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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL
Criminal Revision No. 1033/2022

SHRIRAM KUSHWAHA

Versus

SMT. POOJA KUSHWAHA AND ANOTHER

Appearance:

Shri Hemant Sen– Advocate for the petitioner.

Shri R.S. Yadav – Advocate for the respondents.

RESERVED ON : 20.03.2025

PRONOUNCED ON : 27.03.2025

This appeal having been heard and reserved for judgment, coming on for pronouncement on this day, the court passed the following

ORDER

This criminal revision has been filed under Section 397 read with Section 401 of Cr.P.C. read with under Section 19(4) of the Family Court Act against the order dated 09.03.2022 passed by learned Principal Judge, Family Court, Chhatarpur in MJCR No. 184/2019, whereby respondent/applicant's application under Section 125 of Cr.P.C. has been allowed and petitioner has been directed to pay Rs. 6,000/- per month as maintenance to respondents/applicants.

2. Brief facts relevant for the disposal of present revision are that respondents/applicants filed an application under section 125 of Cr.P.C. on the ground that respondent/applicant No.1 is a legal wedded wife of petitioner. After

solemnization of marriage, petitioner as well as other family members of petitioner started demanding Rs. 3,00,000/- as dowry and on account of non-fulfillment of aforesaid demand, they started harassing and torturing respondent/applicant No.1. Approximately 10 months ago, petitioner and other family members turned out the respondents/applicants from the house. Petitioner did not make any arrangement for maintenance of respondents/applicants. Petitioner is having five shops and thereby he is earning Rs. 25,000/- per months and he has also a grocery shop and thereby he is earning Rs. 30,000/- per month. Petitioner is also having 5 acre agricultural land from which he earns Rs. 5,00,000/- annual. Therefore, each applicant be given Rs. 10,000/- per month for maintenance.

3. Learned counsel for the petitioner, after referring to para 13 of the impugned order, submits that petitioner is not having any shop. He is cultivating land owned by his father. Petitioner is not having any independent source of income. Petitioner has no financial resources to pay the maintenance. It is urged that vide order dated 28.09.2022, petitioner's application under Section 9 of Hindu Marriage Act has been allowed but respondent/applicant did not comply with aforesaid order of restitution of conjugal rights. Thereafter, decree of divorce was passed in favour of petitioner on 11.12.2024. It is also urged that respondent/applicant Pooja Kushwaha's father was in service and he is getting monthly pension. Further, respondent/applicant Pooja Kushwaha is also doing household work as well as stitching etc. Therefore, respondent/applicant is having sufficient resources to maintain herself. Hence, respondent/applicant is not entitled to receive

maintenance. Learned Family Court has erred in allowing and granting maintenance as per impugned order. Therefore, petition filed by the petitioner be allowed and impugned order be set aside.

4. Learned counsel for the respondent submits that petitioner has failed to point out any illegality in the impugned order passed by the learned Family Court. Learned Family Court, after taking into consideration the evidence on record, has rightly passed impugned order. No interference is required in the same. Therefore, petition filed by the petitioner be dismissed.

5. Heard. Perused record of the case.

6. So far as order passed under Section 9 of Hindu Marriage Act as well as divorce granted in favour of petitioner is concerned, no documents pertaining to aforesaid are on record. Therefore, aforesaid cannot be taken into consideration for deciding the instant criminal revision petition.

7. Perusal of submissions of both the parties as well as averments made in the application as well as reply along with evidence adduced before the learned Family Court clearly reveals that respondent/applicant No.1 is not having any independent source of income to maintain herself. If father of respondent/applicant No.1 is having any source of income, then it cannot be said that respondent/applicant No.1 is able to maintain herself. There is nothing on record to show that respondent/applicant No.1 is doing any business etc. Thus, respondent/applicant No.1 is not having independent source of income.

8. So far as income of petitioner is concerned, neither petitioner nor respondent/applicant has furnished any documentary evidence with respect to shops owned/run by the petitioner. There are no documents on record to show that petitioner has rented four shops and out of five shops, in one shop, he is running Grocery shop.

9. Thus, there is only oral testimony of respondent/applicant No.1 with respect to the fact that petitioner/non-applicant is owner of five shops and out of them, he has rented four shops and in one shop, he is running grocery shop. Perusal of oral testimony of respondent/applicant No.1 Pooja Kushwaha reveals that respondent/applicant No.1 Pooja Kushwaha has not stated specifically in her testimony the name of grocery shop run by the petitioner/non-applicant and location thereof. Respondent/applicant No.1 Pooja Kushwaha has also not stated specifically in her deposition the name of persons, who have taken 4 shops from petitioner on rent and the nature of business, aforesaid persons are doing in the shops and name and location thereof. Thus, there is only a bald statement of respondent/applicant No.1 Pooja Kushwaha on the point that petitioner is running grocery shop and he has rented four shops. Hence, in view above, it cannot be said that petitioner is owner and in possession of five shops and he has rental income from four shops and he is running grocery business in one shop.

10. But in the instant case, there is nothing on record to show that petitioner is suffering from any illness etc. and it is evident that he is able bodied person and healthy.

11. In the instant case, learned Family Court has awarded Rs. 4,000/- as maintenance to respondent/applicant No.1 Pooja Kushwaha and Rs. 2,000/- for maintenance of daughter of Pooja Kushwaha aged 2 years. In this Court's considered opinion, having regard to evidence pertaining to the income/financial resources of petitioner, learned Family Court has committed material illegality in awarding Rs. 6,000/- per month as maintenance. Therefore, findings recorded by learned Family Court with respect to aforesaid, i.e. monthly maintenance awarded by the Family Court to respondents/applicants is set aside and having regard to the over all the facts and circumstances of the case, including evidence pertaining to petitioner's income on record, as well as age of respondent/applicant No.2, it is held that respondent/applicant No.1 Pooja Kushwaha is entitled to receive Rs. 3,000/- per month as maintenance and respondent/applicant No.2 is entitled to receive Rs. 1,000/- per month as maintenance. Other findings recorded by the Family Court shall remain intact.

12. Petition filed by the petitioner is party allowed to the extent as indicated hereinabove.

13. Present Criminal revision is disposed of accordingly.

(ACHAL KUMAR PALIWAL)

JUDGE