IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

CRIMINAL REVISION No. 1165 of 2010

BETWEEN:-

1. SMT. DEEPA AND ANR. S/O HARISH RAILWANI, AGED ABOUT 39 YEARS, 159, JAYRAMPUR COLONY INDORE (MADHYA PRADESH)
2. ROHIL THROUGH LR'S SMT. DEEPA S/O HARISH RAILWANI, AGED ABOUT 12 YEARS, 159, JAIRAMPUR COLONY, INDORE (MADHYA PRADESH)

.....APPLICANTS

(SHRI ARIHANT KUMAR NAHAR, LEARNED COUNSEL FOR THE APPLICANTS.)

AND

HARISH RAILWANI S/O BASARMAL RAILWANI, AGED ABOUT 44 YEARS, OCCUPATION: SERVICE, M-95 NANDANAGAR, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI V.K. JAIN, LEARNED SENIOR COUNSEL WITH SHRI MANAN BHARGAVA APPEARED FOR RESPONDENT.)

CRIMINAL REVISION No. 1103 of 2010

BETWEEN:-

HARISH S/O BASARMAL RELWANI, AGED ABOUT 40 YEARS, OCCUPATION: SERVICE H.NO. M-95, NANDA NAGAR INDORE (MADHYA PRADESH)

.....APPLICANT

(SHRI V.K.JAIN, LEARNED SENIOR COUNSEL WITH SHRI MANAN BHARGAVA APPEARED FOR APPLICANT.)

AND

1. **SMT. DEEPA AND ANR. W/O HARISH RELWANI, AGED ABOUT 36 YEARS, 159, JAIRAMPUR COLONY INDORE (MADHYA PRADESH)**
2. **ROHIT THR. RESP. NO. 1. SMT. DEEPA W/O HARISH RELWANI , AGED ABOUT 36 YEARS, 159, JAIRAMPUR COLONY, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ARIHANT KUMAR NAHAR, LEARNED COUNSEL FOR THE RESPONDENT)

Reserved on:- 16.10.2023

Pronounced on:-07.11.2023

These revision petitions having been heard and reserved for orders, coming on for pronouncement this day, the Court has pronounced the following:

ORDER

Both the parties filed this revision petitions u/s 397 r/w section 401 of CrPC separately being aggrieved by the common order dated 15/07/2010 passed by Principal Judge, Family Court, Indore in MJC no.279/2006, whereby the learned trial court has allowed an application u/s 125 of CrPC filed by wife, Smt. Deepa, and minor son, Rohit (Petitioner in CRR No.1165/2010) against the husband and father, Harish (Petitioner in CRR No.1103/2010). Hereinafter petitioners of CRR No.1165/ 2010 will be referred as applicants and

petitioner of CRR no.1103/2010 will be referred as non-applicant.

2. It was admitted fact before the learned trial court that marriage of applicant no. 1/ wife solemnized with the non-applicant husband on 11/02/1997 as per Hindu rites and rituals at Indore. From the wedlock of the husband and wife, applicant no. 2/ son Rohit was born. At the time of filing of application, the applicant no. Rohit 2 was aged around 8 years. It was also admitted that the applicant no. 2/ son is living with his mother/ applicant no.1. It is also an admitted fact that the non-applicant is a railway employee and earns Rs. 8,000/- per month.

3. The applicants had filed an application u/s 125 of CrPC stating that parents of applicant no.1 had given dowry to non applicant according to their capacity. After marriage rituals, non-applicant started demanding Rs. 25,000/- cash and a scooter from the applicant no. 1 and started physically assaulting her for the same. On 02/08/1998, non-applicant got the applicants out of his house. Then the non-applicant had filed a divorce case no. 34/1999 before IXth Additional District Judge, Indore. During the pendency of divorce case, the applicant had compromised in the matter by assuring to keep

