



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 9th OF SEPTEMBER, 2024
CRIMINAL REVISION No. 205 of 2024
SMT. MONIKA
Versus
*PRAVEEN***

Appearance:

Shir Vinay Puranik – Advocate for applicant.

Shri Dany Kumar Rathore- Advocate for respondent.

ORDER

This revision under Section 397/401 of Cr.P.C. read with Section 19(4) of Family Court Act has been filed against the order dated 14.12.2023 passed by IInd Additional Principal Judge Family Court Indore in M.Cr.C. 1049/2018 by which monthly maintenance at the rate Rs.5,000/- has been awarded to the applicant.

2. It is submitted by the counsel for applicant that the applicant and respondent are legally wedded husband and wife. The applicant filed an application under Section 125 of Cr.P.C. for grant of maintenance. By the impugned order, she has been awarded maintenance at the rate of Rs.5,000/- with a rider that the said amount shall be adjusted in case if the applicant is receiving maintenance amount under any other statute. It is further submitted that the respondent was directed to submit his salary slip which he has done and according to the salary slip of the month of July, 2024 his net salary is Rs. 38,373/-. Thus, it is submitted that the monthly maintenance at the rate of Rs.5,000/- per month is on a lower



side.

3. *Per contra*, the revision is vehemently opposed by counsel for respondent. It is submitted that by order dated 13.12.2019 passed by 11st ASJ, Indore, in Criminal Appeal No. 176/2019, an amount of Rs. 7,500/- per month has been awarded under Section 20 of Protection of Women from Domestic Violence Act, therefore, the said amount is liable to the adjusted. It is further submitted that respondent had taken a loan for construction of house and accordingly he is required to pay a monthly installment of Rs.13,700/- and, therefore, it is clear that his net income is Rs.25,000/-per month. The applicant has a responsibility to look after his parents who are residing in Badwani.

4. Heard learned counsel for the parties.

5. According to the respondents, the applicant has been directed to pay Rs.7,500/- per month by order dated 13.12.2019 passed in Criminal Appeal No. 176/2019 decided by 11th ASJ Indore. Since counsel for applicant is not aware of this order, therefore, it is not known as to whether the respondent is regularly making payment of the said amount or not?

6. Be that whatever it may be.

7. So far as the loan is concerned, it is clear that it is a voluntary deduction and the amount in lump sum was already received by the respondent in advance which is being repaid by him in different installments, therefore, the said installment cannot be said to be a statutory and mandatory deduction. Furthermore, according to the applicant the said loan was taken after the separation and, therefore, it was deliberately done by the respondent to bring down his net take



home salary. Therefore, it cannot be taken into consideration for calculating the quantum of maintenance.

8. The Supreme Court in the case of **Rajnish Vs. Neha and Another** reported in **(2021) 2 SCC 324** has laid down certain guidelines with regard to quantum of maintenance and has held as under:-

“77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7; Refer to *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]

79. In *Manish Jain v. Akanksha Jain*, (2017) 15 SCC 801 this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is



conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [*Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]

81. A careful and just balance must be drawn between all relevant factors. 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. [*Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] 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.

82. Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of the HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

83. Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

84. The Delhi High Court in *Bharat Hegde v. Saroj Hegde*, 2007 SCC OnLine Del 622 : (2007) 140 DLT 16, laid down the following factors to be considered for determining maintenance: (SCC OnLine Del para 8)

- “1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.



7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”

85. Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.”

9. The trial Court has awarded the monthly maintenance at the rate of Rs.5,000/- and according to the respondent the applicant is already getting a monthly maintenance of Rs.7,500/- under the protection of Women from Domestic Violence Act. If the amount awarded under Domestic Violence Act is adjusted, then it is clear that for all practical purposes the applicant will not be getting anything by virtue of the impugned order, and total monthly maintenance would be Rs.7,500/- only.

10. Considering the price index, status of the parties as well as the price of the goods of daily needs, this Court is of considered opinion that total amount of Rs.7,500/- is on lower side .

11. Accordingly, the monthly maintenance amount of Rs.5,000/- as awarded by the trial Court is enhanced to Rs.7,500/- which shall be subject to adjustment of maintenance amount awarded under the



Domestic Violence Act or under any other statute.

12. The enhanced amount shall be payable from the date of application.

13. With aforesaid observation, the revision is **allowed**.

(G.S. AHLUWALIA)
JUDGE

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