

HIGH COURT OF MADHYA PRADESH AT JABALPUR
SINGLE BENCH: HON'BLE SHRI JUSTICE SUBHASH KAKADE

Criminal Revision No.961 of 2009

APPLICANT : Narayan Datt Tiwari
S/o Shri Rohini Prasad Tiwari,
aged about 31 years, R/o Badwara,
P.S. Badwara, District Katni (M.P.)

Versus

RESPONDENT : Smt. Laxmibai Tiwari
S/o Narayan Datt Tiwari,
aged about 26 years, R/o Badwara,
presently residing at village Pachpedi,
Umariyan Pan, Tahsil Dheemarkheda,
District Katni (M.P.)

Shri Surendra Mishra, Advocate for the applicant.

(O R D E R)
Passed on: 16.10.2015

This revision under Section 397/401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code' for short) has been filed by the applicant/husband against the order dated 28.04.2009, passed in Criminal Revision No.134/2008, by II Additional Sessions Judge (FTC) Katni, whereby the learned Revisional Court allowed the revision filed by the respondent/wife under Section 125, Cr.P.C. by setting aside the order dated 18.11.2008, passed in M.J.C. No.07/2008, by the learned Judicial Magistrate First Class, Katni.

02. The application on behalf of the respondent/wife filed under the provisions of Section 125 of the Code before the learned Judicial Magistrate First Class, Katni, contending that the marriage between the applicant and the respondent was solemnized on 20.04.2001 as per the Hindu rites and rituals. It is alleged by the respondent that after sometime

of marriage the applicant and his family members demanded Rs.25,000/- cash as dowry and also demanded a motorcycle and thus, tortured her. On 14.04.2004 a complaint was made by the respondent before Superintendent of Police, Katni. On 12.05.2004 after reconciliation the respondent live with the applicant but again after passing of some time applicant again forced to left her husband house. The respondent has no source of income neither her parents has been able to take care of her. It is also contended that the applicant is a contractor of sand checkpost and earns Rs.1,50,000/- per annum and is also receiving a house rent of Rs.10,000/- per month.

03. Applicant entered his appearance by filing reply and contended that the respondent has not fulfilled her marriage obligations. She was mentally discarded lady and was facing psychosis disease and her all activities like a lunatic lady. The applicant got treated her but she could not be cured. The respondents came to her parental home and was not ready to go her matrimonial house even calling by the applicant several times. The applicant has no source of income and he unemployed. The respondent without any reason left the house of the applicant and never turned up. The applicant also paid maintenance to the tune of Rs.900/- per month as directed by the Court of Sessions at Katni under the provisions of Section 24 of the Hindu Marriage Act, therefore, the application filed by the respondent deserves to be dismissed.

04. Learned Judicial Magistrate First Class dismissed the the application filed by the respondent. Against this rejection order dated 18.11.2008 the respondent filed a revision before the learned Lower Revisional Court. The learned Lower Revisional Court allowed the revision filed by the respondent vide order dated 28.04.2009 and ordered

the applicant to pay Rs.800/- per month as maintenance to respondent, hence, this application.

05. Shri Surendra Mishra, learned counsel for the applicant submitted that the order passed by the learned Revisional Court is illegal, arbitrary and against the law and fact, and hence, unsustainable in the eye of law. The Revisional Court without summoning notice to the applicant, passed the order without providing opportunity of hearing, therefore, the same is illegal, arbitrary and against the principle of natural justice and is liable to be set aside. The learned Revisional Court ought to have considered the finding of the learned Judicial Magistrate by which the application has been rejected holding that the respondent is mentally discarded lady and is not ready to live with the applicant. She herself deserted the applicant. The learned Revisional Court has also failed to consider that the respondent has filed false and frivolous case under Section 498-A of IPC and Section 3/4 of Dowry Prohibition Act against the applicant and the same has also been dismissed by the learned trial Court, therefore, the impugned order dated 28.04.2009 is liable to be set aside.

