

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

CRIMINAL REVISION No. 2962 of 2022

BETWEEN:-

**SHALEEN S/O KAILESH CHANDRA NAGAR,
AGED ABOUT 41 YEARS,
OCCUPATION: PRIVATE JOB
PLOT NO. 202 N.G. SUNCITY FACE
3, KANDIWALI DISTRICT MUMBAI
(MAHARASHTRA)**

.....PETITIONER

(SHRI MANISH YADAV - ADVOCATE)

AND

**SMT. NIKHIL SHARMA
W/O SHALEEN SHARMA,
AGED ABOUT 35 YEARS,
OCCUPATION: BUSINESS
M.-21, DONGRE NAGAR
DISTRICT RATLAM
(MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ASHUTOSH SHARMA – ADVOCATE)

Reserved on - 22.06.2023

Delivered on - 04.07.2023

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

ORDER

1. Petitioner has preferred this criminal revision under Section 19(4) of the Family Court Act 1984 read with Section 397/401 Cr.P.C. to set aside the order dated 12.07.2022 passed by the learned Principal Judge, Family Court, Ratlam in MJCR No.49/2017 whereby learned Principal Judge allowed the application under Section 125 of Cr.P.C. filed by the respondent/applicant and directed the petitioner/non-applicant to pay Rs.12,000/- per month as maintenance.
2. Regarding this revision petition, it is undisputed that the marriage between the petitioner/non-applicant and respondent/applicant was solemnized on 27.11.2015.
3. Succinctly, the case of the applicant is that just after marriage the petitioner and his family members started to demand dowry from the applicant. The petitioner has also threatened her to expel her from the house, if she fails to fulfill their demand of dowry. Further it is alleged that suddenly on one day, petitioner/non-applicant has forced the respondent/applicant to sit in a train for Ratlam. Even after this incident, the respondent, in order to save her home, went to her matrimonial house four times, i.e. on 28.03.2016, 30.04.2016, 09.08.2016 and 09.09.2016, however, she was humiliated and thrown out from her matrimonial house. In this way, she has been renounced and maltreated by her husband/petitioner. She further articulated that her husband is employed as Senior Sales Executive in Vijay Sales, Mumbai, Maharashtra and used to get salary of Rs.70,000/- per month.

Hence she prayed for monthly maintenance of Rs.20,000/- and Rs.4,500/- as monthly rent for her house.

4. In reply, the petitioner/non-applicant, while denying the contentions of the application submitted that the respondent has made false allegations against the petitioner and his family members. It was alleged that she was voluntarily residing with her parents. The petitioner/non-applicant is working only as a clerk in a private company, while the respondent/applicant herself is earning Rs.10,000/- by way of stitching clothes and Rs.5000/- from tuition, hence her application deserves to be dismissed.

5. In respect of the aforesaid averments, learned Principal Judge, Family Court has framed two points for determination:

- i. Whether the respondent is entitled for maintenance from the petitioner?
- ii. What would be the approximate amount of maintenance?

6. In this case, the respondent/applicant Smt. Nikhil Sharma deposed in her favour and petitioner/non-applicant Shaleen Nagar has deposed in his favour. After appreciating the evidence of both the parties, learned Principal Judge has awarded Rs.12,000/- as monthly maintenance to respondent.

7. In the course of arguments and revision petition, the impugned order has been challenged on behalf of the petitioner on various grounds. It is highly remonstrated that learned Court below itself admitted that the monthly income of the petitioner is only Rs.24,000/- and in spite of that an amount of Rs.12,000/- has been awarded as monthly maintenance. It is also contended that learned Family Court

did not considered the fact that petitioner/non-applicant has the liability of his mother too and the respondent/applicant is earning her income. Learned Court below has also noticed the fact that the respondent/applicant is voluntarily not residing with the petitioner/non-applicant. It is also expostulated that the respondent/applicant has failed to prove her pleadings, even then the Court below has committed error in its findings.

8. During the course of arguments Shri Yadav, mainly submitted on the point of quantum of maintenance and exposted that learned trial Court has wrongly awarded maintenance on the higher side, therefore, maintenance amount be modified/reduced from Rs.12,000/- to Rs.6,000/-.

9. I have heard the learned counsel for the petitioners and perused the record.

10. So far as the finding as to awarding maintenance is concerned, looking to the evidence available on record, it manifestly emerges that the petitioner himself has relinquished his wife without any reason. In this regard the testimony of applicant Smt. Nikhil Sharma has not been controverted by the evidence of petitioner Shaleen Nagar. As the allegations regarding the fact that she is residing voluntarily with her parents is found baseless in the eye of facts and circumstances of the case.

11. Now coming to the point of maintenance amount, learned trial Court in para-32 of the impugned judgment expressed that the petitioner/non-applicant is working as sales executive in Mumbai and thereby getting a salary of Rs.24,000/- per month. In spite of that learned trial Court has awarded half of the total amount as maintenance.

However, in as much as 5 years has been elapsed since 2018, the salary of the petitioner would be enhanced to Rs.40,000/- per month. This fact is also posited by petitioner during his arguments.

12. In this regard counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of *Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy* reported as *AIR 2017 SC 2383*, in this case, the net salary of the husband was Rs.95,000/- per month and in appeal before the High Court, the maintenance was enhanced to Rs.23,000/-. Further in appeal before the Hon'ble Supreme Court, it was reduced to Rs.20,000/- per month, which is less than 1/4th of the total salary of non-applicant in that case.

13. On this point, Co-ordinate Bench of this Court in the case of *Amit Pandey vs. Manisha Pandey* reported as *2020 Law Suit (M.P) 1098*, by endorsing the aforesaid proposition has enunciated 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.”

14. Virtually Section 125 of Cr.P.C is a piece of socialistic legislation in order to improve the status of a destitute lady in society. Inherent and

immanent idea behind the Section 125 of Cr.P.C is to ameliorate the agony, anguish and financial suffering of a woman, who left her matrimonial home. In order to determine the quantum, the Judge has to figure out what is required by the wife for maintaining the standard of living which is neither luxurious nor penurious, but it should be in accordance with the status of family.

15. In view of the aforesaid discussions, the criminal revision is partly allowed. The impugned order dated 12.07.2022 passed by the learned Principal Judge, Family Court, Ratlam in MJCR No.49/2017 be modified to the extent that the maintenance amount of Rs. Rs.12,000/- per month, awarded to the respondent/non-applicant is reduced to Rs.9,000/- per month from the date of filing of application under Section 125 of Cr.P.C before the Family Court from the date of filing of application under Section 125 of Cr.P.C before the Family Court. The additional amount already deposited by the petitioner shall be adjusted.

16. Rest of the conditions, if any, of the impugned order, stands affirmed.

17. With the aforesaid observations and directions, the revision petition stands **disposed of**.

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

Certified copy, as per Rules.

(PREM NARAYAN SINGH)
JUDGE

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