

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

BEFORE

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 22nd OF MAY, 2025

CRIMINAL REVISION No. 4305 of 2024

SMT. DIVYA

Versus

BHARAT

.....
Appearance:

Shri Vismit Panot - Advocate for the applicant.

Shri Arpit Singh - Advocate for respondent.
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ORDER

This revision petition is directed against the order dated 07/08/2024 (Annex.-A/1) passed by Principal Judge, Family Court, Indore in MJC No.1699/2022, whereby application for maintenance filed under Section 125(1) of Code of Criminal Procedure, 1973 (hereinafter for short referred as, 'Cr.P.C.') filed on behalf of the applicants / wife and daughter has been dismissed.

02. It is not in dispute that applicant Smt. Divya Murjani (Balwani) was married to the respondent Bharat Murjani as per rituals on 20/01/2019 and



out of their wedlock applicant No.2 Krisha is born. (It is also not in dispute that in the impugned order at Page 13 to 15, para 29 to 33 have been mentioned and from page 16 again the para 30 and 31 are repeated)

03. Applicant has levelled allegations in the application that respondent was having illicit relationship with the other women before marriage and he continued to be in direct contact with the aforesaid girlfriends. He is a person of criminal tendency and is involved in gold, mobile and liquor smuggling. He continued to threaten applicant for implicating her. After marriage, she was not allowed to go anywhere and she was kept under house arrest. She was continuously harassed for demand dowry. Respondent after consuming liquor used to beat her at the behest of his parents and sisters. She was not allowed to take proper treatment when she became pregnant and when she gave birth to a girl child, she was harassed about who will bear her daughter's expenses. She has further alleged that her father-in-law would inappropriately touch her lower back with bad intentions. She was maltreated on raising objections. She was sent to her parental house in February, 2021 and after that respondent / husband did not care for her and her daughter and continued demanding Rs.10 Lakhs and 10 *tola* gold with a car. Due to this ill treatment she went in depression.



3.1 It has been further pleaded that she is not doing any working therefore, having no independent income, whereas the applicant is doing Tours and Travels Business and thereby earns Rs.2 Lakhs per month. He also earns Rs.1 Lakh per month by keeping house, gold and other properties on mortgage and lending money at interest. On these miscellaneous submissions, applicants urges the Court for allowing an amount of Rs.50,000/- per months towards maintenance for her and her daughter for dignified living.

04. Respondent refuted all the allegations in reply to the petition. He further submits that no illegal demand has ever been made and / or she has been even maltreated. Rather the applicant No.1 was threatening to commit suicide and implicate her in laws. In Pre-COVID period he was doing business of Tours and Travels along with his father but after that business came to close and now he is working as Travel Agent with meager income of Rs10000/- per month. She has lodged domestic violence case on false grounds against the him. Applicant No.1 is employed in some big Company and is earning reasonably good amount as she is highly educated B.Com. graduate. She can properly maintain herself. She is residing away from the respondent from August, 2021 without sufficient reasons and on false



grounds she has filed this application for maintenance which she is not entitled for and therefore, urges the Court to dismiss the petition.

05. Learned trial Court after affording reasonable opportunity of hearing and adducing evidence to both the parties *vide* impugned order has dismissed the application.

06. Learned counsel for the applicant submits that impugned order passed by the Court below is based on whims and surmises. Learned Court below has not considered evidence in right perspective. The finding that applicant is residing away from the respondent without sufficient reason is perverse. Applicant has adduced sufficient evidence that she was maltreated by the respondent / husband and by her father-in-law which gives her sufficient reasons for claiming maintenance even living away from the respondent. Learned counsel for the applicant has invited attention of this Court towards para 29 to 31 of the impugned order. He further submits that as an interim maintenance Rs.8,000/- was allowed to the applicant, but by this perverse order the same has been denied even there being ample evidence on record.

07. To bolster his submissions, learned counsel placed reliance on the judgment by the Madras High Court in the case of **B. Chinnamma Vs. V.Muthusamy** reported in **1991 SCC OnLine Mad 310**, in para 7 has held

as under:-

“when the wife is subjected to humiliation and ill-treatment by the father-in-law and brother-in-law, and the husband remains a mute spectator; such failure to safeguard the wife's interests amounts to cruelty. This entitles the wife to live separately without forfeiting her right to maintenance under Section 125 of the Code.”

08. He has further placed reliance on the judgment by Apex court in the case of **Rajathi Vs. C. Ganesan** reported in **(1999) 6 SCC 326**, wherein the Apex Court Apex Court has observed as under:-

“if a wife is forced to leave her matrimonial home due to ill-treatment by her in-laws and the husband's indifference, she has a valid reason to live separately and claim maintenance.”