06. Heard learned counsel for the applicant at length and after perusal of the available record carefully, this Court has come to conclusion that this application has no substance; hence, not worth acceptance.

07. This fact is not disputed that the respondent is legally wedded wife of applicant.

08. Section 125 of the Code is a measure of social justice and is specially enacted to protect women and children and as noted by the Apex Court in **Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal**

and Ors. reported in (**AIR 1978 SC 1807**) falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950.

09. 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 by the Apex Court in the case of **Savitaben Somabhai Bhatiya vs. State of Gujarat and Ors.** reported in **[2005(2) SCC 503]**.

10. The husband cannot desert the wife by merely denying the relationship on any ground, if the grounds are not just and reasonable one. The husband cannot save or shield himself by saying that the respondent is not his wife or his marriage with the lady is not valid or ab initio void or the respondent is his divorce wife or criminal proceedings initiated on instance of wife terminated in acquittal of the applicant/husband?

11. It is pertinent to mention here that the learned Judicial Magistrate First Class, Katni rejected the initial application filed by the respondent/wife on the ground that she was living separately without any just and proper reason, hence the M.J.C. No.07/2008 was rejected vide order dated 18.11.2008 on two counts.

12. Firstly, it is true that applicant/husband was acquitted by the Competent Court for the offence punishable under Section 498-A of IPC, which was registered on the report lodged by the respondent wife.

13. But, learned trial Magistrate same time ignored this legal position that even then if the criminal proceedings for physical cruelty and ill-treatment was registered against the husband on the report lodged by the wife for the offence punishable under Section 498-A of IPC and husband were acquitted even then it is “just ground” for wife’s living apart, acquittal does not give the right to the husband to claim that the wife is living separately without just and reason.

14. Secondly, from the perusal of judgment and decree dated 09.10.2007 passed by learned Ist Additional District Judge, Katni in Hindu Marriage Case No.31/2007, it is apparent that the decree of dissolution of marriage between the parties is in existence.

15. The Apex Court in case of *Rohtash Singh vs Smt. Ramendri and others*, reported in *2000 Cr.LJ 1498 (S.C.)* observed that a wife against whom a decree for divorce has been passed on account of her deserting the husband can claim Maintenance Allowance under Section 125 of the Code and the plea of desertion by wife cannot be treated to be an effective plea in support of the husband's refusal to pay her the Maintenance Allowance. After decree for divorce is passed she is under no obligation to live with the husband but though marital relations come to an end by the divorce granted by family Court under Section 13 of Hindu Marriage Act, the respondent continues to be wife within meaning of Section 125 of the Code on account of Explanation (b) to sub-section (1) of Section 125 of the Code which provides that a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindi Marriage Act, continues to enjoy the status of a wife for a limited purpose of claiming Maintenance Allowance from her ex-husband. As a wife, she

is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4) of the Code. In another capacity, namely as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her.

16. It is the obligation of the husband to maintain wife, father to maintain children and son to maintain parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation: **Rajathi vs. C. Ganesan (1999) 6 SCC 326**. Means does not signify only visible means, such as real property or definite employment: **Basanta vs. Sarat 1982 CrLJ 485**. An able-bodied person has sufficient means: **Kandaswami vs. Angammal AIR 1960 Mad 348: 1960 CrLJ 1098**.

17. Learned Revisional Court rightly held that the applicant also having sufficient means of income to pay maintenance and, therefore, rightly awarded the maintenance amount of Rs.800/- per month which is also reasonable.

18. After appreciation of evidence on both the counts learned Revisional Court rightly held that learned Judicial Magistrate First Class, Katni committed error holding that the respondent living separately without any just cause, hence learned Revisional Court allowed the revision and passed impugned order for payment of maintenance at the rate of 800/- per month as maintenance to the respondent, which does not requires any interference.

19. In view of the aforesaid, this revision under Section 397/401 of the Code stands dismissed.
20. A copy of this order be sent to the learned Court below.

(Subhash Kakade)
Judge

taj/ak