
(2011) 11 MP CK 0031

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 1144 of 2011

Pushpa Thakur (Smt.) and Anr

APPELLANT

Vs

Bhagwandas Bhavedi

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2012) ILR (MP) 277

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.—The applicants/wife and the son of the respondent have preferred this revision for further enhancement of the sum being dissatisfied with the order dated 25.4.2011 passed by IInd Principal Additional Judge of Family Court Jabalpur in MJC No. 35/07, whereby allowing their application filed u/s 125 of Cr.P.C., the respondent has been directed to pay only Rs. 600/- per month to the applicant no. 1 and Rs. 200/- per month to applicant no. 2. The applicant no. 1 being wife of respondent on her own behalf and on behalf of minor son, the applicant no. 2, filed an application against the respondent u/s 125 of Cr.P.C. with a prayer to direct the respondent to pay them the sum of monthly maintenance for their livelihood. As per averments of the application, the applicant no. 1, got married with the respondent no. 1 in accordance with Hindu rites and rituals on 27.1.2004. Out of such wedlock, the applicant no. 2 was borne on 20.6.2005. As per further averments, subsequent to marriage, the applicant no. 1 was subjected to harassment and cruelty in the matrimonial home by the respondent where she was also treated to be the servant of the family and even in her pregnancy period, she was subjected to same harassment and cruelty by the respondent and his other family members. In continuation of such activities, by taking all her belonging she along with the applicant no. 2, the minor son was ousted from the matrimonial home without any sufficient cause

and since then under compulsion, they were residing in the parental home of the applicant no. 1. It is also stated that the respondent did not make any effort to bring them back to his home and in such premises, they have neglected and refused by the respondent. It is further stated that the applicant no. 1 being household lady, is not having any source of income and the applicant no. 2 being minor, is not in a position to earn. In such premises, they are in need of sum for maintenance from the respondent. As per further averments, the respondent is involved in the business of contractor of furniture, and of maintenance of the houses. Besides this, he is having the house property and agricultural land and from all sources, he is earning near about Rs. 10,000/- to Rs. 12,000/- per month. With these submissions, the prayer for appropriate direction to the respondent to pay the maintenance at the rate of Rs. 3000/- per month to the applicant no. 1 and Rs. 2,000/- per month to applicant no. 2, is made.

2. In reply of the respondent, the factum of the marriage and birth of the applicant no. 2 from such wedlock are admitted while, the allegations regarding harassment and cruelty committed by the respondent with the applicant have been denied. It is also stated that the applicant no. 1 along with her son-applicant no. 2, is residing, separately from the respondent, in her parental family without any sufficient cause while, the respondent was always remained ready and willing to keep them with him in his family. It is stated that he did not have any business of the contractor-ship or maintenance of the houses and in such premises, he is not having any income from such alleged business. The averments regarding income from the agricultural field is also denied. As per further averments, the respondent is working as daily wage labour at Bhopal and out of which, his income is not so high to pay the amount of maintenance as prayed by the applicants. Some other allegations have also been made against the applicant no. 1 in the reply and the prayer for dismissal of the application was made.

3. In view of the aforesaid pleadings of the parties, some issues were framed by the trial Court on which, the evidence was adduced by the parties. On appreciation of the same, by allowing the applicants' application in part, the respondent was directed to pay them Rs. 600/- per month and Rs. 200/- per month respectively to the applicant no. 1 and applicant no. 2 for their maintenance. Being dissatisfied with the impugned order, the applicants have come to this Court with this revision for further enhancement of such sum in accordance with their prayer made in the application filed u/s 125 of Cr.P.C.

4. Applicants' counsel after taking me through pleadings of the parties, evidence led by them along with the impugned order said that, on appreciation of the evidence even after holding the applicants have been neglected and refused by the respondent, without considering the present price index of the food stuffs and other necessary things in the market, has allowed their application for the sum at very lower side, which is not sufficient to fulfill the regular necessity of the applicants. So far income of the respondent is concerned, by referring para

10 of the cross-examination of respondent Bhagwandas (DW-1), said that he is having the sufficient property and the source of income to pay the reasonable sum of the maintenance to the applicants and prayed to enhance the sum awarded by the trial Court by allowing this revision.

