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CRR-34-2023

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL REVISION No. 34 of 2023*Versus**AND OTHERS*

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Appearance:  
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Shri Swati Sharma - advocate for the petitioner.

Shri Gopal Singh Bhadoria, learned counsel for the respondents.  
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Reserved on 22.10.2024

Delivered On 12.12.2024

ORDER

With the consent of both the parties, heard finally.

1. This criminal revision has been filed by the petitioner under Section 19(4) of the Family Courts Act, 1984 and Section 397 of Code of Criminal Procedure, 1973 being aggrieved by the order dated 23.11.2022, passed by learned Principal Judge, Family Court, Ujjain in MJCR No.206/2021, whereby the learned Principal Judge has awarded maintenance of Rs.6000/- per month in favour of the respondent wife and Rs.5000/- per month in favour of Respondent No.2/Gunishka.

2. Brief facts leading to the present petition and submissions of counsel for the petitioner are that the petitioner and the Respondent both profess Hindu religion and are governed by Hindu law. It is an admitted fact that, non Applicant is the wife of the Applicant and both the parties got



married as per Hindu rites and rituals on 08/12/2010. Their marriage was 'solemnized by mutual consent of the parties and after taking account of every detail about the petitioner's family. The Applicant is a an educated unemployed person and lives in Khandwa which is a small place and the living Standards and salaries are also low. The non applicant was well aware of the status of the petitioner and the job profile and then consented to the marriage, while on the other hand the Non Applicant at the time of marriage was B-Tech and persuaded her M-tech after marriage which was being supported by the Applicant and his family members. Out of this wed lock a daughter is born who is now 11 years of age. Since 8 years of marriage there was no trouble with the matrimonial relationship, but due to various reasons the non Applicant used to have frequent visits to Ujjain, then after some time Applicant realized that the duration of the stay is being enlarged with the visits and the Respondent shown very less interest in discharging her conjugal duties.

3. On 22/03/2018, the Respondent with her parents visit to Ujjain and stayed thereon and when the petitioner asked her to come back she refused to return back to Khandwa and insisted the Applicant to come and settle down in Ujjain with her parents. The Applicant made so many attempts to make her understand that he could not leave his old aged dependent parents, and made many attempts to bring her back to Khandwa, which eventually failed. The petitioner field an application before the learned Principal Judge, Family Court Khandwa under Section 9 of Hindu Marriage Act for restitution of Conjugal Rights and by Judgement dated 21/11/22, the said application was



allowed. In counter action, the Respondent filed an application u/s 125 of Criminal Procedure Code, before Family Court Ujjain on falsified grounds and baseless allegation of violence and torture and the learned Family Court, Ujjain has allowed the application and awarded the maintenance amount in favour of the respondent as stated above.

4. Learned counsel for the petitioner submits that the learned Family Court has committed grave error of law in passing the impugned judgment. It is further submitted that the application under Section 9 of Hindu Marriage Act for restitution of Conjugal Rights was allowed by Judgement dated 21/11/22 even then the respondent did not comply the order of family Court. Hence, she has not sufficient ground to live separate from her husband. The learned Trial Court has failed to consider the fact that respondent is living separately without any valid reason. 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. Therefore, order of maintenance has wrongly been passed and deserves to be set aside.

5. Learned counsel for the respondents submits that the learned family Court has passed the impugned order after considering each and every aspect of the case as well as the income and status of family of the petitioner. The respondent is residing separately with sufficient reasons. In so far as the decree under Section 9 of the Hindu Marriage Act for restitution of Conjugal rights is concerned, the said decree was exparte decree in favour of petitioner and he himself was not interested to keep the respondent wife with him alongwith her girl child. The respondent herself is not earning and she has



to bear the burden of her daughter also. Hence, prays for dismissal of the petition.

6. I have heard the counsel for the petitioner and perused the record.

7. From the bare perusal of the impugned order as well as material available on record, it is crystal clear that the learned Family Court has rightly observed that the husband is having sufficient means of source of income. The learned family court has observed that the petitioner is an educated and working man and the petitioner has filed no prove regarding income of the respondent wife. It is also clear that the respondent has also to bear the burden of study and other expenses of daughter. In this regard the statements of Smt Priyanka (NAW-1) and the petitioner Deepak Neelkanth (AW-1) have been considered. She has clearly supported her case with regard to the financial condition of her husband which has not been rebutted by the petitioner in his Court statements. Therefore, the findings of learned trial Court regarding quantum of maintenance cannot be said to be on higher side. Further, as per the settled provisions of law, the wife is also entitled to maintain socio-economic status as per the financial status of her husband.

8. So far as the order dated 21.11.2022 passed by learned Principal Judge Family Court, Khandwa is concerned, it is an exparte order so it has no binding effect on the proceedings under Section 125 of Cr.P.C. The respondent herself is not an earning lady and she has also to bear the expenditures of her daughter, therefore, it cannot be said that the impugned order is passed against law and there is any infirmity.

9. Now, the question brought before this Court is whether the



respondent is not entitled to get maintenance because she is living separately without sufficient reason. In this regard, the petitioner has stressed that he has obtained a decree from the Court of Principal Judge, Family Court Khandwa under Section 9 of HMA and the same is not being complied with by the respondent/wife. Here, it is important to mention that the said order passed by Family court Khandwa is an exparte order against respondent/wife. On this aspect, the respondent wife has deposed that since she has not male child, her mother and sister-in-law have used to harass her. Actually, her in-laws including her husband/petitioner are not properly behaving with her. She has also alleged that in 2015, she was forcibly aborted and thereafter, a compromise was executed between the parties, but it was not complied with by her in-laws and husband too. In her cross-examination, on this point, she has been questioned that her husband wanted to keep her with him and in reply, she has stated that the behavior of her husband is not good with her. Now, in such condition, only on the basis of the fact that the petitioner has obtained exparte decree under Section 9 of HMA in his favour whether he can avoid to maintain his wife? Only getting the decree under Section 9 of HMA is not sufficient to prove that wife has no sufficient reason to live separate from her husband.

