

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 29th OF JULY, 2024
MISCELLANEOUS CRIMINAL CASE No. 18176 of 2024**

MAHENDRA SINGH
Versus
KAVITA SINGH

Appearance:

Shri Lalji Kushwaha – Advocate for the applicant.

ORDER

This application under Section 482 of Cr.P.C. has been filed against order dated 23.03.2024 passed by Additional Sessions Judge, Pawai, District Panna in Criminal Revision No.8/2022 and order dated 10.01.2022 passed by Nyayadhikari, Gram Nyayalaya, Pawai, District Panna in Miscellaneous Case No.4/2019.

2. The undisputed facts are that applicant and respondent are husband and wife. The respondent filed an application under Section 125 of Cr.P.C.. The evidence of respondent and her witnesses were recorded on 27.09.2019, 09.11.2019 and 04.12.2019. Thereafter, evidence of applicant and his witnesses namely; Sachin Sharma were recorded on 06.03.2020. The evidence of R.P. Sharma, retired Deputy Commandant and Ramshiromani Mishra were recorded on 27.08.2021 and the Gram Nyayalaya by order dated 10.01.2022 allowed the application filed by respondent and awarded monthly maintenance at the rate of Rs.1000/- per month. Being aggrieved by the said order, the applicant as well as the respondent preferred separate Revisions. The Revision filed by applicant was registered as Criminal Revision

No.8/2022, whereas the Revision filed by respondent was registered as Criminal Revision No.17/2022. The Revision filed by applicant has been dismissed by the Revisional Court by a separate order passed on 23.03.2024 in Criminal Revision No.8/2022, whereas Criminal Revision filed by respondent has been allowed by a separate order passed on the very same day in Criminal Revision No.17/2022.

3. It is submitted by counsel for applicant that applicant had met with an accident and because of electrocution he fell down on floor as a result he sustained injuries on his hips and now he is completely bed ridden and he cannot move, therefore he is not an able bodied person. Furthermore, because of his injuries, he is unable to do any job and therefore, not only the applicant is a jobless person but is a bed ridden and is completely dependent on his father. According to applicant, the applicant met with an accident on 25.07.2020 i.e. subsequent to the examination of applicant. The applicant also filed a copy of disability certificate before the Revisional Court. However the Revisional Court has allowed the Revision filed by respondent and has enhanced the maintenance amount from Rs.1000/- to Rs. 5000/- per month.

4. Challenging the orders passed by the Courts below, it is submitted that applicant is unable to earn anything because of physical disability therefore, the maintenance amount should be set aside.

5. Heard the learned counsel for the applicant.

6. According to applicant, he suffered an accident on account of electrocution on 25.07.2020.

7. The counsel for the applicant was directed to point out as to whether any document of treatment was filed by the applicant before the trial Court or not?

8. It was submitted by Shri Kushwaha that since the applicant could not obtain the disability certificate during the pendency of the trial, therefore, he did not file any document to show that he had met with any accident.

9. The trial Court by order dated 08.11.2021 had directed the parties to submit their affidavits in the light of the judgment passed by the Supreme Court in the case of **Rajnesh Vs. Neha and Another** reported in **(2021) 2 SCC 324**.

10. Alongwith an affidavit, it appears that the photocopies of certain medical prescriptions were filed but it appears that applicant did not file any application for examination of Doctor to prove the medical documents and accordingly, the case was finally heard.

11. Before the Revisional Court the applicant had filed a disability certificate, according to which applicant has suffered 40% locomotor disability. From the record of the Revisional Court, it is clear that in disability certificate it is specifically mentioned as under:

- “(A) He is a case of Locomotor Disability.
- (B) The diagnosis in his case is locomotor.
- (C) He has 40% (in figure) Forty percent (in words) **Temporary Disability** in relation to his BOTH LEG as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPwD Act, 2016 notified by Government of India vide S.O. 76 (E) dated 04/01/2018).

This certificate recommended for 5 years(s), and therefore, this certificate shall be valid till 21/09/2026.”

12. Thus, it is clear from the disability certificate that the applicant has suffered temporary disability of 40% in relation to his both the legs.

Although the certificate has been made valid upto 21.09.2026 but what is the meaning of temporary disability could have been explained by the Doctor himself but even if it is assumed that applicant is still suffering from 40% disability, then it cannot be said that he is bed ridden, therefore, the submission made by counsel for applicant that applicant is a bed ridden cannot be accepted. Even otherwise, in the affidavit in support of his stay application as well as in the memo of Revision, it has not been pleaded by the applicant that he is bed ridden.

13. In the light of the judgment passed by Supreme Court in the case of **Rajnesh (supra)**, this Court has already considered the physical ability/disability of the applicant. Once the applicant has failed to prove that he is bed ridden coupled with the fact that disability certificate relied upon by the applicant is a temporary certificate and the applicant did not prove the same before the Trial Court, this Court is of considered opinion that in absence of the medical report that applicant is confined to bed, he cannot escape from his liability to maintain his wife.

14. Under these circumstances, this Court is of considered opinion that both the Courts below did not commit any mistake by holding that the applicant is competent enough to earn.

15. So far as the quantum of maintenance amount is concerned, looking to the price of goods of daily needs, price index etc. an amount of Rs.5000/- cannot be held to be on a higher side.

16. Accordingly, no case is made out warranting interference.

17. The application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

SR*