

(2017) 04 MP CK 0110
In the Madhya Pradesh High Court
Case No : 632 of 2016

Rafeeqe Kha S/o Mehboob Kha

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 125](#) — Order for maintenance of wives, children and parents
[Indian Penal Code, 1860](#), [Section 498-A](#)

Citation : (2017) 04 MP CK 0110

Hon'ble Judges : S.K.Awasthi

Bench : Single Bench

Advocate : Pawan Singh Raghuwanshi, Rajiv Shrivastava

Judgement

1. This revision application is directed against the order dated 26.4.2016 passed by Principal Judge, Family Court, Vidisha in MJC No.48/2015, by which the application filed by the applicant for grant of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (CrPC) was dismissed.

2. The facts leading to filing of the instant revision application are that the marriage was solemnized between the applicant and respondent on 18.2.2014 as per Hindu rituals and customs. The allegation against the respondent 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 2.2.2015 when the respondent and his family members demanded Rs.10.00 lacs from her. The applicant is residing with her parents and has no means to maintain herself whereas according to the applicant, the respondent is working as Constable in Police Department and he is earning Rs.17800/- per month as salary. He is also having 60 bighas agricultural land, out of which he is earning Rs.3.00 lacs per annum. Therefore, an application under Section 125 of CrPC was filed for getting Rs.8000/- per month as maintenance from the respondent.

3. The application was dismissed by the Family Court on the ground that the applicant is residing without any reasonable and sufficient cause with the respondent, therefore, she is not entitled to get any maintenance amount from the respondent.

4. The grounds canvassed by the applicant in the instant revision application are that the Court below has committed error by dismissing the application under Section 125 CrPC in favour of the respondent. The learned court below came to hold that the respondent did not want to keep the applicant as he has apprehension that she can commit any unwanted incident against him and on the other hand a finding was given that the applicant does not deserve the monthly maintenance from the respondent as she is willingly living separately from her husband. Without any substance the court below had given a finding that no cruelty has been committed by the respondent and the applicant herself has deserted the house of the respondent and, therefore, is not liable to get any monthly maintenance. From the evidence available on record, it is found that the respondent is working in Government service and is not interested to keep the applicant with him. Denial of monthly maintenance to the wife is against the social justice and law. Being the husband, it is the duty of the respondent to either keep his wife or to pay monthly maintenance. In these circumstances, the applicant is entitled to receive the maintenance amount.

5. To the contrary, learned counsel for the respondent supported the impugned order and submitted that the order passed by the Court below is just and proper and based on sound reasoning and calls for no interference.

6. I have considered the rival contentions and the facts leading to filing of the instant case. This Court is of the opinion that the trial Court has committed an error in dismissing the application for maintenance to the applicant because the testimony of the applicant recorded before the Court below reflects that she has shown her willing to reside with the respondent. Further, the respondent admitted in his cross-examination that he is not willing to keep the applicant as he has apprehension that she can commit any unwarranted incident against him. In these circumstances, the Court below has committed error in holding that the applicant herself has deserted the house of the respondent. The respondent stated in his examination-in-chief that on the basis of the report lodged by the applicant a criminal case under Section 498-A of IPC has been registered against him. The respondent further stated that he has also filed an application for getting divorce against the applicant and after filing of that application the applicant has initiated a case under Protection of Woman from Domestic Violence Act 2005 against him. In these circumstances, it cannot be said that the applicant is living separately in her parental house without any reasonable and sufficient cause.

7. Applicant has submitted that she has no source of income and she is fully dependent on her parents, though the respondent stated that the applicant is working in ICICI Computer Centre at Vidisha. Apart from that, she is also

teaching in Government Girls College by which she is getting Rs.22000/- per month, therefore, she is able to maintain herself. In the cross-examination, the respondent has accepted that he has not filed any document regarding the income of the applicant. He has admitted that ICICI Computer Centre is owned and run by the brother of the applicant. Although an attempt was made by the respondent to prove that the applicant is managing ICICI Computer Centre by adducing the evidence of Shubham Sharma (NAW-2) and Rinkesh Sharma (NAW-3) but the statements of both the witnesses are not trustworthy because their statements are ambiguous and without support of any reliable proof.

8. The respondent has admitted that he is working as Police Constable in Police Station Civil Line, Vidisha and he is getting Rs.17800/- per month as salary. Therefore, he is competent enough to pay the maintenance amount to the applicant-wife.

9. Hence, the present revision application is allowed and respondent is directed to pay Rs.5000/- (Rupees Five Thousand) per month towards the maintenance of the applicant till further orders. The amount shall be credited in the bank account of the applicant on 5th day of every month.

10. In view of above discussion, this revision is partly allowed.