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CRR-4006-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 17th OF JANUARY, 2025CRIMINAL REVISION No. 4006 of 2024

[REDACTED]

Versus

[REDACTED]

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Appearance:

Shri Vitthal Rao Jumre - Advocate for the applicant.

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ORDER

This criminal revision under section 397/401 of the Cr.P.C. has been filed against the order dated 20.04.2024 (Annexure A/5) passed by the Principal Judge, Family Court, Chhindwara (M.P.) in MJCR No.37/2021 by which the interim maintenance @ Rs.4,000/- has been awarded.

2. It is submitted by counsel for the applicant that applicant is working as a Ward Boy and his monthly income is only Rs.8,000/-. The respondent is already getting Rs.4,000/- by virtue of an order passed under Section 24 of the Cr.P.C. and, therefore, the interim maintenance of Rs.4,000/- awarded under Section 125 of the Cr.P.C. is on a higher side. It is further submitted that the applicant has filed a copy of the diary written by the respondent from which it is clear that she has extended a threat that she might put her life to an end. It is further submitted that wife of the applicant/respondent has a love affair. It is next contended by counsel for applicant that his father by issuing a general notice in a newspaper has dispossessed him from his property and,



therefore, the amount of interim maintenance is on a higher side.

3. Heard the learned counsel for the applicant.

4. The applicant has filed a copy of salary certificate issued by one Anmol hospital, Indore. In the said certificate, the place of issuance and date of issuance are not mentioned. Therefore, unless and until that salary certificate is duly proved by the authorities who has issued the same, it is difficult for this Court to rely on the said certificate at this stage. Furthermore, it is not the case of the applicant that he is not an able-bodied person.

5. The Hon'ble Supreme Court in the case of **Rajnish Vs. Neha and Another** reported in 2021 (2) SCC 324 has held that if the husband is an abled-bodied person then his meager salary will not be a hurdle for grant of maintenance to his wife. The applicant has also filed a page of diary written by the respondent and in this diary it has been specifically mentioned by respondent that at the time of marriage, false information with regard to the property was given by the applicant and his family members. They were told that the applicant and his family has lot of land but in fact they do not have any land. Furthermore, it is specifically mentioned that the applicant is assaulting her physically and is also alleging against her mother. Since this diary has been relied upon by the applicant therefore, no formal proof of the same is required. From the contents of the page of diary, it is clear that in fact it is the applicant who is treating the respondent with cruelty which gives sufficient reason for the respondent to live separately from her husband. It is further submitted by the counsel for applicant that applicant had earlier filed an application under Section 9 of Hindu Marriage Act and since the



respondent was not ready to come back to her matrimonial house, therefore, he has withdrawn the said application and now, the petition for divorce has been filed. Thus, it is clear that no proceedings for restitution of conjugal rights are pending. Even otherwise, in the light of judgment passed by the Hon'ble Supreme Court in the case of **Rina Kumari @ Rina Devi Vs. Dinesh Kumar Mahto @ Dinesh Kumar Mahato** decided on 10.01.2025 in **SLP (Criminal) No.5896/2024**, it is clear that even if a decree under Section 9 of Hindu Marriage Act has been passed, still the wife is entitled for maintenance amount.

6. So far as the contention of the counsel for the applicant that since the wife of the applicant has love affair with somebody else therefore, she is not entitled for maintenance is concerned, the said submission is misconceived. From Section 144(5) of the BNSS/125(4) of the Cr.P.C. it is clear that only if the wife is proved to be living in adultery, then the maintenance amount can be denied. Adultery necessary means sexual intercourse. Even if a wife is having a love and affection towards somebody else without any physical relations, then that by itself cannot be sufficient to hold that the wife is living in adultery.

7. It is next contended by the counsel for the applicant that since half of the salary is being utilized to pay the maintenance amount to the wife therefore, it is on a higher side. As already pointed out that meager income of the husband cannot be a criteria to deny maintenance. If the applicant has married a girl knowing fully well that he is not competent to even fulfil his own daily needs then for that he himself is responsible but if he is an able-



bodied person then he has to earn something to maintain his wife or to pay the maintenance amount. It is submitted by the counsel for applicant that wife of the applicant herself is earning handsomely by running a beauty parlour. The applicant has not filed any document to show that the wife of the applicant is having any property where she can run a beauty parlour. The applicant has not filed any document to show that how much money she is earning from that beauty parlour. The matter is yet to be decided by leading evidence. Mere bald submission that wife is running a beauty parlour is not sufficient to deny interim maintenance to her, specifically when no document has been filed to show that either the wife of the applicant is running a beauty parlour in a shop owned by her or in a shop taken by her on a rent.

8. The copy of the newspaper has been placed on record. So far as the paper notice issued by father of the applicant whereby dispossessing him from the family properties is concerned, the same cannot be relied upon. The applicant is still residing with his father and this public notice is nothing but is a camouflage, might be on the basis of legal advice given to his father. In the public notice, the address of father is mentioned as Kishore Kumar, son of Shri Sampat Rao Khodake, D-5/12, Kevalary Police Line, Indore and in the cause title of this criminal revision, the address of the applicant is mentioned as Amit Kumar Khodake, S/o Shri Kishor Kumar Khodake, aged about 35 years, Occupation - Private Job, R/o D-5/12, Kevalary Police Line, First Battalion, Indore. If the applicant was already dispossessed from the property of his father then how he is residing with his father because the



address given in the public notice and address of the applicant given in the cause title is same.

9. So far as the quantum is concerned, the court below has already taken note of the maintenance amount of Rs.4,000/- which has been awarded to the respondent under Section 24 of Hindu Marriage Act. It is well established principle of law that a wife is entitled for maintenance under every statute but the only requirement is that while adjudicating or calculating the quantum of maintenance, the courts are required to consider the maintenance which the wife is already getting under different statutes. Since the court below has taken note of the maintenance awarded to the respondent under Section 24 of the Hindu Marriage Act therefore, it cannot be said that the trial court committed a material illegality by awarding interim maintenance @ Rs.4,000/-. Furthermore, as already pointed out, if the husband is an able-bodied person then he cannot run away from his liability. On the contrary, in the present case, it is clear from the diary written by the respondent which has been relied upon by the applicant himself, that the applicant and his family members had played fraud on the respondent by giving false information before settlement of marriage.

10. Be that whatever it may be.

11. In the light of price index as well as in the light of the price of daily needs, this court is of the considered opinion that the interim maintenance of Rs.4,000/- awarded by the trial court, after taking note of the fact that the respondent is already getting maintenance pendente lite @ Rs.4,000/- per month under Section 24 of Hindu Marriage Act, does not require any



interference.

12. Criminal revision fails and is hereby **dismissed**.

(G. S. AHLUWALIA)
JUDGE

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