

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL REVISION No. 790 of 2019

BETWEEN:-

VIJENDRA

.....PETITIONER

(BY SHRI PIYUSH SHRIVASTAVA, ADVOCATE)

AND

1. SMT REKHABAI

2. KU. ARADHYA

.....RESPONDENTS

(BY MS. JYOTSANA RATHORE, COUNSEL FOR RESPONDENT)

.....
Heard on :04.04.2024

Delivered on : 15.04.2024
.....

This revision petition was heard and the court pronounce the following:

ORDER

1. This criminal revision has been filed by the petitioner under Section 19(4) of the Family Courts Act r/w Section 397 of Cr.P.C. being aggrieved by the judgment dated 28.12.2018, passed by learned Principal Judge, Family Court, Dhar M.P., in MJCR No.62/2017, whereby the learned Principal Judge

has allowed the application filed on behalf of the respondents and awarded Rs.3000/- per month as maintenance in favour respondent no.1 and Rs.3000/- per month in favour of respondent no.2/daughter from the date of application. Hence, the present petition before this Court for reduction of the maintenance amount.

2 . During the course of arguments, learned counsel for the petitioner submits that the the learned trial Court has awarded maintenance @ Rs.6000/- per month on higher side. In this regard, learned counsel for the petitioner submits that divorce decree has been passed by learned family Court on the ground of adultery. Such finding is relevant for deciding the issue of adultery in the present case. it is further submitted that the learned family court has clearly stated that the respondent of this case surviving her life in adultery. Virtually, on this point, there are overwhelming evidence in this case too.

3. In support of his contention, counsel for the petitioner placed reliance over the judgment passed by Madras High Court in the case of **M.Chinna Karuppasamy vs. Kanimozhi 2015-4-L.W.553** wherein, the Court has observed that "A divorced wife, who lives in adultery, is disqualified from claiming maintenance under Section 125 of Cr.P.C."

4. Counsel for the petitioner further placed reliance over the judgment of Karnataka High Court passed in the case of **Shanthakumari vs. Thimmegowda [2023 SCC ONLine Kar 66]** wherein the Court has observed that *"the oral and documentary evidence produced clearly establish that the petitioner is not honest towards husband and she has got extramarital affairs with neighbor Mahesh and all along, she asserted that she used to stay with him. When the petitioner is staying in adultery, the question of she claiming maintenance does not arise at all. the contention of the petitioner that the*

petitioner is a legally wedded wife and entitled for maintenance cannot be accepted in view of the conduct of petitioner, who is not honest and is leading adulterous life."

5. Per contra, counsel for the respondent/wife admitted that although the respondent has now married, but it cannot be said that she was in adultery and only on the basis of surmises and conjunctures, such type of allegations cannot be leveled regarding involvement of the respondent/wife in adultery. Anyway, even one chance of adultery cannot eschew her from getting maintenance from her husband. Hence, the learned trial Court has rightly considered the evidence available on record and granted maintenance in favour of the respondents. Hence, prays for dismissal of the petition.

6. In support of her contention counsel for the respondent place reliance over the judgment of Delhi High Court passed in the case of **Sh. Pradeep Kumar Sharma vs. Smt. Deepika Sharma [2022 Live Law (DEI) 324]**, wherein the Court observed that *"only continuous and repeated acts of adultery or cohabitation in adultery would attract the rigours of the provisions under Section 125(4) of Cr.P.C."*

7. I have heard the counsel for the parties and gone through the record.

8. Certainly, non-application has filed a judgment of ASJ, Shujalpur who has decreed the case of divorce between the parties on the basis of adultery. Certainly, that finding is relevant to this case as per the provisions of Section 41 of Evidence Act. In this regard, the law laid down by Madras High court in **M.Chinna Karuppasamy (supra)**, the Court observed as under:-

"22. In view of Section 41 of the Indian Evidence Act, 1872, if once the decree for divorce is granted on the ground of adultery,

such finding is relevant for deciding the issue of adultery in the present case. This Court cannot sit in an appeal over the said decree for divorce granted by the Civil court, when the same has not been challenged by the aggrieved party. There can be no difference between a decree on contest and an ex-parte decree, since, like a decree on contest, an ex-parte decree is also a decree passed on proof of the claim made by means of sufficient evidence. It is well known that though simply because the defendant has remained ex-parte, the Court shall not grant decree, unless the claim made in the plaint is proved, by means of evidence either oral or documentary or both. In the case on hand, therefore, there can be no doubt that the decree for divorce granted by the Civil court in favour of the petitioner is sufficient proof that the respondent was living in adultery. When once such a decree is in force, it is not possible for this Court to take a different view contrary to the decree granted by the Civil court. Therefore, I hold that besides, oral evidence let in, in this case, the decree granted by the Family Court clearly goes to prove that the respondent is living in adultery and thus, she suffers from the disqualification to claim maintenance from the petitioner."