the applicant nicely and got the matter disposed off on 07/10/1999. The applicants started living with non-applicant. Even after that, non-applicant continued to physically torture the applicant no.1. On 04/03/2000 the non-applicant again got the applicants out of his house. The non-applicant again filed a divorce case no.390/2002 but on 05/04/2003 the non-applicant withdrew the divorce case. Earlier applicants had filed an application u/s 125 of CrPC which was registered as case no.622/2002, wherein maintenance order was passed in the favour of the applicants. The non-applicant by giving fake assurance insisted the applicant to withdraw the application u/s 125 of CrPC. Therefore, the applicant no. 1 had withdrawn the aforementioned case on 24/02/2004. Even after that the non-applicant did not keep applicants alongwith him. It was also stated that the applicant no. 1 has no source of income. Applicant no. 2 is a minor and goes to school. Applicant no. 2 is dependant on applicant no.1. While the non-applicant is an employee in railway department and he receives pay of Rs. 8,000/- per month therefore, he has the capacity to maintain the applicants. Hence, it was prayed that both the applicants be granted a monthly maintenance of Rs. 1,500/- each, in total Rs.

3,000/- per month from the non-applicant.

4. The non-applicant had denied the allegations in his reply and submitted that he never demanded any kind of dowry from the applicant no. 1. He has never got the applicants out of his house. The applicant no. 1 voluntarily had compromised in the divorce case. The applicant no. 1 has left house of the non-applicant without any reasonable cause. The applicant no. 1 is post graduate in Economics and by private tutoring earns Rs. 4,000/- and by running beauty parlour earns Rs. 6,000/-, a total of Rs. 10,000/-. Therefore, she is capable to maintain herself and her son. It is further pleaded that two sisters and an old widow mother of the non-applicant are dependant upon him. Therefore, the applicants are not entitled for any maintenance from the non-applicant and application is liable to be rejected.

5. Both the parties produced their witnesses before the learned trial court. The learned trial court after hearing the parties has assessed income of the applicant no. 1 to be Rs. 3,000/- per month. The learned trial court has also found that the non-applicant has net income of

more than Rs.21,000/- per month. Further it has also been found that the non-applicant has sufficient means to maintain the applicants and the trial court has awarded monthly maintenance of Rs. 3,000/- in favour of applicant no. 1 and Rs. 4,000/- in favour of applicant no. 2 to be given by the non-applicant since July 2010. Accordingly, the trial court has passed the impugned order.

6. Learned counsel for the non-applicant/ husband submits that the applicants had claimed maintenance Rs. 1,500/- per month but in contrary the trial court has granted more than claimed amount which is not permissible in law. Before filing of the present maintenance application, the applicants had previously also filed maintenance application but the same was withdrawn. Therefore, principle of *Res Judicata* is applicable and subsequent maintenance application is not maintainable as per law. It is further submitted that after 10 years of the marriage, the applicants had filed present maintenance application u/s 125 of CrPC without any explanation. The applicant no. 1 is highly educated. The applicant has monthly earning of Rs. 15,000– 16,000 from tuition and beauty parlour. Thus, she is able to maintain herself and her son. Therefore, she is not entitled for maintenance from the

non-applicant. The applicant no. 1 had left her matrimonial house without any sufficient cause. Now the applicant no. 2 is major, therefore, both the applicants are not entitled for maintenance. The trial court has not properly assessed the evidence available on record and has committed legal error by allowing the maintenance application. Therefore, the impugned order is liable to be set aside. Learned counsel has placed reliance in the case of ***Kadar Mian V Smt. Zahira Khatun And Anr. [1999 Cri.L.J. 1440] and Avanish Pawar V Sunita Pawar [2000 Legal Eagle 316].***

7. On the other hand Learned counsel for the applicants submits that the applicant no. 1 has no source of income. She has reasonable cause to leave separate from non-applicant. Applicant no. 2 is a school student and his school fees is Rs. 2,000/- per month. Looking to the inflation, the trial court has erred in granting such less amount of maintenance to the applicants and the same must be increased to Rs. 7,000/- to applicant no. 1 and Rs. 5,000/- to applicant no. 2. Learned counsel for the applicant has placed reliance on the case of ***Shamima Farroqui V Shahid Khan [(2015) 5 SCC 705].***

