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CRR-458-2022

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 24th OF OCTOBER, 2024CRIMINAL REVISION No. 458 of 2022*BASHIR KHAN**Versus**ISHRAT BANO*

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Appearance:

Mr. Akshat Kumar Jain - Advocate for the petitioner.

Mr. Romesh Pratap Singh - Advocate for the respondent.

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ORDER

This Criminal Revision under Section 397 read with Section 401 of Cr.P.C has been filed against the order dated 21.01.2022 passed by First Additional Sessions Judge, Shivpuri (M.P.) in Criminal Appeal No.25/2021 confirming the order dated 09.02.2021 passed in MJCR No.1200291/2015 by Judicial Magistrate First Class, Shivpuri, whereby the application filed by respondent under Section 12 of Protection of Women from Domestic Violence Act (in short "the DV Act") has been allowed by the trial Court with a direction to pay Rs.3,000/- as maintenance amount to the respondent.

2. Brief facts of the case are that an application under Section 12 of the Protection of Women from Domestic Violence Act (in short "the Act") was filed by the respondent against her father-in-law (petitioner herein) and other in-laws pleading that her marriage took place on 14.06.2011 with Sarif Khan (son of petitioner) and two daughters namely, Natasha and Rimasha



were born from their wedlock. On 30.06.2015, husband of respondent died and thereafter, she filed an application under Sections 18 to 22 of the DV Act before the trial Court demanding maintenance of Rs.40,000/-per month to meet out her day-to-day needs. Thereafter, petitioner filed his reply denying the facts mentioned in the application and prayed for rejection of same. In the trial Court, the respondent herself examined as PW-1, Abdul Rafiq as PW-2 whereas petitioner examined himself as DW-1 and Shahid Israr as DW-2. After hearing both the parties, trial Court passed an order dated 09.02.2021 while holding liable to pay Rs.3,000/- per month as maintenance to respondent. Being aggrieved with the said order, an appeal was filed by petitioner under Section 29 of the DV Act before Sessions Court, Shivpuri, which was dismissed by impugned order dated 21.01.2022.

3. Learned counsel for the petitioner submits that the orders passed by trial Court as well as by appellate Court are contrary to law and are liable to be set aside. He further submits that respondent is the wife of petitioner's son and respondent was living separately when her husband was alive. Her husband died on 30.06.2015. Petitioner is an old-age person and belongs to Muslim community and father-in-law of widow of his son is not liable for maintenance. On these grounds, learned counsel for the petitioner prays for setting aside the impugned order.

4. Learned counsel for the petitioner further submits that as per Mahomedan Law, being father-in-law, petitioner is not entitled to part his money to pay as maintenance to respondent. He places reliance on **Mulla Principles of Mahomedan Law** and takes exception to Page No.457 and 458



of Chapter XIX Maintenance of Relatives and Maintenance of Other Relations in Rule 373 wherein it has been mentioned that a father is not bound to maintain his son's widow.

5. Learned counsel for the petitioner also cites Division Bench decision of Bombay High Court in the case of **Mahomed Abdul Aziz Hidayat Vs. Khairunnissa Abdul Gani**, AIR 1950 Bom 145, in which it has been held that father cannot be compelled to maintain the wife of his son.

6. Learned Counsel for the petitioner further placed reliance on the decision of Calcutta High Court in the case of **Shabnam Parveen Vs. State of West Bengal & others**, AIR 2018 Cal 57, wherein it has been held as under :-

"10. Section 36 of the PWDV Act, 2005 provides that the provisions of that Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. In the decision of Mrs. Nandita Sarkar Nee Sen (Supra), the concept of Hindu Adoption and Maintenance Act, 1956 was taken into consideration vis a vis the provisions of PWDV Act, 2005. In the case in hand both parties are Mohammedan and as such under the Muhamadan Law, opposite party no.2, being father-in-law, is under no obligation to provide maintain allowance to the widow of his son namely the petitioner."

7. On the other hand, learned counsel for the respondent supported the impugned order and prayed for dismissal of this revision.

8. The moot question in the present revision is as to **whether petitioner**



as father-in-law is being fastened his liability to pay maintenance to his daughter-in-law because of death of his son or not ?

9. In the present case, it is not in dispute that respondent is the widow of petitioner's son and according to Mahomedan Law cited above, the father of widow's husband is not compelled to maintain her. The Calcutta High Court has specifically in the case of **Shabnam Parveen (supra)** observed that as per DV Act, the father-in-law of the son's widow is not bound to give maintenance to her. As per the provisions of Muslim law and the DV Act, in the considered opinion of this Court, the present petitioner being father-in-law of respondent, cannot be compelled to give maintenance to the respondent.

10. In view of above discussion as well as the case laws, it is apparent that the trial Court as well as the Sessions Court has committed an error in granting maintenance in favour of respondent. Therefore, order dated 21.01.2022 passed by First Additional Sessions Judge, Shivpuri (M.P.) in Criminal Appeal No.25/2021 and the order dated 09.02.2021 passed in MJCR No.1200291/2015 by Judicial Magistrate First Class, Shivpuri are hereby **set aside**.

11. This criminal revision **stands allowed and disposed of accordingly**.

**(HIRDESH)
JUDGE**