

(2006) 07 MP CK 0054
Madhya Pradesh High Court
Case No: None

Parvati Bai and Another

APPELLANT

Vs

Gendalal

RESPONDENT

Date of Decision: July 27, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125

Citation: (2007) 1 DMC 516**Hon'ble Judges:** Shyam Sunder Dwevedi, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.S. Dwivedi, J.

The applicant have preferred this revision petition feeling aggrieved by the order dated 1.3.2006 passed by the 2nd Additional Principal Judge, Family Court, Indore in Misc. Criminal Case No. 241/2005, whereby the Trial Court has partly allowed the application filed u/s 125(1), Cr.P.C. and awarded the maintenance amount of Rs. 700 per month in favour of the minor son Rakesh only and rejected the part of the claim of maintenance amount demanded by the present applicant Parvatibai being the wife of the respondent.

2 The brief facts of the case are that the present applicant Parvatibai is the legally wedded wife of the respondent Gendalal, living separately with her parents. She is also having a minor son Rakesh aged about 9 years, who is studying in a Primary School. The respondent has contracted second marriage with some other lady and not paying any maintenance amount to the applicant and her son. On the basis of these facts, the applicant has filed a petition u/s 125, Cr.P.C. before the Family Court at Indore. The learned Trial Court after due appreciation of the entire evidence led by both the parties, came to the finding that the applicant Parvatibai is already

getting the rent of a house at Rs. 800 per month. She is also doing some work, by which she can maintain herself, therefore, rejected the claim for maintenance of the applicant Parvatibai but partly allowed the petition and granted the maintenance amount of Rs. 700 per month in favour of the minor son Rakesh, who is living with the applicant Parvatibai. Feeling aggrieved by the impugned order dated 1.3.2006, the applicant has preferred this revision petition.

3. I have heard learned Counsel for the parties and perused the record.

4. It is submitted by the learned Counsel for the applicant that the learned Trial Court has wrongly held that the applicant Parvatibai is getting the rent of the house at Rs. 800 per month, as no such rent has ever been received by the applicant Parvatibai. The concerned house belonged to her father. Similarly, the learned Trial Court has also committed an error in holding that the Parvatibai is also doing some labour work and thereby earning wages so she can maintain herself. Similarly, it is also challenged that the maintenance amount of Rs. 700, which has been awarded in favour of the minor son Rakesh is also inadequate, looking to the expenses of his education and other expenses, therefore, prayed for enhancement of that amount also.

5. Per contra, learned Counsel for the respondent submits that he contacted the second marriage with the consent of the applicant Parvatibai and also made arrangements of her permanent maintenance by giving her a house, from which the applicant Parvatibai is getting rent of Rs. 800 per month and she is also doing labour work and is thereby earning wages, on the basis of which she can maintain herself. The respondent is a retired person, who is getting pension of Rs. 816 per month and is maintaining his family, the second wife and children, therefore, the learned Trial Court has rightly rejected the part of the petition with regard to the maintenance amount claimed by the applicant Parvatibai and, therefore, submits that no grounds are available to interfere with the aforesaid impugned order passed by the Trial Court and prayed for dismissal of the revision petition.

6. The question that arises for consideration is whether the applicant Parvatibai is also entitled to get any maintenance amount from her husband respondent or not?

7. The applicant Parvatibai (A.W. 1) examined herself before the Trial Court and admits that she is willingly living with her parents as her husband has contracted the second marriage with Bhagwatibai and is living with the aforesaid lady. She also admits that she is not willing to live with respondent Gendalal after his second marriage with Bhagwatibai. The respondent Gendalal has 4 children by his second wife Bhagwatibai. Presently respondent Gendalal has already been retired from the service. One document Ex. DI is produced on record, wherein some compromise has been effected between the parties, wherein it is mentioned that a house situated at Bhagirathpura, Indore has been given in lieu of the future maintenance to the present applicant Parvatibai and Parvatibai is entitled to get the rent of that house

in lieu of the maintenance. The applicant Parvatibai has also admitted this fact in her cross-examination at Para 16 that two tenants are residing in that house and she is getting total rent of Rs. 800 per month from those tenants. Thus, the assertion made by the respondent appears to be reasonable and just that applicant Parvatibai is getting Rs. 800 per month as rent from that house and from that amount she can maintain herself.

8. It is submitted by the learned Counsel for the applicant that the house situated at Bhagirathpura, Indore belonged to the father of the applicant Parvatibai. This assertion does not appear to be true, whereas the respondent Gendalal has submitted certain receipts of the House Tax, which he deposited in the Corporation from 1997-98 and 2002, wherein this house has been shown belonging to respondent Gendalal s/o Amarchand.

9. Thus, on the basis of the aforesaid admission of the applicant Parvatibai and on the basis of the statement of other witnesses, in my considered opinion the learned Trial Court has rightly held that the applicant Parvatibai is getting Rs. 800 per month as rent of the house situated at Bhagirathpura, Indore which has been given to her by the respondent Gendalal in lieu of future maintenance to the applicant, as per document Ex. DI. In these circumstances, the applicant Parvatibai is not entitled to get any maintenance amount from the respondent.

10. Similarly, with regard to the inadequate maintenance amount of Rs. 700, which has been granted in favour of the minor son Rakesh, admittedly, the age of the minor son Rakesh is 9 years, for this the respondent Gendalal in his statement stated before the Court that presently he is a retired person getting only pension of Rs. 816 per month. On the basis of this income, the learned Trial Court has awarded Rs. 700 per month as maintenance amount to the minor son, which appears to be just and reasonable amount of maintenance and on the basis of the evidence on record, this finding cannot be said to be illegal or perverse, on which basis the aforesaid finding can be interfered with.

11. Resultantly, the Revision Petition being devoid of merits, is hereby dismissed.