5. On the other hand responding the aforesaid arguments, Shri Brijesh Verma, learned appearing counsel by justifying the impugned order said that the same is based on proper appreciation of the evidence and also taking into consideration the monthly income of the respondent i.e. near about Rs. 2,700/- per month hence, it does not require any interference at this stage for further enhancement of the sum. In continuation, he also argued that besides the liabilities of the applicants, the respondent is also having the liabilities of some other family members i.e. mother and younger brother. He also said that the respondent was ready and willing to keep the applicants with him in his family but without sufficient cause, they are residing separately and in such premises, the applicants are not: entitled for further enhancement of the sum and prayed for dismissal of this revision.

6. Having heard the counsel at length, keeping in view their arguments, after perusing the record along with the impugned order, I am of the considered view that this revision deserves to be allowed in part.

7. It is apparent that after passing the impugned order holding the applicants are neglected and refused by the respondent without any sufficient cause with a findings that they did not have any source of income for their livelihood, such findings of the trial Court have not been challenged on behalf of the respondent by filing any revision or any other proceedings. So in such premises, such findings of the trial Court have got finality between the parties and the same does not require any interference at this stage. So, only question remains in this revision whether the applicants are entitled for further enhancement in the monthly sum awarded by the trial Court or not.

8. It is settled law that if the wife and children like applicants are non-earning members and have been neglected and refused by the husband/father like the respondent then, it is the duty of the husband like the respondent to pay them the appropriate sum for their livelihood and maintenance. It is also settled proposition that if the husband like the respondent is healthy and able bodied person then, on account of less income, he cannot escape from his liability to pay the reasonable sum of maintenance to his wife and children.

9. Although, in the available circumstances and evidence of the case at hand, the respondent is not having the less income, on the contrary in view of para 10 of his deposition recorded in the trial Court, he is having the house along with the agricultural land. In such premises, it could not be deemed that the respondent is having only income Rs. 2,700/- per month. His income appears to be of that level on which he may give sufficient and reasonable sum to the applicants for their livelihood. Looking to the current price index of the market regarding food

stuffs and other necessary things for human being, Rs. 600/- per month and Rs. 200/- per month for applicant no. 1 and applicant no. 2 respectively, is apparently at very lower side. Whenever the amount of maintenance is awarded to the wife and children then, the Courts are bound to consider all the probable circumstances, that on receiving the sum awarded by the Court, the wife and children may maintain themselves properly by taking the necessary food of both the times. Keeping in view such aspect, on examining the case of applicants, in the present scenario of market and price index of food stuffs, Rs. 800/- per month even for one person either the applicant no. 1 or applicant no. 2 is no sufficient and in such they cannot survive by fulfilling their necessity. In such premises, it is held that they are in need of more sum of maintenance from the respondent. In the light of the present price index of the food stuffs in the market and also looking to the status of the parties, I am of the considered view that now-a-days, minimum Rs. 50/- per day for applicant no. 1 and Rs. 30/- per day for a minor son applicant no. 2 are required for their maintenance. It is needless to state here that wife and children are also entitled to live in equal status of the respondent and respondent is bound to pay that much amount as maintenance according to his status.

10. In view of the aforesaid discussions and keeping in view the status of the applicants as well as the respondent and their family circumstances, I deem fit to enhance the sum of the maintenance awarded by the trial Court from Rs. 600/- per month to Rs. 1500/- per month for the applicant no. 1 and from Rs. 200/- per month to Rs. 900/- per month for the applicant no. 2. Therefore, by allowing this revision in part, the respondent is directed to pay Rs. 1,500/- per month to the applicant no. 1 and Rs. 900/- per month to the respondent no. 2 from the date of the impugned order i.e. 25.4.2011. Till this extent the impugned order is modified while other findings of the same are hereby affirmed.