



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL REVISION No. 885 of 2024

SMT. AFRIN BEE W/O MOHAMMAD SHADAB MANSOORI
Versus
MOHAMMAD SHADAB

.....
Appearance:

Shri Daya Nath Pandey, learned counsel for the petitioner.

Shri Vishal Patidar, learned counsel for the respondent.
.....

WITH

CRIMINAL REVISION No. 919 of 2024

MOHAMMAD SHADAB
Versus
SMT. AAFRIN BE

.....
Appearance:

Shri Vishal Patidar, learned counsel for the petitioner.

Shri Daya Nath Pandey, learned counsel for the respondent.
.....

Heard on : 23.10.2024

Pronounced on : 20.11.2024

.....
ORDER

With consent, heard finally.

2] This order shall govern the disposal of these criminal revisions as they are arisen out of the same order dated 16.02.2024 passed in Miscellaneous Judicial Case No. 120/2022 by the learned Principal Judge, Family Court, District- Ratlam. Hence, they are heard analogously and are being decided by this common order.



3] Being disgruntled by the judgment dated 16.02.2024, passed in M.J.C. No.120/2022, by learned Principal Judge, Family Court, District-Ratlam, the Criminal Revision No. 885/2024 has been filed by petitioner Afrin Bee W/o Mohammad Shadab Mansoori for enhancing the maintenance amount from Rs.12,000/- to Rs.20,000/-, while the Criminal Revision No. 919/2024 has been filed by respondent/Mohammad Shadab to set aside the order of maintenance. Further, for the sake of convenience, the wife- Afrin Bee W/o Mohammad Shadab Mansoori will be addressed as petitioner and husband-Mohammad Shadab will be addressed as respondent.

4] Brief facts of the case are that the marriage of the petitioner and respondent was solemnized on 28.02.2021 as per the Muslim Rites and Rituals. The petitioner stayed in her matrimonial house along with her in-laws, wherein her husband and his family members started harassing and torturing her for not fulfilling their demand of dowry of Rs.40,00,000/- and due to not fulfilling the demand, the petitioner was compelled to live in her parental home. In this regard, an application was also submitted by the petitioner against her in-laws at Mahila Thana and Police Superintendent, Ratlam. On 04.10.2021, the respondent and his family members came to wife's parental home and started abusing and assaulting the petitioner, due to that she submitted an application at Mahila Thana. They had also threatened to petitioner's brother and sister-in-law. Further, an FIR bearing Crime No. 614/2021 at Police Station- Station Road was lodged for the offence punishable under Sections 498-A, 323, 294 and 506 of IPC. Afterthat, she filed an application under Section 125 of Cr.P.C. and the learned family



Court has awarded the maintenance as stated above.

5] Learned counsel for the petitioner has pleaded in his arguments that the learned trial Court has not considered the income of the respondent and committed grave illegality in awarding lesser maintenance in favour of petitioner /wife. The petitioner was compelled to live in her parental house. He has also submitted that the respondent is a practicing advocate at Ratlam. The respondent is also having source of income from business of papad making, land on lease and from rent also. The respondent has admitted in his statement that he is an advocate. He has also other source of income but this fact was not considered by the learned Family Court while awarding maintenance to the petitioner. The petitioner is liable to get maintenance as per family status of the respondent, being a wife, she was compelled by respondent to live separately because of mental and physical cruelty. It is further submitted that the amount of maintenance awarded by learned trial Court is on lower side. Hence, it is prayed that amount of maintenance of the petitioner/ wife may kindly be enhanced upto Rs.20,000/- per month.

6] The aforesaid facts were denied by the husband in his reply to the application by stating that his wife /petitioner herself is competent lady and she does not require any maintenance amount. Hence, the maintenance awarded of Rs.12,000/- by the learned trial Court is not in-consonance with law and the petitioner's petition is liable to be dismissed in ab initio due to non maintainability. It is against the evidence available on record. It is submitted that the petitioner/wife is living separately without any cogent reason, and therefore, she is not entitled for maintenance from the



respondent. It is submitted that there is nothing on record regarding the fact that she is not earning anything and non-availability of such pleading itself is sufficient that she herself enrolled as an Advocate in the year 2019 and earning Rs.30,000/-. That apart, she is having agriculture land at Village Malvasa Tehsil and District Ratlam and also having ancestral property through which, she is earning 4 to 5 lakhs per annum. She has also contested the election of Mayor by spending amount of Rs. 1,17,598/-. She is also earning income being District President of Samajwadi Party. It is settled position of law that the proof of burden is first placed upon the wife to prove that the means of her husband are sufficient and she is unable to maintain herself. On these grounds, counsel for the respondent/husband prayed for setting aside the impugned order.

