

HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Revision No.2201/2018

Mohd. Shafiq Ansari and another

Vs.

Mohd. Rasool Ansari

[Single Bench : Hon'ble Smt. Anjuli Palo, Judge]

Shri B.K. Shukla, counsel for the applicants.

Shri R.K. Tiwari, counsel for the respondent.

**ORDER
(18/12/2018)**

Applicants have filed this criminal revision under Section 397/401 of Cr.P.C. read with Section 19 of the Family Court Act being aggrieved by the order dated 19.04.2018 passed by learned Principal Judge, Rewa in M.J.C. No.03/2015, whereby learned Family Court has allowed the application of the respondent under Section 125 of Cr.P.C. and awarded Rs.750/- per month in favour of the respondent jointly against the applicants.

2. It is not in dispute that the applicant no.1 is major son and applicant no.2 major daughter of the respondent. Respondent filed an application under Section 125 of Cr.P.C. against the applicants on the grounds that he is aged about 70 years and not having any livelihood or help to maintaining himself. The applicants possessed his house, hence,

he claimed Rs.4000/- per month maintenance allowance from the applicants.

3. In reply, the applicants denied the pleadings of the respondent on the grounds that he was working as *tantrik* in Badi Dargah. He is healthy and able bodied person to earn money. He is involved in anti-social activities. The applicants were restraining him, due to this reason; he filed an application under Section 125 of Cr.P.C. against them. Applicant no.1 is suffering from the disease of tonsil and he had kidney problem, not doing any work and applicant no.2 is the widow, she is depending on the income of Hibanama. Respondent is earning about Rs.15,000/- per month and he has other source of earning. Therefore, they are not liable to be paid any amount for maintenance to the respondent.

4. After considering the evidence on record, learned trial Court found that the applicants are duty bound to maintain their father who is unable to maintain himself. The applicants are able to give maintenance allowance to the respondent. Hence, trial Court partly allowed the application and directed to each applicant to pay Rs.375/- to the respondent per month. The trial Court further directed that respondent has liberty to claim remaining maintenance allowance legally from his other major children.

5. The applicants challenging the impugned judgment on the grounds that learned trial Court committed grave error to allow the application in favour of the respondent, because he is able bodied healthy person and running sex racket places in Rewa city. He also

having ancestral house and running shop of the stove, torch etc. He made *tajiya* etc. He purchased land and constructed six rooms house. He is not entitled to receive any maintenance allowance from the applicants. The respondent is failed to give information about the source of income of the applicants. They are not competent to pay any amount to the respondent. Hence, impugned order be set aside.

6. Heard both learned counsel at length.

7. Perused the record.

8. It is not in dispute that the applicants are major son and daughter of the respondent. Respondent is aged about 70 years. Respondent stated that he was thrown out by the applicants from his own house and they also harassed him. Applicant no.2 is working at RIT College, Rewa and she earned about Rs.10,000/- per month from the college. She is practicing as an Advocate at Rewa and by the said profession, she is earning Rs.5,000/- per month. Similarly, applicant no.1 is working as conductor and earning Rs.4,000/- to 5,000/- per month.

9. On the contrary, the applicants denied their liability. Applicant no.2 Rehana deposed that she has no source of income. She is doing private job and earned Rs.4,000/- to 5,000/- per month. Her daughter is dependent on her. She is spent Rs.3,000/- per month to educate her daughter as her fees and transportation expenses. She also stated that the respondent by selling cycle, torch, stove, gas chulha, is earning Rs.3,000/- to 4,000/- per day. During the festival season, he made *tajiya* etc. and sell per *tajiya* Rs.12,000/- to 15,000/- and also by

conducting *tona-totka* etc., he is earning Rs.10,000/- per month. He has also some immovable properties.

10. It is pertinent to note that the applicants failed to produce any document to establish any specific source of income of the respondent. Even though, the fact that the respondent has only little source of income for his livelihood is acceptable, but this Court is not inclined to accept the contention of the applicants that they are not able to provide Rs.375/- per month each to their father, who is an old aged person and dispossessed by them from his own house.

11. In the case of *Raj Kumari v. Yashodha Devi, [1978] Cr. L.J. 600, the Punjab and Haryana High Court* has held that:-

“When the statute provides that the pronoun 'his' not only denotes a male but also a female, we do not think it necessary to refer to the report of the Joint Committee for the interpretation of clause (d) of Section 125(1) Cr.P.C. The father or mother, unable to maintain himself or herself, can claim maintenance from their son or daughter. The expression "his father or mother" is not confined only to the father or mother of the son but also to the father or mother of the daughter. In other words, the expression "his father or mother" should also be construed as "her father or mother".

12. In the case of *M. Areera Beevi v. Dr. K.M. Sahib, [1983] Cr.L.J. 412*, and *Repalli Masthanamma v. Thota Sriramulu*, a Single Bench of the Kerala High Court and the Andhra Pradesh High Court have respectively taken the view that the parents who are unable to maintain them- selves can claim maintenance also from their daughters under section 125(1)(d) Cr.P.C.

13. In the case of *Dr. Vijaya Manohar Arbat vs. Kashirao Rajaram Sawai and another (1987) 2 SCC 278*, the Supreme Court has held that:-

“After giving our best consideration to the question, we are of the view that section 125(1)(d) has imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or her- self. Section 488 of the old Criminal Procedure Code did not contain a provision like clause (d) of Section 125(1). The legislature in enacting Criminal Procedure Code, 1973 thought it wise to provide for the maintenance of the par- ents of a person when such parents are unable to maintain themselves. The purpose of such enactment is to enforce social obligation and we do not think why the daughter should be excluded from such obligation to maintain their parents.”

14. Thus, under Section 125(4) of Cr.P.C., the respondent is entitled to claim appropriate maintenance allowance from his children. In the present scenario, looking to the daily needs for an old aged person including health etc. for maintaining himself, the contention of the applicants that the direction of the trial Court to each of the applicants to pay maintenance allowance of Rs.375/- per month to their father is at higher side, is not acceptable.

15. In view of the above principles laid down by the High Court as well as the Supreme Court, this Court does not find any perversity or illegality in the impugned order and there is no merit in the case to interfere in the impugned order by this Court under the revisional power.

16. Accordingly, revision is hereby **dismissed**.

[Smt. Anjali Palo]
Judge