ MANDI UJJAIN
(MADHYA PRADESH)**

.....RESPONDENTS

(MS. SHANNO SHAGUFTA KHAN ADVOCATE)

Reserved on :11.10.2023

Delivered on :19.10.2023

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

ORDER

With consent heard finally.

The petitioner has filed the present petition under Section 19(4) of the Family Court Act R/W Section 397/401 of Cr.P.C. being aggrieved by the

order 16.01.2020, passed by learned Additional Principal Judge, Family Court, District Ujjain in MJCR No.498/2018, whereby the learned Family Court has rejected the application filed by the petitioner under Section 127 of Cr.P.C praying for reduction in the maintenance amount of Rs.7,000/- and Rs.3000/- awarded to respondent/wife and her son, respectively.

2 . Prosecution story in nutshell are that the marriage between the petitioner and respondent was solemnised on 29.05.2014 and a son was born out of their wed lock. Due to some dispute arose between them, the respondent left her matrimonial home and since then she started living separately. The Respondent moved an application under Section 125 of Cr.P.C against the petitioner and learned Principal Judge allowed the aforesaid application vide order dated 30.05.2018 by awarding maintenance to the tune of Rs.7000/- to respondent/wife and Rs.3000/- to the son towards interim maintenance.

3 . Being aggrieved by the aforesaid order, the petitioner preferred a criminal revision before this Court which was dismissed as withdrawn with liberty to the petitioner to file all the additional documents that were obtained after passing order against the application filed under Section 125 of Cr.P.C, in the application filed under Section 127 of Cr.P.C. In compliance of the aforesaid order petitioner preferred an application under Section 127 of Cr.P.C which was rejected by the Family Court vide order dated 16.01.2020. Being crestfallen with the aforesaid order the petitioner has preferred this revision petition.

4. Learned counsel for the petitioner submitted that the respondent/wife is highly qualified. She has acquired Master's Degree and was also serving in Bhartiya Mahavidyalaya, Ujjain. Petitioner is ready to keep the respondent with him and maintain her. Respondent did not come to the Court with clean hands

and as such she has suppressed the fact that she was working as a teacher and drawing handsome amount as salary and she is able to maintain herself. Trial Court has failed to consider the fact that respondent is living separately without any valid reason. It is settled position of law that the proof of burden is first placed upon the wife to prove that the means of her husband are sufficient and she is unable to maintain herself.

5. Counsel further submitted that the petitioner is also suffering from different deadly problems and unable to maintain even his basic needs. Petitioner is also having the responsibility to maintain his old aged ill parents and as such petitioner is unemployed as on today and in that condition it would be difficult to pay the huge amount of maintenance awarded by the Family Court, therefore, counsel prays that the order passed in M.J.C.R. No.498/2018 dated 16.01.2020 and M.Cr.C. No.57/2017 dated 30.05.2018 may kindly be set aside. However, in the end of his arguments learned counsel submitted that if the Court does not wishes to interfere with the order of the Family Court regarding maintenance, then in alternate counsel prayed that the case be remanded back to learned trial Court for further adjudication in the light of law laid down by Hon'ble Apex court in the case of *Rajnish vs. Neha and another* reported as **(2021) 2 SCC 324**.

6. Learned counsel for the respondent opposed the prayer by submitting that applicant Sandeep was working as designing engineer in Floor Daniel India Pvt. Limited, Cyber City, Gurgaon and was earning Rs.7.00 lakhs salary per annum. Counsel submitted that respondent/wife is certainly entitled for standard of living as of the petitioner and in view of the socio-economic facts and circumstances of petitioner. Therefore, the order of the Court below is just and

proper and does not warrant any interference.

7. Heard learned counsel for the parties and perused the record.

8 . On due consideration, it is clear that Principal Judge awarded maintenance to the tune of Rs.7000/- to respondent/wife and Rs.3000/- to the son towards interim maintenance and on an application under Section 127 of Cr.P.C filed by petitioner/husband the same was rejected in the light of law laid down in the case of *Chaturbuj vs. Sitabai* reported in *AIR 2008 SC 530* on the ground that after desertion if the wife earns little bit income the same cannot be taken as a reason to reject her maintenance on the ground that she has self sufficient source to earn her livelihood.

9. In so far as the demurrer regarding respondent not coming with clean hand is concerned, learned counsel for the petitioner, relying upon the case of **Vinita Devangan vs. Rakesh Kumar Devangan** reported as **2009 LawSuit(Chh) 64**, submitted that the respondent has deliberately suppressed her income whereas she has a degree of M.Phil, virtually a degree itself cannot be regarded as a source of income. So far as coming with clean hands in the Court is concerned, on this aspect the law laid down in the case of *Chaturbuj vs. Sitabai (Supra)* is condigned to quote here:

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

10. On this aspect the view of Hon'ble Apex Court in the case of *Sunita Kachwaha and Ors. v. Anil Kachwaha* reported as *AIR 2015 SC 554* it has been held that the proceedings under Section 125 of Cr.P.C is summary in nature. In a proceeding under Section 125, Cr.P.C., it is not necessary for the Court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant-wife and the respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.