7] I have heard the counsel for the parties and perused the record.

8] In view of the arguments and rival submissions of counsel for both parties, I have gone through the record. The statements of Smt. Afrin Bee (PW-1) and Mohammad Shadab (DW-1) are contradicting to each other. However, it is revealed that the respondent is an advocate and practicing in the Court from the year 2019. The respondent himself has submitted that charges of skilled labour is approximately is Rs.500/- to 600/- per day while his senior is giving to him only Rs.200/- per day. On the other side, the petitioner has fairly stated that she is not in regular practice. She only tried to learn provisions and conduct but no earning anything. Certainly, she has contested election of Mayor and MLA and as per evidence, she is District President of Samajwadi Party. After considering the statements and other



evidence available on record, learned trial Court has passed the impugned order for final maintenance. Having gone through the appreciation of evidence, nothing is found to say that the order passed by the trial Court is against the propriety and evidence.

9] So far as question regarding maintainability of maintenance, this question is no longer res integra. Hon'ble Apex Court has already held the legal position in the cases of **Shabana Bano Vs. Imran Khan, (2010) 1 SCC 666** and **Shamim Bano Vs. Asraf Khan, (2014) 12 SCC 636**. The relevant paragraphs in the case of **Shabana Bano (supra)** is condign to quote here :-

“Cumulative reading of the relevant portions of judgments of this Court in **Danial Latifi (supra)** and **Iqbal Bano (supra)** would make it crystal clear that even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women.”

10] Further, the law laid down by Hon'ble Apex Court has held in the case of **Shamim Bano (supra)** is mentioned below :-

“Another aspect which has to be kept uppermost in mind is that when the marriage breaks up, a woman suffers from emotional fractures, fragmentation of sentiments, loss of economic and social security and, in certain cases, inadequate requisites for survival. A marriage is fundamentally a unique bond between two parties. When it perishes like a mushroom, the dignity of the female fame gets corroded. It is the laws duty to recompense, and the primary obligation is that of the



husband. Needless to emphasise, the entitlement and the necessitous provisions have to be made in accordance with the parameters of law.

Under these circumstances, regard being had to the dictum in *Khatoon Nisa Vs. State of U.P. and others*, 2002 (6) SCALE 165, seeking of option would not make any difference. The High Court is not correct in opining that when the appellant-wife filed application under Section 3 of the Act, she exercised her option. As the Magistrate still retains the power of granting maintenance under Section 125 of the Code to a divorced Muslim woman and the proceeding was continuing without any objection and the ultimate result would be the same, there was no justification on the part of the High Court to hold that the proceeding after the divorce took place was not maintainable.”

11] As such, muslim women are also entitled to get maintenance as they are also coming under the purview of section 125 of Cr.P.C. Hence, the contentions regarding non-maintainability is found without substance.

12] So far as the income earned by the petitioner by joining politics, it is well settled that a person cannot be debarred by getting maintenance only on the basis that she is earning money for her livelihood. It is the duty of husband to maintain his wife as he has taken her from her parental home.



Be that at it may, a destitute lady, being a wife cannot be deprived of for obtaining maintenance from her husband only on the basis that she is educated and earning lady. In order to reckon the maintenance amount, it should be kept in mind that the wife can neither be allowed to lead a luxurious life, nor she can be compelled to lead a penurious life. Nevertheless, her dignity and status should be maintained in accordance with the status of her matrimonial family.