9. Certainly, since the finding of family court regarding adultery has attained finality. As per section 41 of Evidence Act, it is only relevant to the facts of this case.

10. In this regard, the definition of the word "relevant" is worth important to mention here as under:

"Relevant:.-One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to him

the provisions of the Act relating to the relevancy of facts.

11. Now, the question whether every relevant fact is admissible as proved in the case. More-often, the expression "relevant" and "admissibility" are used as synonymous but their legal implications are distinct and different. For example; an evidence of a witness who dies prior to his cross-examination is relevant though the evidentiary value will depend upon the facts and circumstances of the case. Certainly, relevant evidence is *prima facie* admissible unless it is secluded for some other reasons.

12. In this regard, the judgment Ex.D/1 is relevant for establishing the adultery against the respondent but, now the question is whether this adultery is continuous and sufficient in view of Section 125(4) of Cr.P.C.

13. On this aspect, learned counsel for the respondent relied upon the law laid down by High court in **Sh. Pradeep Kumar Sharma (supra)** wherein High court of Delhi has endorsed the view of this Court passed in the case of **Ashok vs. Amita [2011 Law Suit (MP) 179] & Sukhdev Pakharwal vs. Rekha Okhle [2018 ILR (MP) 1571]**. The view of this Court in the aforesaid cases are as under:-

25. In Ashok v. Anita (supra), the High Court of Madhya Pradesh interpreting the said provision and observed as reproduced:-

“8. A perusal of the provisions of section 125(4) of Cr. P.C. makes it clear that a stray act of adultery on the part of the wife does not amount to adultery within the meaning of section 125(4) and further does not disentitle the wife to maintenance., The expression “living in adultery” connotes a course of adulterous conduct more or less continuous and not

occasional.

9. In the case of **Alert Jagdeeshwari v. Aleti Bikshaparhy and M.P. Subramaniyam v. T.T. Ponnakshiammaal (supra)**, it is observed:—

“After careful consideration of the law on the point, we are of the opinion that it is not a stray act or two of adultery that dis-entitle a wife from claiming maintenance from her husband; but it is a course of continuous conduct on her part by which it can be called that she is living an adulterious life that takes away her right to claim the said maintenance. It is significant to note that the wording in section 488(4) of the Cr. P.C. is not, if she commits adultery” but „if she is living in adultery“. To our mind there is a certain amount of emphasis on the term „living“. A mere lapse, whether it is one or two, and a return back to normal life cannot be said to be „living in adultery“. If the lapse is continued and followed up by a further adulterous life, the woman can be said to be „living in adultery“.”

26. The High Court of Madhya Pradesh in **Sukhdev Pakharwal v. Rekha Okhle (supra)**, has reiterated the position and stated as under:-

“17. It is settled law that phrase “living in adultery” applies to a continuous adulterous conduct and not a single or occasional lapse from virtue. Solitary Act of adultery or isolated lapse of wife will not disentitle her from claiming maintenance. Unless it is found that at the relevant time, the wife was actually living in adultery, she is not disentitled to claim maintenance. The burden of proof of such adulterous conduct

on the part of the wife, is upon the husband.”

14. In conspectus of the aforesaid legal position, it can be predicated that "living in adultery" means only continuous and repeated acts of adultery and therefore it would attract the recourse of provisions under Section 125(4) of Cr.P.C. The learned trial Court has considered the whole evidence placed before the Court and after considering the whole evidence found that on substratum of the single instance in living adultery, the wife could not be eschewed from getting the maintenance under Section 125(4) of Cr.P.C.

15. In upshot of aforesaid analysis in entirety and the finding of fact of the learned trial Court is not warranted to be interfered with by this Court using the limited jurisdiction of revision. So far as the quantum of maintenance is concerned, only Rs.3000/- and Rs.3000/- per month has been awarded in favour of respondent no.1 (wife) and respondent no.2 (daughter) respectively, cannot be assumed as excessive. The learned trial Court after considering every aspect and present scenario of dearness has properly adjudicated the maintenance amount, accordingly, it also does not warrant any interference.

16. *Ex-consequencia*, the revision petition stands dismissed and the order of learned trial Court is hereby affirmed.

(PREM NARAYAN SINGH)
JUDGE

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