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IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 2nd OF DECEMBER, 2024CRIMINAL REVISION No. 3457 of 2024*SMT. REKHA AHIRWAR AND OTHERS**Versus**NIRMAL CHANDRA*

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Appearance:

Shri Romesh Pratap Singh - Advocate for the applicant.

None for respondent though served.

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ORDER

This revision, under Section 397, 401 of Cr.P.C. read with Section 19(4) of Family Courts Act, has been filed against order dated 03.07.2024 passed by Principal Judge, Family Court, Gwalior (M.P.) in Case No.989/2023 MJC, for enhancement of interim maintenance amount.

2. By impugned order, applicant No.1 has been granted interim maintenance of Rs.2,000/- per month whereas applicant No.2 has been granted interim maintenance of Rs.1,000/-.

3. Challenging the interim maintenance amount awarded by court below, it is submitted by counsel for applicants that they have filed salary-slip of respondent of the month of February, 2024 according to which his gross salary is 68,228/- and his statutory deductions are



Rs.14,278/-. It is further submitted that therefore his take-home income is Rs.53,950/-. So far as loan is concerned, it is submitted that respondent has already received the amount in advance and if he is making repayment of the same then it cannot be said that the said voluntary deduction is liable to be deducted from the take-home salary. It is further submitted that marriage was performed on 09.05.2019 and therefore, the contention of respondent that loan was taken for bearing marriage expenses is false because it is clear from salary-slip that loan was taken in February, 2022.

4. None for respondent though served. On 29.11.2024 also, none had appeared for respondent. Therefore, by way of last indulgence, case was adjourned. Today also, none appears for respondent.

5. Heard learned counsel for applicants.

6. Applicant has filed salary-slip of respondent of the month of February 2024, according to which his basic pay is 36,400/-; Dearness Allowance is 16,744/-; House Rent Allowance is 9,828/-; and Transport Allowance is Rs.5,256/- whereas his statutory recoveries are Railway Employees Insurance Scheme-C R.30/-; New Pension Scheme Tier-I Rs.5,314; Income Tax Rs.6,334/-; Professional Tax Maharashtra Rs.800/-; and CMTD-ECC Bank by Rs.1,800/-. EMI of Rs.23,125/- is towards repayment of loan. Since loan amount is nothing but receipt of money in advance, therefore, it is clear that not only it is a voluntary deduction but respondent has already received the amount in advance.



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For calculating the take-home salary, only statutory deductions can be taken into consideration. The voluntary loan taken by husband has to be ignored. Therefore, it is clear that in the month of February, 2024, the take-home salary of respondent was Rs.53,950/-. Under these circumstances, interim maintenance of Rs.2,000/- awarded to applicant No.1 and Rs.1,000/- awarded to applicant No.2 is shockingly on lower side. Trial Court must remember that wife and child/children are entitled for enjoyment of the same status which otherwise they would have enjoyed in their matrimonial/parental home. Undue sympathy with the husband for no good reason is neither in the interest of wife and children who are living a deserted life and is also not in the interest of justice.

7. Considering take-home salary of respondent, this Court is of the considered opinion that interim maintenance amount is liable to be enhanced. Therefore, it is enhanced to Rs.10,000/- for applicant No.1 and Rs.5,000/- to applicant No.2.

8. The aforesaid amount shall be payable from the date of application as directed by Supreme Court in the case of **Rajnesh vs. Neha and another** reported in (2021) 2 SCC 324 in which it is held under :-

“113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application,



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since the period during which the maintenance proceedings remained pending is not within the control of the applicant.”

9. It is made clear that in case if applicants are getting maintenance amount in any other proceeding then the aforesaid amount shall be liable to be adjusted.

10. With aforesaid observations, this revision is *allowed*. No order as to costs.

(G. S. AHLUWALIA)
JUDGE

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