8. I have heard learned counsels for both the parties and perused the records.

9. In the case of ***Shamima Farroqui (Supra)*** the Apex court in paragraph 20 has held has under:-

> "20. In the instant case, as is seen, the High Court has reduced the amount of maintenance from Rs.4,000/- to Rs.2,000/-. As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. Needless to say, the order of the learned Family Judge is not manifestly perverse. There is nothing perceptible which would show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no Revisional Court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there was no reason to interfere. There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order."

10. In the case of ***Avanish Pawar (Supra)*** the coordinate bench of this court after considering S.24 of the Hindu Marriage Act, 1955 and other relevant provisions, it has been held that major son will not come within the purview of S.24 of the Act to be entitled to maintenance from the father.

11. In the case of ***Kadar Mian (Supra)*** the coordinate bench of Orissa High Court in paragraph 11 has held has under:

> "11. The second contention of the petitioner is regarding grant of excess amount of maintenance in favour of Opposite Party No. 2. On perusal of the petition, under Section 125 of the Code and the impugned judgment, the said criticism is found to be correct. At the risk of repetition it may be noted that opposite parties prayed for monthly maintenance of Rs. 200/- for opposite party No. 2, but an amount of Rs. 250/- has been granted in her favour. Relying upon the case of Lakshmidhar Panigrahi v. Smt. Reboti Panigrahi, (1985) 2 Crimes 967, learned counsel for the petitioner argued that the excess amount of maintenance granted in favour of Opposite Party No. 2 may be interfered with. Learned counsel for the Opposite Parties argues that in view of rise in price no fault can be found with the enhanced rate of maintenance granted to Opposite Party No. 2. He has failed to take note of the fact that order for maintenance has been granted with effect from March 1991. Apart from that, no evidence was tendered on behalf of the Opposite Parties for grant of maintenance at the enhanced rate. Therefore, learned Judge, Family Court was not correct in granting monthly maintenance to the Opposite Party No. 2 at a higher rate than the amount which was prayed for. Accordingly, the quantum of monthly maintenance with respect to Opposite, Party No. 2 is reduced to Rs. 200/- from Rs. 250/- per month."

12. In the case of ***Bakulabai v. Gangaram, [(1988) 1 SCC 537],*** Hon'ble the Supreme court has held as under in paragraph 7:-

> "7. The other findings of the Magistrate on the disputed question of fact were recorded after a full

> consideration of the evidence and should have been left undisturbed in revision. No error of law appears to have been discovered in his judgment and so the revisional courts were not justified in making a reassessment of the evidence and substitute their own views for those of the Magistrate..”

13. From the analysis of foregoing case-laws it is apparent that the power of revisional court is very limited when it comes to alteration in the judgment passed by the trial court based upon proper appreciation and marshalling of evidence and without having any error in law.

14. In the instant case, admittedly at the time of filing of application u/s 125 of CrPC on 25/04/2006 the applicant no. 2 was minor, aged around 8 years. The impugned order was passed on 15/07/2010, therefore, it is crystal clear that at the time of passing of impugned order, the respondent no. 2 was minor, aged around 12 years. Therefore, the applicant no. 2 was entitled for maintenance. However, it appears that during pendency of this revision petition, the applicant no. 2 has attained the age of majority. But on this ground revisional court cannot interfere with the impugned judgment. In this respect the non-applicant/ husband can approach the trial court under relevant provisions.