09. He has further relied on the judgment by Apex court in the case of **Bhanot Vs. Savita Bhanod** reported in **(2012) 3 SCC 183**, wherein the Apex Court in para 12 and 13 has held as under:-

“failure of the husband to protect his wife from harassment by his family members amounts to cruelty. Such failure justifies the wife's separate residence and claim for maintenance.”

10. He has further placed reliance on the judgment by Apex court in the case of in the case of **K. Srinivas Rao Vs. D.A. Deepa** reported in **(2013) 5 SCC 226**, wherein para 15 and 22 has observed as under:-

“mental cruelty includes the failure of a spouse to protect the other from harassment by his or her relatives. Such conduct entitles the aggrieved spouse to live separately and claim



maintenance.”

11. *Per contra*, learned counsel for the respondent supporting the impugned order submits that findings recorded by the learned Court below against the applicants are well reasoned and based on evidence on record. No fault can be found with. He submits that applicant No.1 along with her daughter is residing away from the company of the respondent without any sufficient reason. The allegations leveled against him are not supported by any evidence. She has filed FIR under Section 498-A of IPC, but no allegation with regard to alleged obscene Act by father-in-law has been mentioned therein, which itself reveal that she has concocted story in this regard. For this, he has invited attention of this Court towards para 29 to 31 of the impugned order.

12. Learned counsel for the respondent invited attention of this Court towards para 42 of cross-examination of the applicant No.1, wherein she has first admitted that she has bank account and last four digits are '7981' with allegation that the same account is being operated by her in-laws and after that retracted herself from the fact that the above account maintained in her name maintained at SBI, Indore, wherein she deposits salary. On these miscellaneous submissions, learned counsel submits that order passed by the



Court below is well reasoned and cannot be interfered while exercising the powers under revisional jurisdiction, which is extra ordinary in nature, therefore, prays for dismissal of the criminal revision.

13. Heard and considered the rival submissions raised at bar and also perused the record.

14. It is not in dispute that applicant No.1 was married to respondent and out of this wedlock applicant No.2 daughter Krisha was born. Applicant has assigned reason for living away from the Company of respondent is that he is having illicit relationship with the other women and continued to do so even after marriage and also the fact that she has been maltreated by the respondent and her in-laws. Even father-in-law had evil eye on her and he touched her with bad intention including laying his hand in her waist but the fact with regard to bad intention of father-in-law has not been mentioned in the FIR lodged under Section 498-A, 504, 506 of Indian Penal Code, 1860 and Section 3 and 4 of Dowry Prohibition Act, 1961 registered at Crime No.509/2022 at Police Station Juni Indore, Indore by the applicant No.1.

15. But leaving this apart Applicant / wife has assigned other reasons also for living away from the company of the respondent / husband is that she has has continuously maltreated by respondent / husband and in-laws. She has



not only made allegations but when she was fed-up of the maltreatment meted out to her, she has lodged FIR against the respondent and in-laws with vivid details, which is registered at Crime No.509/2022 at Police Station Juni Indore, Indore.

16. It is of common knowledge that as far as possible women in Indian society make efforts to adjust in the matrimonial house. Only when situation becomes unbearable, they approach the police or other authorities for lodging complaint or FIR. The allegations raised by the applicant-wife have been reiterated in her statement in this case before the Court. Even though respondent / husband has refuted the allegations but same cannot be brushed aside at this stage for holding that applicant is living away from the company of the respondent / husband without sufficient reasons as veracity of allegations is still to adjudicated in criminal case. Therefore, finding recorded by the Court below that applicant is living away from the respondent without sufficient reason cannot be sustained. In this regard judgments relied upon by the applicant in the case of **B. Chinnamma Vs. V. Muthusamy (Supra)**, **Rajathi Vs. C. Ganesan (Supra)**, **Bhanot Vs. Savita Bhanod (Supra)** and **K. Srinivas Rao Vs. D.A. Deepa (Supra)** support her claim.



17. As far as income of the applicant is concerned, no cogent evidence has been tendered by the respondent to prove that she is woman of sufficient means and therefore, she is not entitled for any maintenance. In this regard, respondent / husband Bharat (NAW-1) in para 12 of his cross-examination has stated that his wife, the applicant is in service, but he accepts that he has no proof in this regard. He has further stated that she is earning near about Rs.15,000/- per month is also based on his surmises, therefore, this evidence led by the respondent / husband does not prove that applicant / wife is in service and having sufficient means to sustain herself along with her daughter. She herself has controverted the evidence in this regard led by the respondent / husband. She has specifically mentioned in para 13 of her statement before the Court that she is not doing any business as she has to take care of her toddler daughter.

