

Smt. Sunita Ghosh Vs Shri Pradeep Ghosh

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Jan. 27, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 125, 397, 398, 399, 400, 401
Protection of Women from Domestic Violence Act, 2005 " Section 23

Hon'ble Judges: Prem Narayan Singh, J

Bench: Single Bench

Advocate: Prateek Maheshwari, Ayush Jain

Final Decision: Dismissed

Judgement

JUDGMENTTAG-JUDGMENT

Prem Narayan Singh, J

With the consent of the parties, heard finally.

1. This criminal revision has been filed by the petitioner under Section 397 of Cr.P.C., 1973, being aggrieved by the judgment dated 03.03.2022, passed

by learned Additional Sessions Judge, Indore, in Cr.A. No.178/2019, for setting aside or modifying the impugned order whereby the learned Judge has

allowed the appeal filed by respondent/husband and order dated 16.05.2019, passed by Learned JMFC, Indore granting interim monetary relief

amounting Rs.20,000/- per month under Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "D.V. Act"), has been

set aside.

2] Brief facts of the case are that the marriage of the parties was solemnized on 08.02.2011 as per the Hindu Rites and Rituals. The petitioner had

already given birth to a daughter Arohi out of her previous wedlock. The respondent was very well aware about the first marriage of the petitioner

and also aware about daughter from first marriage. At the time of marriage the respondent was working in ICICI Bank while the petitioner was

working in Employees Provident Fund Corporation. Soon after the marriage, behaviour of the respondent/husband became cruel towards the petitioner

as well as with daughter. The respondent also neglected the petitioner. He used to shout badly and also used to demand money from her brother.

Later on, in the year 2014, the respondent moved to Bhopal on the pretext of a new job, and ever since the parties are living separately. After failing in

attempts of reconciliation, on 17.05.2018, the petitioner was constrained to file a complaint under the D.V. Act.

3] Learned counsel for the petitioner/wife has contended that the learned trial Court as well as Appellate Court have committed grave illegality in

awarding lesser maintenance in favour of wife. The petitioner was compelled to live separately. The petitioner is liable to get maintenance as per

family status of the respondent, being a wife, she has started to live separately because of mental and physical cruelty committed by the respondent. It

is further submitted that the impugned order passed by the learned Appellate Court by refusing to allow the maintenance to the petitioner and her child,

is illegal, incorrect and liable to be set aside since the very foundation on the basis of which appeal was filed that the respondent/husband remains

unemployed and having no means remained completely overturned with the latest affidavit. In view of the judgment, Rajnesh Vs. Neha reported as

(2021) 2 SCC 324, both parties filed their respective affidavits, whereby the petitioner made a full and true disclosure of her income as an employee

of Employee Provident Fund Corporation, earning Rs.55,406/-. It is further submitted that the respondent/husband was earning about Rs.2 lakhs per

month. The respondent/husband made a disclosure of Salary of Rs.98,000/- per month (Annexure-P/7). He did not file any salary slip or any other

relevant documents. He has also placed his reliance in the cases of Sunita Kachhwaha Vs. Anil Kachhwaha, (2014) 16 SCC 715, Reema

Sulkan Vs. Sumer Singh Sulkan, (2019) 12 SCC 303 and Shailja Vs. Khobanna, (2018) 12 SCC 199. Hence, the petitioner prayed that the

petition filed by her may kindly be allowed and impugned order dated 03.03.2022 be set aside by modifying the order dated 16.05.2019 passed in

Criminal Case No. 1679/2018 may be modified to some extent as prayed in the application filed by her.