13] So far as quantum of the maintenance amount is concerned, respondent is an advocate, the learned trial Court has discussed his income as he is getting Rs.200/- per day but now-a-days, the income of an advocate cannot be articulated as Rs.200/- per day. If any advocate is continuing practice for approximately 05 years, his income will be reckoned and assumed to the extent of Rs.50,000/- per month. That apart, it is also worth to mention that in the marriage of petitioner and respondent, Maher Rs.20,00,000/- was given which reflects the standard of both parties. It is admitted position that respondent has enrolled himself as an advocate (Enrollment No. MP1409/2019) which shows that the respondent has been practicing as an advocate for five years. Hence, assuming the aforesaid income, the amount awarded Rs.12,000/- per month for the wife/petitioner cannot be said on higher side.

14] In this regard, the law laid down by Hon'ble Supreme Court in the case of **Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy (AIR 2017 SC 2383)**, wife is entitled to get 25% of the income of the husband. Hon'ble High Court of M.P., endorsing the aforesaid citation in the



case of **Amit Pandey vs. Manisha Pandey** reported as **2020 Law Suit (M.P)**

1098, adumbrated as under:-

“The Hon'ble Apex Court in the case of **Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy** (AIR 2017 SC 2383), has held that 25% of the income of the husband would be just and proper and not more than that. So, apart from that when ex-parte order was passed in favour of the respondent/ wife, then learned trial Court should have awarded 25% of the net income of the petitioner/non-applicant as maintenance and not more than that. So, it is appropriate to reduce the awarded maintenance amount of Rs.10,000/- per month to Rs.7,000/- per month which would be paid by the petitioner/non-applicant to the respondent/wife. The decisions in **Deb Narayan Halder Vs. Smt. Anushree Haldar** (AIR 2003 SC 3174) and **Chandrakalabai Vs. Bhagwan Singh** (2002 Cr.L.J. 3970) are not at all applicable in the case of petitioner/non- applicant.”

15] Further, in view of the impugned order, it is crystal clear that the respondent/husband is living in his life style and maintaining the standards, therefore, as per the settled provisions of law, the wife is certainly entitled to live her life as per the standards of her husband. On this aspect, it is asserted in **Badshah Vs. Sou. Urmila Badshah Godse** [AIR (2014) SCW 256], the purposive interpretation needs to be given to provision of Section 125 of Cr.P.C. and it is bounden duty of Courts to advance cause of social justice. It is time honoured principal that the wife is entitled to a financial status equivalent to that of the husband. Under Section 125 Cr.P.C. the test is whether the wife is in a position to maintain herself in the way she was used to live with her husband. In **Bhagwan v. Kamla Devi** (AIR 1975 SC 83), it



was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C.

16] At this juncture, the following excerpts of **Rajnish Vs. Neha and Ors. (Supra)** is reproduced below :-

"The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meager that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort."

17] Therefore, in view of the aforesaid facts and circumstances and settled position of law and considering the monthly income of husband Mohammad Shadab who is sufficiently earning from his profession and his parents are not depended upon him, learned trial Court awarded the maintenance amount of Rs.12,000/- per month for wife. Also considering the socio-economic standard of wife as per the standard of her husband, the maintenance amount seems to be correct in view of settled proposition of law. Hence, the revision petition filed by the husband/respondent is having no merits and is hereby liable to be dismissed.

18] So far as the scope of revisional power of this Court is



concerned, this Court may rely upon the following extract rendered in para 19 of the case of **Shamima Farooqui vs. Shahid Khan, (2015) LawSuit (SC) 314** is referred as under :-

"In the instant case, as is seen, the High Court has reduced the amount of maintenance from Rs.4,000/- to Rs.2,000/-. As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. Needless to say, the order of the learned Family Judge is not manifestly perverse. There is nothing perceptible which would show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no revisional court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there was no reason to interfere. There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order."

19] In view of aforesaid analysis in entirety and the law laid down by Hon'ble Apex Court, looking to the income of the husband so also his liabilities and the fact that wife is earning lady, she also has her own source of income, this Court is of the considered opinion that the impugned order of learned Family Court awarding the maintenance of Rs.12,000/- per month to petitioner/wife is not suffering from any infirmity and illegality. Accordingly, both Criminal Revision Nos. 885/2024 & 919/2024 being devoid of merit are dismissed and the impugned order is hereby affirmed.



20] Registry is directed to send a copy of this order to the trial Court for information and necessary action.

Certified copy as per rule.

(PREM NARAYAN SINGH)
JUDGE

Vindesh