

(2017) 05 MP CK 0110
In the Madhya Pradesh High Court
Case No : 740 of 2016

Pintu alias Vinod Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 18-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 397](#), [Section 401](#), [Section 401](#), [Section 125](#), [Section 125](#)

Citation : (2017) 05 MP CK 0110

Hon'ble Judges : G.S.Ahluwalia

Bench : Division Bench

Advocate : J.S. Rathore

Judgement

1. This revision under Section 397, 401 of CrPC has been filed against the order dated 10.06.2016 passed by First Additional Sessions Judge, Bhind in Criminal Revision No.19/2014 by which the Revisional Court has set-aside the order dated 11.12.2013 passed by JMFC, Mehgaon, District Bhind in M.Cr.C.No.14/2008.

2. The necessary facts for the disposal of the present revision in short are that the respondent filed an application under Section 125 of CrPC for grant of maintenance at the rate of Rs.3,000/- per month. It was the case of the respondent that she got married to the applicant on 22.06.2004. Immediately after the marriage, the applicant started harassing and treated her with cruelty on the ground of demand of dowry. It was further alleged that because of the harassment, the respondent is residing separately with her father and she is unable to maintain herself. The father of the applicant has 13 bigha of agricultural land and the applicant is an Electric Mechanic. She had lodged a FIR for offence under Section 498-A of IPC against the applicant.

3. The applicant filed his reply and denied the allegations of demand of dowry. It was further stated that the respondent is residing separately without any

reasonable reason. The respondent is a handicapped and unemployed person having no source of income. A false case for offence punishable under Section 498-A of IPC has been lodged by the respondent. The respondent is residing with her brother-in-law Charan Singh as his wife and since she is living an adulterous life, therefore, she is not entitled for maintenance.

4. The Trial Court after recording the evidence of the parties came to the conclusion that the applicant has failed to prove that the respondent is living an adulterous life but at the same time it was held that the respondent is residing separately from the applicant without any reasonable reason and, therefore, she is not entitled for maintenance.

5. Being aggrieved by the order of the Magistrate, the respondent filed a criminal revision. The Revisional Court after considering the evidence led by the parties came to the conclusion that the Magistrate committed an illegality while dismissing the application under Section 125 of CrPC. It was further held that the respondent is residing separately from the applicant because of the fact that she was harassed for demand of dowry and accordingly it was held that she is residing separately for reasonable reason. Accordingly, the application filed by the respondent under Section 125 of CrPC was allowed and it was held that the respondent is entitled to get the maintenance amount of Rs.1,500/- per month from the applicant from the date of the order.

6. Being aggrieved by the order passed by the Revisional Court, the applicant has filed the present revision.

7. It is submitted by the counsel for the applicant that the respondent had made false allegations of cruelty and he has been acquitted for the offence under Section 498-A of IPC. The respondent is residing separately without any reasonable reason and, therefore, she is not entitled for receipt of maintenance amount. The applicant is still ready and willing to keep the respondent with him. It is further submitted that this Court by order dated 20.12.2016 had granted time to the counsel for the respondent to seek instructions that whether the respondent is willing to go with the applicant and live with him or not. However, inspite of repeated opportunities, the respondent did not come up with a specific case that whether she wants to live with the applicant or not. Accordingly, it was submitted that as the respondent is residing separately without any reasonable reason, therefore, she is not entitled for any maintenance amount. None appeared for the respondent. Heard the learned counsel for the applicant.

8. The Magistrate while passing the order dated 11.12.2013 had specifically come to the conclusion that the applicant has failed to prove the allegation that the respondent is living an adulterous life. Making a false allegation against the character of a person by itself amounts to cruelty. Once, the applicant had made a specific allegation against the respondent that she is living an adulterous life and when the applicant failed to prove this allegation then it can be safely said that the behavior of the applicant towards the respondent was cruel. Accordingly,

the false allegation of living an adulterous life in itself is sufficient for the respondent not to reside with the applicant, therefore, under these circumstances, it cannot be said that the respondent is residing separately from the applicant without any reasonable reason.

9. So far as the order dated 20.12.2016 by which the respondent's counsel was directed to seek instructions from the respondent that whether she is willing to go with the applicant or not is concerned, the respondent has filed certain documents to show that the applicant had earlier filed a petition under Section 13 of Hindu Marriage Act which was subsequently withdrawn and after the order dated 10.06.2016 was passed by the Revisional Court, the respondent tried to reside in the house of the applicant with the help of her relatives but every time he refused to accept her. Accordingly, she has filed a petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights. Thus, it is clear that the respondent is still ready and willing to live with the applicant but in fact it is the applicant who is not ready to accept the applicant.

10. Accordingly, this Court is of the view that the Revisional Court did not commit any mistake in setting-aside the order dated 11.12.2013 passed by the Magistrate. Accordingly, this revision fails and is hereby dismissed.