
(2019) 07 MP CK 0080

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 6171 Of 2018

Aarif S/O Shafi Haji Musalman

APPELLANT

Vs

Shajida W/O Aarif Mev Musalman

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Family Courts Act, 1984 — Section 19(4)
Code Of Criminal Procedure, 1973 — Section 125, 397, 401
Indian Penal Code, 1860 — Section 498A
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2019) 07 MP CK 0080

Hon'ble Judges : S.K. Awasthi, J

Bench : Single Bench

Advocate : M.K. Sharma

Final Decision : Disposed Off

Judgement

1. This revision application under Section 19 (4) of the Family Courts Act, 1984 read with Section 397 and 401 of the Code of Criminal Procedure,

1973 is directed against or-der dated 22.11.2018 passed by Principal Judge, Family Court, Mandsaur (MP) in Miscellaneous Criminal Case

No.247/2016, whereby an application filed by the respon-dent / wife under Section 125 of the Code of Criminal Proce-dure, 1973 has been allowed;

and the applicant / husband is directed to pay Rs.3,000/- (rupees three thousand) per month to the respondent / wife towards her maintenance.

2. Admitted facts of the case are that marriage of ap-plicant and respondent was solemnized on 03.08.2015, as per Muslim Rituals and Customs; and

they are not having any child. Earlier the respondent / wife got registered a case against the applicant / husband and his family members un-der

Section 498-A of the Indian Penal Code, 1860 and also under Section 3 read with

Section 4 of the Dowry Prohibition Act, 1961. After compromise, respondent / wife again started living with the applicant. Now, she is residing with her mother at Madaarpura, District Mandsaur (MP).

3. Facts leading to filing of this revision application are that respondent / wife moved an application under Section 125 of the Code of Criminal

Procedure, 1973 against the applicant / husband for grant of maintenance amount, alleging that after some time of the marriage, the applicant per-

sistently making demand of dowry from respondent; and he used to harass her. For the reason, that demand of dowry was not meted out, the applicant

showed the door to the respondent on 12.04.2016. Since then, she is residing in the house of her mother. She does not have any source of income

thus, she found it difficult to maintain herself, whereas the applicant is having 10 bighas of agricultural land at Mandsaur; and he is also engaged in the

business of selling cattle, thereby earning Rs.1,00,000/- per annum. Therefore, a prayer was made by the respondent / wife for grant of maintenance

of Rs.10,000/- per month before the Family Court. The said application was partly allowed vide impugned order dated 22.11.2018; and the Family

Court has directed the applicant to pay Rs.3,000/- per month towards maintenance of the respondent. Feeling aggrieved by the fixation of

maintenance amount, the applicant / husband has preferred this revision application.

4. The contention canvassed by the learned counsel for the applicant is that respondent is not entitled to get any maintenance amount, as she is

residing separately on her own will; and she accepted that she does not want to live in a joint family. If the applicant make arrangement for separate

residence, then she is ready to live with him. In spite of that, the Family Court has committed an error by directing the applicant to pay Rs.3,000/- per

month to the respondent as maintenance amount.

5. None is appearing on behalf of the respondent, though served.

6. I have considered the contentions of the learned counsel for the applicant; and perused the record of the Family Court.

7. This Court is of the opinion that the Family Court has committed an error of law in allowing the application for grant of maintenance, as the case is

not in favour of the respondent / wife.

8. The respondent has accepted in her statement that earlier she lodged FIR

against the applicant and his par-ents for the commission of offence

punishable under Section 498-A of the Indian Penal Code, 1860 and also under Section 3 read with Section 4 of the Dowry Prohibition Act, 1961.

However, later on, she compromised the matter and re-turned back to her matrimonial house. Thereafter, she again left her matrimonial house. In

paragraph No.15 of her cross examination in which she categorically stated that she is ready to live with applicant, if the applicant makes arrange-

ment for their separate residence. However, in paragraph No.7 of her deposition, she stated that applicant has taken separate house near the

matrimonial house; and she re-mained with the applicant in the said house for a period of ten days, when she return to matrimonial house, which

shows that the applicant has made arrangement for separate living for respondent / wife. Even then, she is not ready to reside with the applicant by

taking false excuses. The re-spondent has also accepted that she has not filed any docu- ment regarding the proof of income of her husband. There-

fore, it is clear that the respondent / wife has also failed to prove income of the applicant.

9. Considering these facts, this Court is of the view that the findings recorded by the Family Court are not in ac-cordance with the evidence lead by

both the parties; and the Family Court has committed error in directing the applicant to pay Rs.3,000/- per month to the respondent as mainte-nance.

10. Hence, criminal revision deserves to be allowed; and is hereby allowed; and the impugned order dated 22. 11.2018 passed by Principal Judge,

Family Court, Mand-saur (MP) in Miscellaneous Criminal Case No.247/2016 is hereby set aside; and the application filed by the respondent / wife

under Section 125 of the Code of Criminal Procedure, 1973 for grant of maintenance is hereby dis-missed.

11. Consequently, Criminal Revision No.6171/2018 stands allowed and disposed of.