11. In view of the aforesaid settled propositions, the destitute wife who is unable to maintain herself cannot be victimised only on the basis of her fault. The hyper technical attitude cannot be adopted in such type of maintenance cases. As such the petitioner cannot escape the liability of maintenance of the child and wife on excuse that she has done some fault in her pleadings and proceedings of the case. In terms of amount, learned counsel relying upon the order dated 14.08.2017 passed by this Court in the case of **Smt. Pooja Shivhare vs. Ravi Shivhare (Cr.R. No.137/2017)** submitted that since the respondent is a working lady no maintenance amount should be awarded to her. Virtually, the respondent herself has clearly posited in her earlier statement dated 07/11/2017 in para-5 of her examination in chief that she was not working and she had no means of income. She has also stated that she has no means

for maintenance of her child and she is dependent of her father. Aforesaid statement has not been rebutted in her cross-examination. Therefore, in that case even if she is having decree of M.Phil she cannot be declined for maintenance.

12. On this aspect the ratio laid down by Hon'ble Apex Court in para 10 of the case of *Sunita Kachwaha and Ors. (Supra)* is worth referring here:

"10.The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself."

As such in view of the aforesaid preposition only on the basis of M.Phil Decree the respondent cannot be sued from getting maintenance from her husband.

13. It is by now well settled that if the husband is capable to earn, he would be liable for maintenance for his wife and children, even he has left the job. It is contended by learned counsel for the petitioner that certainly the petitioner is B.Tech and Diploma Engineer, but since he has left the job, he could not be held liable for maintaining his wife and children.

14. On this aspect the law laid down by Hon'ble Apex court in the case o f *Shamima Farooqui vs. Shahid Khan* reported in (2015) *LawSuit(SC)314*, reads as under:

"Having stated the principle, we would have proceeded to record our consequential conclusion. But, a significant one, we cannot be oblivious of the asseverations made by the appellant. It has been asserted that the respondent had taken voluntary retirement after the judgment dated

17.2.2012 with the purpose of escaping the liability to pay the maintenance amount as directed to the petitioner."

As per the aforesaid law, it is manifestly clear that even if the petitioner has left the job, he will be liable to maintain his wife and child.

15. In this context, this Court may profitably quote the phrases from judgment rendered by Hon'ble Apex Court in the case of ***Chander Parkash Bodh Raj vs. Shila Rani Chander Prakash*** reported as ***AIR 1968 Delhi 174***, wherein it has been held in para 17:-

"....., an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."

16. So far as the prayer of the petitioner to remand back the case is concerned, it has to be kept in mind that both the parties are already facing litigation since 2016. Earlier the order passed by the Family Court was challenged before this Court and on direction of this Court the petitioner has filed another petition before the learned Family Court under Section 127 of Cr.P.C for reducing the maintenance amount which was rejected by learned Principal Judge by the impugned order against which this petition has been filed. In these conditions the alternative prayer for remanding the case in the light of law laid down by Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha (Supra)*** does not appear to be appropriate at this stage. However, so far as Section 127 of Cr.P.C is concerned the party has right to come before the trial Court at any changing stage. Therefore, no case for remanding back this case to Family Court is made out accordingly, the prayer is hereby rejected.

17. So far as the scope of revisional power of this Court is concerned,

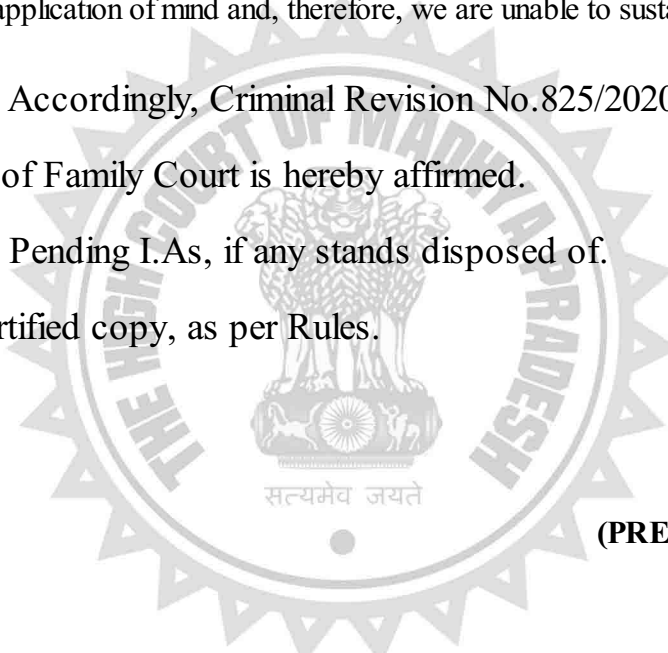
this Court may rely upon the following extract rendered in para 19 of the case of *Shamima Farooqui vs. Shahid Khan (Supra)*:

"In the instant case, as is seen, the High Court has reduced the amount of maintenance from Rs.4,000/- to Rs.2,000/-. As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. Needless to say, the order of the learned Family Judge is not manifestly perverse. There is nothing perceptible which would show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no revisional court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there was no reason to interfere. There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order."

18. Accordingly, Criminal Revision No.825/2020 is hereby dismissed and the order of Family Court is hereby affirmed.

19. Pending I.As, if any stands disposed of.

Certified copy, as per Rules.



**(PREM NARAYAN SINGH)
JUDGE**

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