

Neelam And Others Vs Radheshyam Patel

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Jan. 17, 2025

Hon'ble Judges: Prem Narayan Singh

Bench: Single Bench

Advocate: Ritumbhara Pandey, Mohan Sharma,

Final Decision: Disposed Off

Judgement

JUDGMENTTAG-JUDGMENT

Prem Narayan Singh,

With consent of the parties, heard finally.

2] This order shall govern the disposal of these criminal revisions as they are arisen out of same order dated 22.08.2023 passed in Miscellaneous

Judicial Case (Criminal) No. 592/2019 by the learned IIIrd Additional Principal Judge, Family Court District Indore. Hence, they are heard analogously

and are being decided by this common order.

3] Being aggrieved by the judgment dated 22.08.2023, passed in MJC(Cri) No.592/2019, by learned IIIrd Additional Principal Judge, Family Court,

District-Indore, the Criminal Revision No. 4570/2023 has been filed by Neelam W/o Radheshyam Patel/petitioner No. 1 and Namami D/o

Radheshyam Patel for enhancement of maintenance amount of Rs.12,000/- & Rs.8000/- upto Rs.40,000/- (in total), while the Criminal Revision No.

4157/2023 has been filed by respondent/Radheshyam to set aside the order of maintenance passed in favour of his wife and daughter. Further, the

wife-Neelam and daughter-Nimami will be addressed as petitioner Nos. 1 and 2 while husband-Radheshyam will be addressed as respondent.

4] Prosecution story in nutshell is that the marriage between the petitioner No. 1 and respondent was solemnized on 25.05.2015 as per hindu customs

in Indore. In marriage, the family members of the petitioner gave household items, cash and jewellery as dowry. However, after sometime, the

respondent and his family members started harassment and cruelty with petitioner No. 1 by demanding Rs.5 lakhs and a four wheeler. Due to not

fulfilling the said demand, the behaviour of respondent was very rude to petitioner No. 1 and he used to beat her, also abuse her on a day to day. On

17.06.2016, their daughter Nimami was born out of this wedlock. Later on, petitioners were forced to go back to her maternal house and respondent

filed petition for divorce under Section 13A of Hindu Marriage Act. Therefore, the petitioners moved an application under Section 125 of Cr.P.C. for

claiming maintenance.

5] Learned counsel for the petitioners has pleaded in his argument that the learned Family Court has passed the order only on the basis of respondent's

avermments, the trial Court did not pay any heed on the evidence available on record. The respondent is a businessman and runs R.S. Institute as a

Director through which he earns Rs.65000/- to Rs.70,000/- per month. The petitioners were compelled to live in her maternal house without any

monetary relief. The petitioners are totally dependent on the respondent. Petitioner No. 1 is not an earning lady. She has not sources for her livelihood.

Her father expired on 09.05.2022. Counsel for the petitioners has also contended that the maintenance awarded to the petitioners is very meagre and

lower side, which can be extended upto Rs.40,000/- per month.

6] On the other side, learned counsel for the respondent has opposed the contentions of the petitioners and submitted that the petitioners have falsely

shown the respondent to be Director of one R.S. Institute. The respondent has nothing to do with R.S. Institute and photographs (Ex.P/5) which were

inadmissible in the evidence, were taken into consideration by the trial Court and came to hold that respondent is associated with R.S. Institute. The

petitioners have not furnished any certificate in terms of Section 65 of Evidence Act and have also not produced negatives of photographs. There is no

documentary evidence to prove that the respondent is earning Rs.65,000/- to Rs.70,000/- per month. It is further submitted that the petitioner No. 1 is

an educated lady having M.Com. Degree and also gainfully employed by performing the profession of tailoring but the trial Court has erred in law in

not holding that petitioner No. 1 is earning lady. Further, it is submitted that the trial Court has incorrectly considered the ITRs of respondent and

wrongly presumed the income to be Rs.40,000/- per month. The maintenance Rs.20,000/- awarded to the petitioners is extremely higher side and

respondent has no means to pay such a exorbitant amount. On these grounds, request of petitioners is required to be rejected and order of

maintenance be set aside.

7] In view of the arguments and rival submissions of counsels for both parties, I have gone through the record.

8] At the outset, in order to examine the validity of maintenance award, the testimonies of both parties alongwith their documentary evidence, is

contemplated. Neelam (AW-1) herself has deposed regarding harassment and cruelty in her examination-in-chief, which has not been rebutted in her

cross-examination. Respondent Radheshyam (NAW-1) and witness Daduram (NAW-2) have also deposed in support of their averments. Witness

Daduram is the father of respondent Radheshyam. The respondent and witness have denied the allegations of petitioner. However, it is revealed that

a divorce proceeding has been filed by respondent himself. Hence, there is sufficient reasons for petitioner is living separately from her

husband/respondent.

9] The allegations are also more or less proved. In this way, findings of learned trial Court with regard to award maintenance in favour of petitioner

is found correct in the eyes of law. However, quantum of maintenance amount remains crux of the case.

10] On this aspect, as per law laid down by Hon'ble Apex Court in the case of Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy (AIR

2017 SC 2383), it is a well settled position of law that a wife can get 25% from her husband's salary as maintenance. In the case at hand, the learned

family Court has assumed Rs.40,000/- per month on the basis of Income Tax Returned filed by the respondent. It is also contended that the husband

has the liability of his parents, therefore, the amount awarded by the trial Court could not be enhanced. Further in view of the law laid down by

Hon'ble Apex Court in the case of Kalyan Dey Chowdhary (Supra), it is agreed that wife can get approximately 25% from her husband's salary

considering the other facts.

