

(2017) 05 MP CK 0017
In the Madhya Pradesh High Court
Case No : 4864 of 2016

Smt. Shakun Bai

APPELLANT

Vs

Shyam Singh

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 125](#) - Saving of inherent powers of High Court — Order for maintenance of wives, children and parents

Citation : (2017) 05 MP CK 0017

Hon'ble Judges : Anjuli Palo

Bench : Single Bench

Advocate : Navin Kumar, Manish Kumar

Final Decision : Allowed

Judgement

1. This petition has been filed under Section 482 of the Cr.P.C. against the order dated 18.1.2016 passed by 9 th Additional Sessions Judge, Bhopal in Criminal Revision No.86/2015 arising out of order dated 12.11.2014 passed by the learned JMFC, Bhopal in MJC No.827/2013, whereby the learned JMFC has refused to grant the maintenance under Section 125 of the Cr.P.C. to the applicant and learned appellate Court allowed maintenance allowance of Rs.1,000/- per month in favour of the applicant.
2. The applicant has prayed for enhancement the maintenance amount upto Rs.5,000/- in place of Rs.1,000/- per month on the grounds that the respondent has proper source of income. He is earning a sum of

Rs.3,00,000/- annually. The applicant is living on the mercy of her parents. In these hiking days of price, the applicant is unable to maintain herself in a pittance amount of Rs.1,000/- per month.

3. Heard and perused the record.

4. Rule of best evidence is not applicable in maintenance proceedings. The proceedings being the quasi civil proceedings, probabilities are required to be brought on record. When the husband (respondent) is an able person, it has to be inferred that he has the means to pay the maintenance. It is the solemn duty of the husband and he cannot run away from his duties by simply saying that he has no earnings.

5. It is not in dispute that the respondent is working as Home Guard and receiving a fixed salary. Learned 9th Additional Sessions Judge, Bhopal has found that the respondent was earning a sum of Rs.6,000/- per month as salary. After the death of his father, the respondent has an agricultural land in his possession, therefore, the respondent has an income of Rs. 12 lacks from agricultural land. Learned lower appellate Court allowed the maintenance application of the applicant under Section 125 of the Cr.P.C. and granted a sum of Rs.1,000/- per month in favour of the applicant. At the time of presentation of maintenance application under Section 125 of the Cr.P.C. in the year 2013 till now it is not in dispute that rate of essential things/daily needs is regularly increasing day by day. Any major person cannot survive in the sum of Rs.1,000/- per month. Hence, The applicant is entitled to get the maintenance according to the status and salary of the respondent.

6. In case of "Bhuvan Mohan Singh Vs. Meena AIR 2014 SC 869, it is held that Section 125 of the Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of

sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband.

7. Keeping in view the above discussion, the present petition is partly allowed. The impugned order dated 18.1.2016 is set aside. It is directed that the respondent shall pay the maintenance amount of Rs.2,000/- per month to the applicant from the date of order of JMFC i.e. on 12.11.2014.