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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 4th OF OCTOBER, 2023

CRIMINAL REVISION No. 3677 of 2022

BETWEEN:-

.....PETITIONER

(SHRIARPIT SINGH, LEARNED COUNSEL FOR THE PETITIONER).

AND

.....RESPONDENTS

(SHRI AMIT BHATIA, LEARNED COUNSEL FOR THE RESPONDENT [R-1]).

This revision coming on for admission this day, the court passed the following:

ORDER

1. The present Criminal Revision under Section 19(4) of Family Court Act, 1984 has been filed against the order dated 18.08.2022, passed by Principal Judge, Family Court, Ratlam, in M.J.C.R. No.180/2018, whereby the learned Family Court has partly allowed the application filed under Section 125 (1) of Cr.P.C by awarding maintenance of Rs.10,000/- per month to respondent .

2. Learned counsel for the petitioner has submitted that at the most, the respondent resided with the petitioner merely 18 months, therefore, the petitioner cannot be penalized for such a higher amount of Rs. 10,000/- per month. It is further submitted that the respondent herself was an earning lady. As per the statement of respondent, she has done MBA and she was earning Rs.28,000/- per month while income of the petitioner is only Rs.20,912/-. Hence, the order of the Trial Court deserves to be set aside.

3. On the other hand, learned counsel for the respondent has opposed the prayer and submitted that looking to the income of the applicant, the Trial Court has rightly awarded maintenance amount to the respondent, therefore, the petition deserves to be dismissed.

4. In view of the rival submissions, the matter has been considered.

5. Counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in the case of *Niharika Ghosh Vs. Shanakr Ghosh 2023 SCC online Del 5624*. Virtually, in that case, the wife was an earning lady and was earning for charity, in this way, since she was earning, then the Court has dismissed her petition.

6. However, in this case, the factual matrix is totally different. On the basis of degree, a wife cannot be disentitled for the maintenance. On this aspect, learned Trial Court has relied upon the case of *Smt. Sunita Kachhwaha and others Vs. Anil Kachhvaha, 2014 (3) J LJ* and therefore, viewed that if wife has a degree of higher education, it cannot be ascertained that she is able to maintain herself.

7. So far as the finding as to awarding maintenance is concerned, looking to the evidence available on record, it manifestly emerges that the petitioner himself has relinquished his wife without any reason. In this regard the

testimony of respondent Tabassum has not been controverted by the evidence of petitioner Mohammad Nadeem. As the allegations regarding the fact that she is residing voluntarily with her parents is found baseless in the eye of facts and circumstances of the case.

8. Now coming to the point of maintenance amount, learned trial Court in para-14 of the impugned judgment expressed that the respondent was an working lady, however, now she is unemployed. In view of that learned trial Court has awarded half of the total amount as maintenance. However, in as much as more than one year has been elapsed since 18.08.2022, the salary of the petitioner would be enhanced to some extent. It is also posited by respondent during arguments that nothing has been explained regarding total deduction of Rs. 16,801/- hence, the salary would be assumed as total earning of Rs.37,713/-.

9. In view of salary certificate of the petitioner in recent time, it would be assumed as nearly Rs. 40,000/- per month and therefore, in the light of the judgment of Hon'ble Supreme Court in the case of **Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy reported as AIR 2017 SC 2383**, Rs. 10,000/- would be appropriate maintenance in favor of the respondent/wife.

10. On this point, Co-ordinate Bench of this Court in the case of **Amit Pandey vs. Manisha Pandey reported as 2020 Law Suit (M.P) 1098**, by endorsing the aforesaid proposition has enunciated as under:-

“The Hon'ble Apex Court in the case of Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy (AIR 2017 SC 2383), has held that 25% of the income of the husband would be just and proper and not more than that. So, apart from that when

ex-parte order was passed in favour of the respondent/ wife, then learned trial Court should have awarded 25% of the net income of the petitioner/non-applicant as maintenance and not more than that. So, it is appropriate to reduce the awarded maintenance amount of Rs.10,000/- per month to Rs.7,000/- per month which would be paid by the petitioner/non-applicant to the respondent/wife. The decisions in Deb Narayan Halder Vs. Smt. Anushree Haldar (AIR 2003 SC 3174) and Chandrakalabai Vs. Bhagwan Singh (2002 Cr.L.J. 3970) are not at all applicable in the case of petitioner/non- applicant.”

11. Virtually Section 125 of Cr.P.C is a piece of socialistic legislation in order to improve the status of a destitute lady in society. Inherent and immanent idea behind the Section 125 of Cr.P.C is to ameliorate the agony, anguish and financial suffering of a woman, who left her matrimonial home. In order to determine the quantum, the Judge has to figure out what is required by the wife for maintaining the standard of living which is neither luxurious nor penurious, but it should be in accordance with the status of family.

12. In view of the aforesaid discussion in entirety as well as the material available on record, this Court does not find any illegality, irregularity or impropriety in the impugned order passed by the learned trial Court, therefore, no interference is warranted.

13. At this stage, this revision petition filed by the petitioner fails. Resultantly, the present petition is dismissed.

14. Pending application, if any, also stands closed.

(PREM NARAYAN SINGH)
JUDGE

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