4] The aforesaid facts were denied by the husband in his reply to the application by stating that it cannot be prima-facie determined whether any act

of domestic violence has been committed by the respondent. Learned trial Court has only granted interim maintenance in favour of the petitioner due

to the fact that there were no documents provided by the respondent in respect of employment of petitioner. It is an admitted fact from the affidavit of

income and assets that the petitioner is a government employee and draws Rs.58,858/- (net income monthly) per month. She is competent to maintain

herself as she was accustomed to live in her maternal home. Counsel for the respondent has also drawn the attention of this Court towards the

judgment of Hon'ble Apex Court in the case of Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke, (2015) 3 SCC 123 and judgment of

Hon'ble High Court of Delhi in Kanupriya Sharma Vs. State & An rpassed in Criminal Revision Petition No. 849/2018 and M.A. No.

33234/2018. It is submitted that the wife is living separately without any cogent reason, and therefore, she is not entitled for maintenance from her

husband. There is nothing on record regarding the fact that she is not earning anything and non-availability of such pleading itself is sufficient that she

herself is an earning lady. It is settled position of law that the proof of burden is first placed upon the wife to prove that the means of her husband are

sufficient and she is unable to maintain herself. On these grounds, counsel for the respondent has prayed to affirm the impugned order and allow the

petition filed by him.

5] I have heard the counsel for the parties and perused the record.

6] In view of the arguments and rival submissions of counsel for both parties, it is revealed that the petitioner/wife is an employed lady and earning

Rs.58,858/- per month (after deduction from gross salary of Rs.78,148/- per month). The learned trial Court has awarded interim maintenance of

Rs.20,000/- per month vide order dated 16.05.2019 in favour of petitioner, however, it is also admitted fact that the petitioner has not filed any appeal

being aggrieved by the aforesaid order. Actually, while deciding the interim maintenance amount under D.V. Act, the trial Court ought to consider

prima-facie material available on record. In this case, there are allegations of cruelty against the respondent which has to be decided after evidence.

In this regard, the respective provisions of Section 23 of D.V. Act is worth to refer here:-

“23. Power to grant interim and ex parte orders.” (1) In any proceeding before him under this Act, the Magistrate may pass such

interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of

domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order

on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 1

or, as the case may be, section 22 against the respondent.

7] In view of the aforesaid law, this Court has gone through the order of learned Trial Court wherein the Trial Court after discussing a lot regarding

relations of both parties clearly viewed that in order to decide the question as to whether the respondent has committed domestic violence against the

petitioner or not, the Court has to consider the evidence of both parties. That means, this question will be determined after taking evidence of both the

parties. However, in this case, learned Trial Court has adjudicated the interim maintenance in favour of the petitioner only on the basis that the

respondent was unable to brought any document with regard to the service of petitioner. In this way, the learned Trial Court has awarded interim

maintenance without adjudicating the prima facie case of domestic violence caused against petitioner. In the case at hand, it is admitted that the

petitioner is a divorcee lady and having a girl child before her marriage with the respondent. It was also alleged that the respondent was suffering from

sexual weakness, however, such type of weakness cannot be a part of Domestic Violence. Under these conditions the order of learned Trial Court for

awarding the interim maintenance in favour of the petitioner without ascertaining the fact of Domestic Violence is not in accordance with law.

7] Learned counsel for the applicant has placed reliance in the case of Sunita Kachhwaha (supra). The facts of this case are not similar to the facts

of the present case. In the given case, it is held by the Hon'ble Apex Court that only on the basis of higher education of the wife, the wife cannot be

eschewed from getting maintenance if she does not earn anything. In that case the wife was a teacher at Jabalpur and nothing was placed with the

record before the Family Court or before the High Court to prove her employment or her earnings whereas in the case at hand the income of the

petitioner is admittedly proved as Rs.78,148/- per month. Counsel has also placed reliance in the case of Shailja (supra), in that case, as per the

income of wife the maintenance amount was reduced to the extent of 50%. The facts of the case are different to the facts of the present case. In the

case of Reema Sulkan (supra), the Respective High Court has decided the maintenance of wife on the basis of notional minimum income of the

husband as per the current minimum wages which was Rs. 10,000/- per month. Apex Court found it unreasonable and viewed that while awarding the

maintenance amount, the living standard of the husband and his family, his past conduct should be considered. This case is also not helpful for the

applicant as she is earning lady.