18. As far as income of the respondent / husband is concerned, the applicant / wife in para 10 of her examination-in-chief before the Court has stated that respondent is doing business in the name of Bharat Tours and Travels, wherein he books Air Tickets, Railway Tickets, Travel Packages, Passport, Money Transfer, Foreign Money Exchange, etc. and earns near about Rs.2 Lakhs per month. He also earns Rs.1 Lakh per month by keeping



house, gold and other properties on mortgage and lending money at interest.. Thus, she has asserted that respondent / husband is earning near about Rs.3 Lakhs per month which could not be rebutted by cogent evidence.

19. Respondent / husband (NAW-1) has unsuccessfully tried to controvert the statement made by applicant / wife with respect to his income. In para 11, it has been stated by respondent / husband that he is doing business of Tours and Travels with his farther and *Tauji* (elder brother of his father). Though he has stated that his father is paying him only Rs.10,000/- per month but he has neither denied the fact that he is involved in the aforesaid business nor controverted the fact of his income as alleged by his wife. In para 16 also, he has admitted about the aforesaid business. In para 17 of his cross-examination, he has admitted that he along with applicant / wife had gone on foreign tour of three countries including Malaysia and Dubai. He has further admitted that in passport entries regarding foreign tour are recorded but he has not supported his passport. In para 18, he has further admitted that he went on foreign tour with his wife and expenditure of near about Rs.1 Lakh was incurred. He has further admitted in para 30 of his cross-examination that in his affidavit submitted before the Court below it is mentioned that he is Proprietor of Tours and Travels Business. Though in *suo moto* statement



he has stated that this fact has been wrongly mentioned, but it does not inspire confidence. In para 31 of his statement, respondent has mentioned his income as Rs.15,000/- only but looking to the foreign tours and lavish lifestyle of living as is manifest from the photographs filed and other evidence on record, it is apparent that respondent has concealed his income. It can be safely inferred from the expenses incurred and nature of business that applicant is atleast having monthly income of Rs.50,000/-.

20. In case of **Bhuwan Mohan Singh Vs. Meena** reported in **(2015) 6 SCC 353**, the apex Court has held as under:-

“Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust



unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."

21. Mere fact that the applicant wife is earning does not absolve the respondent husband of his responsibility to maintain her and her minor daughter. Admittedly, the respondent is a businessman No reason or material has been placed on record by the respondent to even *prima facie* show that he is incapable or incapacitated from earning.

22. Respondent has a legal, social and moral responsibility to not only maintain his wife but also his children. Even if assuming that the applicant is earning, the same cannot be a reason for the respondent to avoid the responsibility and duty of maintaining his wife and minor daughter.

23. A child for her upbringing does not only require money. A lot of time and effort goes in upbringing of a child. It would be incorrect to hold that both the parents are equally responsible for the expenses of the child. A mother who has custody of a child not only spends money on the upbringing of the child but also spent substantial time and effort in bringing up the child. One cannot put value to the time and effort put in by the mother in



upbringing of the child. No doubt, mother, if she is earning, should also contribute towards the expenses of the child but the expenses cannot be divided equally between the two.

24. Here it appear to be pertinent to extract the observation of Apex Court in para 8 of the judgment **Chaturbhuj v. Sita Bai, (2008) 2 SCC 316** which runs as under:-

“8. In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan Dutt v. Kamla Devi [(1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83] it was observed that the wife should be in a position to maintain a 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 CrPC.”

25. In the present case, it is evident and proved by the material available on record that applicant / wife is not living away from the company of the respondent / husband without sufficient reasons. It is also proved that wife is not having sufficient means to support herself and to her daughter. It is also



proved that respondent / husband has sufficient means and income to fulfill the obligations towards his wife and daughter.

26. The aforesaid circumstances have not been duly appreciated by the learned Court below in the right perspective. The impugned order passed by the Court below refusing the applicant / wife and her daughter in not allowing maintenance is not sustainable in law.

27. *Ex consequentia* this revision petition having merits succeeds and the impugned order is hereby set aside by **allowing** the petition. It is directed that respondent / husband will pay Rs.10,000/- per months to applicant No.1 / wife and Rs.7,000/- monthly to applicant No.2 / daughter without fail by 15th of each succeeding month. The order will be effective from the date of filing of the application. In case it is found that respondent / husband fails to comply with the order, the applicants will be at liberty to go before the Court below for getting executed the order passed by this Court.

Certified copy as per rules.

(BINOD KUMAR DWIVEDI)
JUDGE

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