

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 12th OF JULY, 2023

MISC. PETITION No. 5515 of 2022

BETWEEN:-

**AJAY BANSAL S/O CHEDILAL BANSAL, AGED ABOUT 26
YEARS, OCCUPATION: DRIVER SHANKARGARH
MAKRONIYA POLICE STATION MAKRONIYA DISTRICT
SAGAR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ANKUR SHRIVASTAVA - ADVOCATE FOR THE PETITIONER)

AND

**SMT. RANI D/O MANOJ BANSAL W/O AJAY BANSAL,
AGED ABOUT 22 YEARS, KOREGAON MAKRONIYA
POLICE STATION MAKRONIYA DISTRICT SAGAR
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SHYAM YADAV- ADVOCATE FOR THE RESPONDENT)

.....
सत्यमेव जयते
*This petition coming on for admission this day, the court passed the
following:*

ORDER

This petition is filed by the petitioner being aggrieved of order dated 18.08.2022 passed by learned District Judge, Sagar in RCSHM No.148/21 awarding a sum of Rs.3,000/- per month as a maintenance and one time litigation charges of Rs.4,000/- on the ground that despite a decree of restitution of conjugal rights passed by the Court of Additional District Judge No.10, Sagar on 31.01.2020 whereby respondent non-applicant was directed to cause restitution of conjugal rights within two months of passing of the order since order has not been complied with by the non-applicant, therefore, she is not

entitled to any amount of maintenance.

Reliance is placed on the judgment of Coordinate Bench of this High Court in **Smt. Kiran Vs. Chandra Shekar, AIR 1998 MADHYA PRADESH 69**, wherein it is held that grant of maintenance *pendente lite* is a discretionary power of Court. Refusal to grant maintenance on ground that decree of restitution of conjugal rights is operating against wife is proper.

Shri Shyam Yadav, in his turn, submits that there is a proper reason for not joining company of the husband, inasmuch as, non-applicant is being subjected to continuous cruelty and harassment in the hands of the husband, therefore, she cannot be deprived of the amount of maintenance under Section 24 of the Hindu Marriage Act.

After hearing learned counsel for the parties and going through the record so also the judgment of Coordinate Bench of this High Court in **Smt. Kiran (supra)** wherein it is held that Section 24 of the Hindu Marriage Act uses the expression 'the Court may' and once the discretion is exercised by the trial Court then that discretion may not be interfered with.

There is another judgment of this Court in **Balakram Vs. Smt. Durgabai and Others, 2007 (1) MPWN 10**, wherein it is held that if wife does not join company of husband despite of decree of restitution of conjugal rights against her then she is not entitled to claim maintenance.

After considering the aforesaid two judgments and the language employed in Section 24 of the Hindu Marriage Act, 1955, it is evident that the language is "where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding,

it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable"

Recently, Hon'ble Supreme Court in **Petition(s) for Special Leave to Appeal (Crl.) No(s). 8994/2019** in case of **Subrat Kumar Sen Vs. State of Uttar Pradesh and Anr.** issued notices on 03.10.2019 observing that there are conflicting decisions of various High Courts as to the impact of wife keeping herself away from the company of her husband without any sufficient reason despite there being an order under Section 9 of the Hindu Marriage Act. In the meanwhile, directed the petitioner to pay maintenance to the wife.

In the present case situation is no different. There are different judgments on the subject but if it is viewed from the angle of the provisions contained in Section 24 then following factors are required to be examined, namely;

(i) whether the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding;

(ii) if a person cursed i.e. the wife or the husband fulfills this requirement then there can be an order to the respondent to pay to the petitioner the expenses of the proceedings and monthly maintenance during the proceedings;

(iii) The amount of monthly maintenance will depend upon the income of the petitioner and the income of the respondent and;

(iv) While doing so court has to see the aspect of reasonableness.

Thus, it is evident that the purpose of Section 24 is to provide maintenance to needy and deserving.

Even for the sake of argument, it is observed that wife is keeping herself

away from the company of her husband despite there being a decree of restitution of conjugal rights, the fact of the matter is that the ultimate resultant will be a decree of divorce in favour of the husband.

Now the question arises that whether a divorced wife is entitled to maintenance or not? The answer is that even a divorced wife unless aspect of adulatory or remarriage is proved is entitled to maintenance. Therefore, without there being adjudication of this aspect as to whether the wife is staying away from the husband without any justifiable reason despite there being a decree of restitution of conjugal rights, paramount interest of the wife is to be adjudged on the parameters given in Section 24, namely, whether she has independent and sufficient income for her up keep or not. If the answer is in negative then maintenance is to be awarded.

There is no material brought on record to point out that respondent wife has sufficient means for her sustenance and independent source of income. In absence of any such material reliance cannot be placed on the judgments of the Coordinate Benches in **Kiran (supra)** and **Balakram (supra)** inasmuch as the discretion which has been exercised by the learned trial Court cannot be interfered in the supervisory jurisdiction of this Court unless perversity is explained on the face of the record.

In the opinion of this Court since there is no perversity in the impugned order, it does not call for interference.

Petition fails and is hereby dismissed.

(VIVEK AGARWAL)
JUDGE