10. On this aspect, High Court of Delhi in the case of **Babita vs. Munna Lal** [2022 SCC Online Del 4933] has elaborately considered the issue involved in the present petition as under:-

"54. The learned Trial Court, in the proceedings



under Section 125 Cr. P.C., had to conduct an independent inquiry since it was supposed to and was duty bound to appreciate evidence which was before it to reach a conclusion as to whether the complainant had been able to make out her case fulfilling the conditions for grant of maintenance under Section 125 Cr. P.C. or not, and thereafter could have decided as to whether on the basis of ex-parte decree of restitution of conjugal rights, she had disentitled herself from grant of such relief.

MERE DECREE OF SECTION 9 HMA DOES NOT DISENTITLE GRANT OF MAINTENANCE UNDER SECTION 125 Cr. P.C.

55. There is nothing in law to debar grant of maintenance under Section 125 Cr. P.C. in case a decree of restitution of conjugal rights is possessed by the husband. 56. There is no express bar to grant maintenance to a wife, against whom a decree for restitution of conjugal rights under Section 9 of the Hindu Marriage Act has been passed. There is, therefore, no bar to entertain application for grant of maintenance.

57. Thus, this Court holds that the view held by the learned Trial Court that an order of a Civil Court



granting ex-parte decree of restitution would automatically put an end to her right to grant on maintenance under section 125 Cr. P.C. is incorrect. In case it was contested by both the parties and then would have been decided in favour of the husband and being in default in not returning, in these circumstances it could become a ground to deny maintenance to her. An ex-parte decree for restitution of conjugal rights is not an absolute bar for consideration of application under section 125 Cr. P.C. In case the court is satisfied on the basis of evidence before it that the wife had justifiable grounds to stay away from the husband, maintenance can be granted. In the case at hand, the learned judge clearly mentioned in the order that the wife had led evidence to prove that she had every reason to stay away from the husband as there was risk to her life at the hands of the husband. The learned Judge should have in that case decided the case based on the said evidence, which unfortunately, he did not even assess or appreciate. If the evidence on record shows that due to husband's conduct the wife has not been able to live with him and he has denied to maintain her and the minor children, maintenance cannot be refused to her.

58. A decree of a Civil Suit can be held to be



binding qua leaving company of husband without reasonable cause, only if proceedings before the Civil Court 9 of HMA dealing with case under Section specific issue has been framed in this regard and the parties have been given opportunities to lead evidence and specific findings are recorded by the Civil Court on contested merit. However, in cases where the husband has obtained an ex-parte decree of conjugal rights from a Civil Court, it cannot be held to be binding on the court exercising jurisdiction under Section 125 Cr. P.C.

59. The mere presence of a decree of restitution of conjugal rights against the wife does not disentitle her to claim maintenance if the conduct of the husband is such as to ensure that she is unable to obey such a decree or it was the husband who had created such circumstances that she could not stay with him."

11. On this aspect, considering the almost similar facts and circumstances of the case, the Co-ordinate Bench of this Court (Jabalpur Bench) in the case of Avedesh Kumar Tiwari vs. Smt. Chitra Tiwari passed in CRR No.1447/2011 dated 28.08.2015 has clearly held that *"when the applicant did not lead any evidence before the trial Court and ex-parte order of maintenance was granted then, the evidence lead in the case under Section 9 of the Hindu Marriage Act cannot be applied in the maintenance case with*





*retrospective effect.*" Therefore, the findings of concerned Court arrived at in the proceedings of final decree passed under Section 9 of the Hindu Marriage Act is not having any binding effect on the trial Court/Family Court at the time of passing the judgement regarding grant or non-grant of maintenance under Section 125 of Cr.P.C.

12. In view of the aforesaid settled law, only on the basis of decree in favour of petitioner under Section 9 of HMA, it cannot be assumed that the husband is willing to keep his wife with him. Actually, behaviour of husband with his wife is material in such type of cases. Even if husband obtained a decree under Section 9 of HMA in his favour, it would be expected from him that he must behave properly with his wife and keep her with him in good manner. If a person misbehaves and commits cruelty with his wife, she has every reason to live separate from her husband. Only on the basis of exparte decree, a destitute wife cannot be precluded from getting maintenance from her husband.

13. It is time honoured principal that the wife is entitled to have a financial status equivalent to that of the husband. In this Case, the respondent has proved that she is unable to maintain herself. Certainly, she would get only the maintenance amount from her husband which is neither luxurious nor penurious but in any way, it should be in accordance with financial status of husband. 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."

14. At this juncture, the following excerpts of **Rajnish 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 meager 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."

15. In view of the aforesaid analysis and law laid down by this Court in the case of **Avedesh Kumar Tiwari (supra)** as well as High Court of Delhi in the case of **Babita (supra)**, in the considered opinion of this Court, only on the basis of getting exparte decree under Section 9 of HMA in favour of husband and against wife, a destitute wife cannot be eschewed to get maintenance from her husband. Hence, the maintenance amount awarded by the learned Family Court appears to be just and proper, therefore, no interference is called for with the findings of impugned order. Accordingly, this revision petition filed by the petitioner fails. Resultantly, the present petition is dismissed and the impugned order of the learned appellate Court is



also hereby affirmed.

16. Pending application, if any, also closed.

17. A copy of this order be sent to the trial Court concerned for information.

Certified copy, as per rules.

(PREM NARAYAN SINGH)  
JUDGE

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