15. Admittedly, earlier filed application u/s 125 of CrPC was

withdrawn by the applicants. Therefore, it appears that the aforementioned application was not decided on merits. The application of principle of *Res Judicata* is although allowed for subsequent application u/s 125 of CrPC, provided that the matter must be directly and substantially in issue was also in issue in the previous application between the same parties and the same previous application has been decided on merits. The Apex Court in the case of ***Prem Kishore & Ors. V Brahm Prakash & Ors. [Civil Appeal No. 1948 of 2013]*** in paragraph 34, has held as under regarding the rule of application of Res Judicata, which runs as under-

> "34. The general principle of res judicata under Section 11 of the CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality."

16. In the instant case, earlier application filed by the applicants u/s 125 of CrPC was dismissed as withdrawn. The aforementioned application was not decided on the merits, therefore, the principle of Res Judicata is not applicable in this case.

17. It is admitted fact that the applicant no. 1 is legally married wife

and applicant no. 2 is the legitimate minor son, of the non-applicant.

18. On perusal of statement of applicant no. 1/ Deepa (PW/ 1) it appears that non-applicant was sharing good bond with this witness. But later, the non-applicant started to demand dowry and harass her for the same. On 04/03/2000, the non-applicant got this witness out of his house, giving her threat that he will kill her. Since then this witness has been living in her parental house. Aforementioned statement of this witness has not been challenged in cross-examination by non-applicant.

19. Non-applicant/ Harish (DW/ 1) stated that Deepa (PW/ 1) used to ask him to open a beauty parlour for her, to live separate from his parents and get the family planning operation done. As the applicant did not do as aforementioned, Deepa (PW/ 1) had left his house. He admitted in paragraph 7 of cross-examination that he never complained to anyone regarding her wish to get a beauty parlour opened for her and to get his family planning operation done. It also appears from the statement of Harish (DW/ 1) that he had moved applications for divorce from Deepa (PW/ 1), twice in the competent

court. In paragraph 11, this witness further stated that he had filed an application in this case that he is ready to keep the applicants alongwith him but the day when she came to live with him, this witness denied to take her back to his house. Therefore, statement of applicant no. 1 is reliable and it appears that the applicants had sufficient cause to live separate from the non-applicant.

20. As per statement of applicant no. 1, it appears that she has no means to maintain herself and her child.

21. Harish (DW/ 1) stated that applicant no. 1 earns Rs. 6,000/- from beauty parlour and Rs. 4,000 – 5,000/- from tuition. Deepa (PW-1) in paragraph 10 of cross-examination has admitted that she has done M.A. (Economics) and has done course of beauty parlour. She has also admitted that before the marriage, she used to do job in a beauty parlour for a monthly salary of Rs. 1,000/-. In paragraph 11 of cross-examination she denied that she earns Rs. 4,000/- monthly from tuition and Rs. 6,000/- per month from beauty parlour.

22. Smt. Neeta (DW/ 2) stated that she works as a consultant at ‘Akhil Bhartiya Mahila Sabha, Indore’. The applicant no. 1 and non-

applicant had come to her for consultance. She tried to get the dispute compromised between the parties. Applicant no. 1 had told her that she works in a beauty parlour. She further stated that on 08/10/2009 she visited house of the applicant no. 1 and found beauty parlour instruments in her home. Deepa (PW/ 1) had told her that she earns Rs. 15,000 – 20,000/- monthly from the beauty parlour. Therefore, it appears that this witness did not know Deepa (PW/ 1) personally for a longer period of time and had met her just for consultancy. No question was put in cross-examination of Deepa (PW/ 1) that Smt. Neeta (DW/ 2) visited her house and the applicant told her that she earns Rs. 15,000 – 20,000/- monthly from the beauty parlour. The non-applicant has neither filed any document nor has examined any witness who takes service from applicant no. 1, which proves that the applicant works, as a tutor and runs a beauty parlour and earns the alleged amount. Therefore, statement of non-applicant/ Harish (DW/ 1) and Smt. Neeta (DW/ 2) does not appear to be reliable. Apart from that the applicant is highly educated and she had also done course of beauty parlour. Therefore, the trial court has rightly observed that the income from the beauty parlour of the applicant no. 1 is probably

around Rs. 3,000/- per month.

