

(2017) 02 MP CK 0209

MADHYA PRADESH HIGH COURT

Case No: 321 of 2015

Makkhan

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Feb. 7, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 397, Section 401, Section 125 - Calling for records to exercise powers of revision - High Courts powers of revision - Order for m

Hon'ble Judges: S.K.Awasthi

Bench: Single Bench

Advocate: D.S. Tomar, J.P.S. Baghel

Judgement

1. This criminal revision has been preferred by the applicant under Section 397 read with Section 401 of the Code of Criminal Procedure (hereinafter referred to as "CrPC") against the order dated 13.02.2015 passed by Principal Judge, Family Court, Vidisha in MJC No.179/2014 whereby application filed by nonapplicants under Section 125 of Cr.P.C has been allowed and applicant has been directed to pay total Rs. 4,000/- per month towards the maintenance of non-applicants.

2. Briefly stated facts of the case are that the marriage of applicant and non-applicant No.1 was solemnized six years ago as per muslim rituals & customs. The present non-applicant No.2 is their daughter. According to the application filed on behalf of the non-applicant No.1 the present applicant and his family members were persistently making demand of dowry and they used to harass her. For the reason that the demand of dowry was not met out, applicant showed the door to the nonapplicants and since then non-applicant No.1 along with her daughter is residing with her parents. She is unable to maintain herself and non-applicant No.2, as she does not have any source of income whereas the applicant has yearly income

of Rs. 3,00,000/- . Accordingly, prayer was made to direct the applicant to pay Rs. 15,000/- per month as maintenance amount.

3. The said application was partly allowed vide impugned order dated 13.02.2015 and the Court below directed the applicant to pay total Rs. 4000/- per month to the non-applicants towards maintenance.

4. Feeling aggrieved by fixation of maintenance amount, the applicant has filed this revision petition.

5. The contention canvassed by learned counsel for the applicant is that the court below has committed an error while allowing the application under Section 125 of Cr.P.C in favour of the non-applicants as the applicant does not have enough means to maintain himself. There are no documentary evidence available on record which shows that applicant has agricultural land or he is earning any amount from the agriculture. On the contrary, nonapplicant No.1 earns Rs. 5,000/- per month by stitching work. Hence, he prayed for setting aside the impugned order.

6. Learned counsel for the non-applicants supported the impugned order and prayed for rejection of this revision petition.

7. I have considered the contentions of rival parties and perused the record of trial Court. Undisputedly, non-applicant No.1 is the legally wedded wife of applicant and nonapplicant No.2 is their daughter. Non-applicant No.1 is living separately from applicant since last six years. The applicant stated that non-applicant No.1 is deliberately living separately. To the contrary, non-applicant No.1 contended that applicant used to harass her for dowry. From the perusal of the submissions of non-applicant No.1, it indicates that on the basis of the report lodged by non-applicant No.1, a criminal case under Section 498-A of IPC was registered against the applicant. Although, the applicant was acquitted by Court below for the charge under Section 498-A of IPC but in view thereof the submission of applicant that non-applicant No.1 is deliberately living separately has no force.

8. Non-applicant No.1-Smt. Anjumani stated in her examination in chief that the applicant has thirty begha of agricultural land. She claimed that applicant earns Rs. 3,00,000/- per year from agriculture. However, the applicant denied it by saying that he is working as labour and earns Rs. 150 per day. Non-applicant No.1 has not led any oral as well as documentary evidence to establish that the applicant has thirty begha of agricultural land and he earns Rs. 25,000/- per month from cultivation. Applicant claimed that non-applicant No.1 earns Rs. 5,000/- per month from stitching work but she denied the same and claimed that she has no source of income. Applicant admitted that he is working as labour and he is earning Rs. 150/- per day and this fact was not controverted by the non-applicant No.1 in her

cross-examination.

9. From perusal of record of Court below, it is clear that non-applicant No.1 has failed to prove the income of applicant but applicant has admitted in his examination in chief that he is working as laborer and he earns Rs. 4,500/- per month.

10. In these facts of the case, this Court is of the view that the trial Court has erred in fixing the maintenance amount of Rs. 4,000/- per month with respect to the nonapplicants. Consequently, this revision petition is partly allowed and the applicant is directed to pay Rs. 2,000/- per month towards the maintenance of non-applicant No.1 and he is further directed to pay Rs. 1000/- per month to non-applicant No.2. The total amount of Rs.3,000/- per month shall be credited in the bank account of non-applicant No.1, on fifth day of every month.

11. In the result, the revision petition is partly allowed with the aforesaid directions.