11] As per law laid down by Hon'ble Apex Court in the case of Kalyan Dey Chowdhary (supra), wife is entitled to get 25% of the income of the

husband. Hon'ble High Court of M.P., endorsing the aforesaid citation in the case of Amit Pandey vs. Manisha Pandey reported as 2020 Law

Suit (M.P) 1098, adumbrated as under:-

"The Hon'ble Apex Court in the case of Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy (AIR 2017 SC 2383), has held that 25% of

the income of the husband would be just and proper and not more than that. So, apart from that when ex-parte order was passed in favour of the

respondent/ wife, then learned trial Court should have awarded 25% of the net income of the petitioner/non-applicant as maintenance and not more

than that. So, it is appropriate to reduce the awarded maintenance amount of Rs.10,000/- per month to Rs.7,000/- per month which would be paid by

the petitioner/non-applicant to the respondent/wife. The decisions in Deb Narayan Halder Vs. Smt. Anushree Halder (AIR 2003 SC 3174) and

Chandrakalabai Vs. Bhagwan Singh (2002 Cr.L.J. 3970) are not at all applicable in the case of petitioner/non- applicant.

12] In view of the settled position of law, a wife can get only 25% from her husband as maintenance. In the case at hand, the husband is earning

approximately Rs.40,000/- per month, therefore, the wife is entitled to get maintenance 25% of that amount. That means, the maintenance amount can

be awarded to the tune of Rs.10,000/-, however, in case where the husband is also having liability of his parents, the maintenance amount can be

reduced to some extent. Hence in view of the income of the husband which is approximately Rs.40,000/- per month, it would be appropriate to award

Rs.10,000/- to petitioner No. 1/wife and Rs.6,000/- to petitioner No. 2/daughter.

13] So far as the request of petitioner No. 2 to increase the maintenance amount is concerned, on this aspect, the view taken by this Court in the case

of Shikha Vs. Avaneesh Mahodaya, [2024 LawSuit (MP) 554], is worth to be quoted here :-

14. In the upshot of the aforesaid views laid down by Hon'ble Apex Court and this Court, this Court is of the considered opinion that a well qualified

spouses should not be left idle or to remain idle basing on their maintenance amount received from their husband. Nevertheless, Section 125 of Cr.P.C

has not been constituted to create an army of idle or inactive people waiting for maintenance to be awarded from the income of the other spouse. In

the case at hand, the wife is well qualified, she has Masters degree in Commerce and also done Shipping and Trading Diploma Course, thus she has

earning capacity and therefore the exorbitant maintenance should not be awarded to her. It can be assumed that she can easily earn a good income by

indulging herself in any work or business. Neither a married woman is debarred from doing job, nor a married woman living separately and also

obtaining maintenance from her husband is prevented to employ herself and to earn some income for her livelihood.

14] In this regard the law laid down by Hon'ble Apex Court in the case of Jabsir Kaur Sehgal vs. District Judge Dehradun and Ors. reported as AIR

1997 SC 3397 is condign to be quoted here:-

The Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses

for his own maintenance and those; he is obliged under the law and statutory but involuntary payments or deductions. Amount of maintenance fixed

for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her

husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or

extortionate.

15] Admittedly in this case, petitioner No. 1 is well educated and having M.Com. Degree. It is not expected from her that she would be always

dependent upon her spouse who has also some liabilities of his family members. The maintenance amount should not be excessive, extravagant or

extortionate. At this juncture, the following excerpts of Rajnesh Vs. Neha and Ors. [(2021) 2 SCC 324] is reproduced below:-

The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the

applicant was accustomed to in her matrimonial home. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two

extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor

should it be so meager that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself

with reasonable comfort.

16] In view of the aforesaid analysis, law laid down by Hon'ble Apex Court, looking to the income of husband so also the liabilities and the fact that

the wife is well qualified lady, this Court is of the considered opinion that, maintenance amount of Rs.12,000/- per month is on higher side and same is

required to be reduced to Rs.10,000/- per month and on the same line, maintenance amount of daughter/petitioner No. 2 is also required to be reduced

from Rs.8,000/- to Rs.6,000/- per month. So far as the date of initiating the maintenance is concerned, learned family Court has initiated maintenance

amount from the date of application i.e. 16.05.2019 whereas the interim maintenance amount was awarded by learned family Court from the date of

order i.e. 19.12.2019. In this case, the income of husband is proved as Rs.40,000/- per month by the trial Court and total maintenance awarded to the

petitioners of Rs.16,000/-. Hence, adopting a balance approach, it would be better to award maintenance from the date of order of interim

maintenance i.e. 19.12.2019.

17] In conspectus of the aforesaid deliberation in entirety, the petition (Cr.R. No. 4570/2023) of wife for increasing maintenance is outrightly rejected,

while petition (Cr.R. No. 4157/2023) of husband is partly allowed and impugned order is modified to the extent that the husband shall pay maintenance

of Rs.10,000/- per month in place of Rs.12,000/- per month to wife/petitioner No. 1 and Rs.6,000/- per month in place of Rs.8,000/- to the

daughter/petitioner No. 2 per month. The order of maintenance would be initiated from the date of 19.12.2019, from which the order of interim

maintenance has been passed. It is also made clear that if any amount already deposited under the head of maintenance as interim maintenance or

any other maintenance, shall be adjusted. The remaining portion of the impugned order does not warrant any interference.

18] Registry is directed to send a copy of this order to the trial Court for information and compliance.

19] In view of aforesaid, both revision petitions stands disposed of.