

(2016) 11 MP CK 0003

MADHYA PRADESH HIGH COURT (INDORE BENCH)

Case No: Criminal Revision No. 829 of 2014

Anil S/o Shri Suganchandra Jain

APPELLANT

Vs

Smt. Sunita W/o Shri Anil Kumar
Jain and State of M.P.

RESPONDENT

Date of Decision: Nov. 29, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Family Courts Act, 1984 - Section 19(4)

Citation: (2017) 1 CriCC 492 : (2016) 4 Crimes 648

Hon'ble Judges: Shri Jarat Kumar Jain, J.

Bench: Single Bench

Advocate: Smt. Mamta Shandilya, learned Dy. Govt. Advocate, for the Respondent No. 2;
Shri Piyush Shrivastava, learned Counsel, for the Respondent No. 1; Shri S.J. Polekar,
learned Counsel, for the Applicant

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Shri Jarat Kumar Jain, J. - This revision under Section 19(4) of the Family Court Act, 1984 has been filed against the order dated 31.05.2014 passed by the Principal Judge, Family Court, Ratlam in M.Cr.C. No.203/2014 whereby directed the applicant/husband to pay maintenance @ Rs.4,000/- per month to the non-applicant/wife from the date of order.

2. It is an admitted fact that applicant's marriage was performed with non-applicant on 20.04.2008 and they lived together first time for 7 days and second time for 12 days i.e. 11.05.2008 to 22.05.2008. Thereafter non-applicant/wife had left matrimonial home and since then she is living in her parental home at Ratlam. She is an enrolled Advocate since the year 1991.

3. Non-applicant/wife had filed an application under Section 125 of the Cr.P.C. stating that when she lived in her matrimonial home since 11.05.2008 to 22.05.2008 during that period her husband (applicant) and mother-in-law had so harassed her that she was forced to leave her matrimonial home, before leaving the matrimonial home her signatures were obtained on blank stamp papers. Applicant's first marriage was performed with Ranjana but only after two months she divorced the applicant due to harassment of applicant. Non-applicant is having no means to maintain herself whereas applicant is a manufacturer of Ayurvedic medicine and used to earn Rs.25,000/- per month. On these grounds she claimed maintenance @ Rs.5,000/- per month from the date of application.

4. Applicant in the reply denied the allegations and stated that he and his mother had never harassed the non-applicant. On 23.05.2008, in the absence of applicant non-applicant had left matrimonial home along with her brother Anil and one Shrenik Bapna. On 26.05.2008 applicant went to Ratlam to take non-applicant with him, however, she refused to come with the applicant, thereafter applicant made many attempts to take back her but she was not ready to come back and live with applicant. Thus, she is living in her parental home without any reason. The applicant is hardly earned Rs.3,000/- per month and he has to maintain his sick mother also; whereas non-applicant is an Advocate and has sufficient income to maintain herself. In such circumstances, she is not entitled for maintenance.

5. Both the parties adduced evidence. Trial Court held that the non-applicant was harassed by her mother-in-law and applicant. Hence, she had sufficient reason not to live with her husband/applicant. Applicant is earning more than Rs.50,000/- per year whereas non-applicant/wife had no income from the profession as an Advocate. Hence, Trial Court directed the applicant to pay maintenance @ Rs.4,000/- per month from the date of order. Being aggrieved the applicant has filed this revision.

6. Learned Counsel for the applicant submits that the non-applicant had left the matrimonial home voluntarily and is living in her parental home without any reason. The finding of trial court that only in 12 days non-applicant was so harassed that she was forced to leave matrimonial home is erroneous. Actually she is practicing lawyer since the year 1991 at Ratlam and has sufficient income to maintain herself. Thus, she is not entitled for maintenance. Trial court gave a finding that applicant used to earn Rs. 50,000/- per year; whereas directed the applicant to pay Rs. 4,000/- per month i.e. Rs. 48,000/- per year to the non-applicant. Such direction is against the evidence on record. Thus, the order passed by the Trial Court is liable to be set aside. For this purpose learned Counsel for the applicant placed reliance on the judgment of this Court in the case of **Prakash Kushwaha v. Smt. Pooja reported in 2014 (2) JLJ 189** and Savita Bai v. Prahlad reported in 2013 (3) M.P. Weekly Note 77.

7. On the other hand, learned Counsel for the non-applicant supports the impugned order and submitted that the non-applicant/wife is ready to live with the applicant;

however, due to harassment she is compelled to live separately. Hon'ble Apex Court in the case of **Laxmi Bai Patel v. Shyam Kumar Patel reported in JT 2002 (3) SC 409** held that the responsibility of husband to maintain his wife and wife has the right to claim maintenance so long as she stays away from the matrimonial home under compelling circumstances. This court in the case of **Dalibai v. Rajendra Singh reported in 2006 (1) MPLJ 495** held that wife left matrimonial house and started living separately due to harassment by husband. To prove this fact statement of wife is sufficient to hold that there was reasonable and sufficient cause available to her to live separately, hence the revision be dismissed.

8. After hearing learned Counsel for the parties, perused the record.

9. This Court has to examine the findings of Trial Court as to whether non-applicant/wife has sufficient reason to live separately and whether she is unable to maintain herself.

10. Admittedly after marriage non-applicant/wife lived in her matrimonial home first time for 7 days. There is no allegation that during that period she was harassed by her in-laws, thereafter she lived in her matrimonial home from 11.05.2008 to 22.05.2008 i.e. for 12 days, thereafter she was forced to leave her matrimonial home. In this regard it is useful to refer Para 9 of her deposition in which she admitted that she was having a mobile phone and used to talk with her brother, however, she has not made any complaint about her harassment to her brother. She left matrimonial home with her brother Anil. But she has not made any complaint to anybody or lodged a report at Police Station. On the other hand, her brother Anil Chhajed (PW-2) deposed that on 22.05.2008 she came to Ratlam to select a girl for his marriage. Anil did not depose that non-applicant has complained him about harassment in her matrimonial home. In the cross-examination of the applicant no question was asked about alleged cruelty and harassment.

11. I would like to refer to the judgment of this Court in the case of Savita Bai (Supra) in which after marriage Savita Bai resided only for 8 days in the house of her husband and thereafter, she left the house without any reason and unable to prove the charge of harassment. Under such circumstances, this Court has held that "the applicant-wife is not entitled for maintenance." In the present case also non-applicant-wife resided in her matrimonial home for the first time for 7 days and second time for 12 days and it is alleged that in these 12 days she was harassed. It is practically impossible that she could have been so harassed that it is impossible for her to live in her matrimonial home. After 12 days she had voluntarily gone with her brother with a view to select a girl for marriage of her brother. Thus, it can not be held that she was thrown with force from her matrimonial home or she was forced to leave her matrimonial home.

12. Learned counsel for the non-applicants placed reliance on the judgment of Laxmi Bai Patel (Supra) and Dalibai (Supra). Facts of these cases are quite different,

therefore, these cases are not helpful to the non-applicants.

13. With the aforesaid, I am of the view that the finding of the Trial Court that non-applicant/wife has sufficient reason to live separately is not sustainable in law. Non-applicant/wife is residing separately without any reason, hence, she is not entitled for maintenance under Section 125 of Cr.P.C.

Thus, the order passed by the Trial Court is hereby set-aside and the revision is hereby allowed.