
(2017) 02 MP CK 0216
In the Madhya Pradesh High Court
Case No : 616 of 2014

Jitendra Singh Narwariya @ Jeetu

APPELLANT

Vs

The State Of Madhya Pradesh

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 125](#) — Order for maintenance of wives, children and parents

Citation : (2017) 02 MP CK 0216

Hon'ble Judges : S K Awasthi

Bench : Single Bench

Advocate : Sanjay Kumar Sharma, Anoop Singh Kushwah

Final Decision : Allowed

Judgement

1. This revision application has been directed against the order dated 31.05.2014 passed by Principal Judge, Family Court, Gwalior in Cr.M.J.C.No.173/2013, whereby the family Court has fixed monthly maintenance of Rs.5,000/- per month payable to the present applicant by the respondent. The applicants are aggrieved by the insufficiency of the maintenance amount fixed by the court below.

2. The facts leading to filing of the present case are that the marriage was solemnized between the applicant No.1 and the respondent on 28.01.2007 and the applicants No.2 and 3 were born out of the wedlock of applicant No.1 and respondent. Allegation against the present applicants is that the respondent and his family members continuously made demand of dowry and harassed the applicant for non-fulfillment of the same, due to which she was dragged out from the matrimonial house on 04.09.2013 when the respondent had

demanded Rs.5,00,000/- from her. The applicant is residing with her parents presently and has no means to maintain herself and her daughters whereas according to the applicant, the respondent is earning Rs.60,000/- per month out

of his jewellery business. Therefore, an application under Section 125 of Cr.P.C. was filed leading to pronouncement of the impugned order dated 31.05.2014. Feeling unsatisfied with such quantum of maintenance amount, the present revision application is filed.

3. Learned counsel for the applicant has invited attention of this Court to the findings of the trial Court recorded in paragraph No.5 onward in the impugned order and submitted that the family Court clearly concluded that the respondent has not conducted cross-examination with respect to the amount of money earned by the respondent and therefore, fixation of such meager maintenance of Rs.5,000/- per month is perverse.

4. To the contrary, learned counsel for the respondent submitted that the primary burden lies on the applicant under Section 125 of Cr.P.C. to prove the monthly income of the respondent, and till such burden is not discharged the respondent cannot be directed to pay any maintenance amount to the applicants. Therefore, the impugned order is just and proper and based on the sound reasoning.

5. Having considered the rival contention and perused the record placed before this Court, in the opinion of this Court the critical issue of monthly income of the respondent has been addressed in the statement of the applicant which has not been sufficiently controverted in

the cross-examination. Apart from it, the applicant alone could not be burdened with the maintenance and upbringing of the applicants No.2 and 3. With respect to the contention of the respondent that the primary burden lies on the applicant to prove the monthly income of the respondent, it is observed that the applicant No.1 in her statement has discharged her burden and therefore the onus was on the respondent to controvert the same in which the respondent has failed. While taking this view of the matter, it cannot be concluded that the monthly income of respondent was Rs.60,000/- per month. However, the same does not seem to be as low as Rs.8000 - 10000/- per month. Considering the standard of living of the respondent which has come on record. Therefore, the monthly income of the respondent can be assessed to be around Rs.25,000/- per month for the purpose of calculating the maintenance amount and in proportion, the applicants are entitled to receive Rs.12,500/- per month in place of Rs.5,000/- per month as fixed by the family Court. The enhanced amount shall be paid from the date of passing of this order. Apart from it, the other terms fixed by the court below shall remain intact.

6. Taking of this view of the matter, the instant revision application is allowed to the extent indicated herein above.