

(2020) 02 MP CK 0001

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 3286 Of 2018

Alok Chourasia

APPELLANT

Vs

Chanchal Modi @ Sarika Chourasia

RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 397, 401

Citation : (2020) 02 MP CK 0001

Hon'ble Judges : B.K. Shrivastava, J

Bench : Single Bench

Advocate : Siddharth Datt, Vijay Kumar Shrivastava

Final Decision : Dismissed

Judgement

1. This revision has been preferred under Section 397/401 of Cr.P.C. on 9/07/2018 on behalf of Alok Chourasia against the order dated 5/05/2018 passed by the Family Court, Jabalpur in M.J.C. No. 3/2017 by which the learned Lower Court granted the interim maintenance @ Rs.12,000/- per month to the respondent/petitioner Chanchal Modi.

2. It is an admitted position that petitioner Alok Chourasia is the husband of respondent Chanchal Modi. Chanchal Modi (wife) filed an application under Section 125 of Cr.P.C Annexure-2 before the Family Court, Jabalpur. Along with the aforesaid application, another application for interim maintenance was also filed (Annexure A-2).

Reply of the aforesaid application was submitted by the present petitioner (Annexure A-3). Thereafter, the Court below passed the order on 5/05/2018 and directed husband Alok Chourasia to pay the interim maintenance @ Rs.12,000/- per month to respondent wife Chanchal Modi till final decision of the original M.J.C.

3. It is submitted by learned counsel for the petitioner that the trial Court committed mistake by passing the aforesaid order. The order is not in

consonance with law and, therefore, deserves to be set aside. The respondent/wife has not disclosed certain fact within her knowledge about her income, education, business and living standard. After about one and half year, she suddenly filed the aforesaid petition. The wife did not place any document to show that petitioner is earning Rs. 2,00,000/-. The petitioner is working in a cloth shop and get the salary @ Rs.6,000/- per month and apart from this, he earned Rs. 4,000/- to Rs.5,000/- as commission agent. Upon the aforesaid ground, the petitioner requested to set aside the impugned order.

4. On the other side, learned counsel for the respondent supports the aforesaid order. It is submitted that petitioner himself disclosed his income @ Rs.2,00,000/- per month in his bio-data. It was the liability of the petitioner to establish his income. The trial Court passed the order after taking into consideration the entire documents, therefore no any interference is required.

5. It is true that the order is passed only for interim maintenance till final decision of the petition. The petitioner is having option to establish his income and liability. The respondent/wife may also produce some documents or evidence for proving the income of the petitioner/husband. In the case of 125 of Cr.P.C., the burden of proof is upon the husband to prove his income and liabilities. If the husband succeed to prove the aforesaid, then the trial Court may change the amount of compensation which has earlier granted as interim maintenance. When the final order will be passed, the Court will not bound to the interim order.

6. It appears from the entire record that the petitioner/husband did not submit any evidence regarding his income and liabilities. The wife produced bio-data Annexure A-3 which was given by the husband himself. In this bio-data, the husband mentioned his occupation as "wholesale cloth commission agent (ground floor)", "business of suiting and shirting (basement)" and also shows his income as "Rs.2,00,000/-" per month. The trial Court discussed the aforesaid document in para 6 and prima facie, came to the conclusion that the aforesaid document is not suspicious.

7. The trial Court has also discussed in para 7 that the statement of husband is not true that he is earning Rs.6,000/- per month. The Court also took note that the husband is claiming that he spent Rs. 1,10,000/-as fees of the wife for "fashion designing" course. In view of the Court, it is not possible to a person to pay the aforesaid huge amount if he earns only Rs.6,000/- per month. Prima facie, this observation is also found correct.

8. In para 8 of the impugned judgment, the trial Court has also mentioned that the husband only pleaded that the wife is earning from teaching, tuition and fashion designing but the husband did not produce any evidence in this regard. Only pleading cannot help the husband. If the husband pleaded the aforesaid, then he may produce the evidence during the trial and if the Court came to the conclusion that the wife is having sufficient sources to earn, then the Court may dismiss the application. At present, prima facie, only upon the basis of aforesaid

pleading, the interim maintenance cannot be denied.

9. The trial Court also relied on the law laid down in the case of *Rajathi Vs. J. Ganeshshan* A.I.R. 1999 S.C. 2374 in which it has been held that if the applicant-wife says that she is unable to maintain herself, it is sufficient to grant interim maintenance unless rebutted by the non-applicant. The trial Court also relied upon the law laid down in the case of *Samima Farukhi Vs. Shahid Khan* A.I.R. 2015 S.C. 2025 and said that mere pleadings of the husband are not sufficient to deny the claim of interim maintenance. If the husband is able bodied, then it shall be presumed that he is able to grant the maintenance.

10. Therefore, looking to the entire case, it appears that the husband did not produce any documentary evidence to satisfy the Court about his income and liabilities. On the other side, the wife produced the bio-data given by the husband. In addition to that, the Court took note of the pleadings of both the parties and came to the conclusion that the interim maintenance is required. The view of the Court is found satisfactory. No any infirmity or illegality is found in the aforesaid order. The option is available with the husband to produce the sufficient evidence and, thereafter, the Court may pass the final order in this regard.

11. By the interim order dated 16/07/2018, this Court directed the husband to pay Rs.7,000/- per month to the respondent. Therefore, it is directed that the remaining amount due @ Rs.5,000/- per month will be paid by the husband within three months from the order of this Court, otherwise, the trial Court will proceed to recover the aforesaid amount.

12. Accordingly, the revision having no force is dismissed.