8] This case is related to the interim maintenance under Section 23 of Domestic Violence Act. Learned Trial Court has wrongly decided the interim

maintenance of Rs. 20,000/- in favour of the petitioner without ascertaining prima facie case of Domestic Violence committed by respondent against

petitioner. Hence, order of the learned Trial Court is not tenable as per law. So far as the order of learned appellate Court is concerned, the learned

Appellate Court, considering each and every aspect of the case and after appreciation of the order of the trial Court, set aside the order of the same.

With regard to the amount of interim maintenance, in view of the aforesaid facts and circumstances and settled position of law and considering the

monthly income of the petitioner/wife Rs.58,858/- per month, learned Appellate Court has set aside the order of trial Court dated 16.05.2019. So far as

the necessity of interim maintenance is concerned, it is revealed that the petitioner is an employed lady and is earning Rs. 78,148/-per month. As such,

the fact findings of the learned Appellate Court do not warrant any interference.

9] However, in the considered opinion of this Court while deciding the award of interim maintenance under D.V. Act, the Courts are obliged to

consider the principles of maintenance under Section 125 of Cr.P.C. On this aspect, it is asserted in Badshah Vs. Sou. Urmila Badshah Godse

[AIR (2014) SCW 256], the purposive interpretation needs to be given to provision of Section 125 of Cr.P.C. and it is bounden duty of Courts to

advance cause of social justice. It is time honoured principal that the wife is entitled to a financial status equivalent to that of the husband. Under

Section 125 Cr.P.C. the test is whether the wife is in a position to maintain herself in the way she was used to live with her husband. In Bhagwan v.

Kamla Devi (AIR 1975 SC 83), it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor

penurious but what is consistent with status of a family. The expression ""unable to maintain herself"" does not mean that the wife must be absolutely

destitute before she can apply for maintenance under Section 125 Cr.P.C.

10] The aforesaid legal propositions with regard to the maintenance awarded under Section 125 of Cr.P.C., however, it is also applicable while

deciding the interim maintenance amount under Section 23 of D.V. Act. 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 meagre 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.

However, the net income of petitioner is admittedly established as Rs.58,858/- per month. On the other side, the wife/petitioner is living separately

alongwith minor child. So far as the income of respondent as disclosed in his affidavit, it has no use for giving interim maintenance unless the fact of

domestic violence against the petitioner is prima facie established. Hence, the requirement of maintenance for wife and ability of husband for

awarding maintenance is not required to be ascertained.

11] In view of the aforesaid settled proposition of law, interim maintenance for wife can only be awarded when she is able to prove prima facie that

she is suffering from domestic violence caused by respondent/husband. In the case at hand, no prima facie case is made out in favour of petitioner so

that she can get any interim maintenance from her husband. The learned Appellate Court after considering all aspects of the case allowed the appeal

of petitioner. The order of learned Appellate Court is mainly based on the income of the petitioner which is not perverse in the eyes of law and facts.

On this aspect, the learned Court for respondent has relied upon the judgment of Sanjaysinh Ramrao Chavan (Supra) wherein it is held by Hon.

Apex Court

“Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any

relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because another view

is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in

the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to 401 of Cr.PC is

not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable

in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or

where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional

jurisdiction.

12] In view of the aforesaid law, considering all aspects of the case, the impugned order of Appellate Court dated 03.03.2022 is not suffering from

any impropriety, illegality and incorrectness. Hence, the revision petition filed by the petitioner/wife is having no merits and is hereby dismissed.

13] In view of the aforesaid, Criminal Revision No. 1613/2022 is hereby dismissed.

14] A copy of this order be sent to the trial Court as well as Appellate court for information.

Certified copy as per rule.