23. Harish (DW/ 1) stated that he works in railway department, his pay slip is Ex.D/ 2. As per pay slip (Ex.D/ 2), on February 2010 the non-applicant's gross pay was Rs. 28,696/- per month net pay was 16,892/- and it appears from letter (Ex.P/ 1) dated 18/11/2009 which was given to applicant no. 1 by Divisional Rail Manager, Ratlam under RTI Act stated that gross pay of the non-applicant was Rs. 24,121 and deduction amount was Rs. 6,849/-. Harish (DW/ 1) stated that his old mother and 2 sisters are dependant on him. In paragraph 9 of cross-examination he has admitted that one of his sisters married in February 2010 and another sister has done Ph.D., though he denied that her second sister works as professor and ears Rs.20,000/- but he admitted that he had given in advertisement in Sindhi Samaj Newspaper (Ex.D/ 4), the salary of his sister to be Rs. 20,000/-. Apart from that if it is presumed that one sister and mother is dependant on non-applicant, then too the present applicants are wife and son of the present applicant. It also appears that the non-applicant works in railway department and has sufficient source of income and thus he has legal and moral obligation to maintain the applicants. Therefore,

the learned trial court has rightly held that the non-applicant has sufficient source of income and hence is liable to maintain the applicants.

24. So far as the question that the trial court has awarded more than the claimed maintenance amount, in this respect, the applicants had filed the maintenance application on 25/04/2006, at that time, pay of non-applicant was Rs. 8,000/- per month and now (then) Rs. 24,000/- per month. In this situation the learned trial court has awarded the maintenance amount in the favour of the applicants more than the claimed amount. In this respect, coordinate bench of Punjab and Haryana High Court in the case of ***Amarjeet Singh V Pushpa Devi [2015 SCC online P&H 14045]*** observed in paragraph 10 as under:-

> "10. Now the question which requires determination is whether the Magistrate is competent to award maintenance more than the amount claimed by the petitioner in the application, Section 125 Cr. P.C. provides that a Court may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Court thinks fit, and to pay the same to such person as the Court may from time to time direct. Under this provision, it is the duty of the Court to provide just maintenance to the deserted wife or destitute child. The amount of maintenance should be such that a

> wife is able to maintain herself decently and with dignity. If after considering the material placed before the Court, the Court thinks that a particular amount is a reasonable amount, he is required to award the said amount as maintenance, and in my opinion, he cannot refuse to grant the said amount merely because the claimant has not claimed such an amount in her application. Once the legislation has cast duty on the Court to award just and reasonable amount of maintenance in the facts and circumstances of a case, the same cannot be denied on mere technicalities i.e. the claimants had not claimed the said amount in their application. Once discretion has been given to the Court to award an amount of maintenance, it will always be just and reasonable, in the facts and circumstances of a case. There is no specific restriction under Section 125 Cr. P.C. that the Court cannot award more than the amount claimed in the petition. Rather a duty has been imposed on the Court to award compensation which he thinks fit. In such situation, the Court is not debarred from awarding compensation exceeding the claimed amount."

25. In the present case, from the view taken by the learned trial court, it appears that in changed circumstances, the applicants have been rightly awarded maintenance amount, more than claimed amount.

26. On the basis of foregoing analysis, it appears that the learned trial court has rightly awarded the maintenance amount in favour of the applicants and against the non-applicant. Awarded amount appears to be reasonable. The learned trial court has rightly appreciated the

evidence available on record and has not committed any error. In view of the above discussion, I find that the view and approach of the learned Family Court is completely justified and legal and there is no material irregularity or illegality in the impugned judgment and order. Hence, both the revisions have no force and are liable to be dismissed.

27. Consequently, both the revision petitions are **dismissed**.

(PRAKASH CHANDRA GUPTA)
JUDGE

Ajit/-