

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

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

CRIMINAL REVISION No. 1255 of 2023

BETWEEN:-

**BALRAM DIXIT S/O SHRI RAMPRAKASH DIXIT, AGED
ABOUT 35 YEARS, R/O GANJ MOHALLA NEAR PANI KI
TANKI ATER DISTRICT BHIND (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ATUL GUPTA- ADVOCATE FOR PETITIONER)

AND

- 1. SMT. KIRAN DIXIT D/O SHRI RAMSIYA, AGED ABOUT 30
YEARS, R/O GANJ MOHALLA NEAR PANI KI TANKI ATER
DISTRICT BHIND, AT PRESENT MIDTOWN GALAXY
NEAR SABZI MANDI FLAT NO G -05 SECOND FLOOR
PINTO PARK MURAR GWALIOR (MADHYA PRADESH)**
- 2. SUYASH (MINOR THROUGH GUARDIAN MOTHER SMT.
KIRAN DIXIT) S/O SHRI BALRAM DIXIT, AGED ABOUT 6
YEARS, GANJ MOHALLA NEAR PANI KI TANKI ATER
BHIND, AT PRESENT MIDTOWN GALAXY NEAR SABZI
MANDI FLAT NO G -05 SECOND FLOOR PINTO PARK
MURAR GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI RAVI SHANKAR GUPTA- ADVOCATE FOR
RESPONDENTS)***

Reserved on : 10.01.2024
Pronounced on : 17.01.2024

***This revision having been heard and reserved for judgment,
coming on for pronouncement this day, Justice Sanjeev S Kalgaonkar
pronounced the following:***

ORDER

This revision petition under Section 397 read with Section 401 of CrPC is filed assailing the order dated 08.02.2023 passed in Case No.301 of 2021 by learned Principal Judge, Family Court, Gwalior whereby the petitioner is directed to pay interim maintenance of Rs.5,000/- per month to Respondent No.1 Kiran Dixit and Rs.1,000/- per month to Respondent No.2 Suyash Dixit from the date of order.

The expositions of the facts giving rise to this petition are as under:-

- (1) Petitioner Balram Dixit got married to respondent No.1 Kiran on 16.02.2019. Petitioner Balram and respondent Kiran blessed with a son Suyash aged around 6 years who is residing with his mother after matrimonial discord between them. Petitioner Balram and respondent Kiran are living separately.
- (2) Kiran and Suyash had filed an application under Section 125 of CrPC against petitioner Balram Dixit. Respondent Kiran has submitted application for grant of interim maintenance.
- (3) Learned Additional Judge to the Principal Judge, Family Court, Gwalior after hearing both the parties, allowed the application for grant of interim maintenance and directed petitioner Balram Dixit to pay interim maintenance of Rs.5,000/- per month to Kiran Dixit and

Rs.1,000/- per month to Suyash till disposal of the case.

Feeling aggrieved by the order of grant of interim maintenance vide order dated 08.02.2023, this revision petition is filed assailing the impugned order on the following grounds:-

- (1) Learned Trial Court has committed error in granting interim maintenance without proper appreciation of the material on record.
- (2) Respondent Kiran Dixit has compelled the petitioner to leave his house and captured entire house. She has started taking rent from the tenants. She is earning Rs.15,000/- from rent received from the tenants.
- (3) Respondent has compelled her husband to live separately. She is enjoying the rent of house.
- (4) She had filed a petition under Section 24 of Hindu Marriage Act, 1955 which was rejected by the Family Court vide order dated 19.02.2020. Review against this application was rejected vide order dated 12.01.2022. Concealing these facts, the application for interim maintenance was filed.
- (5) Learned Family Court without considering these aspects of the matter passed the impugned order which deserves to be set aside.

Learned counsel for the petitioner submits that petitioner has no

source of income, he has resigned from the job of Guest Lecturer due to his physical incapacity. Learned Principal Judge failed to consider that applicant Kiran Dixit has sufficient source of earning from rent, therefore, the impugned order suffers from illegality.

Per Contra, learned counsel for the respondents submits that there is no evidence on record that the respondents have regular source of earning from rent. The petitioner has sufficient source of earning from his job and properties, therefore, the Family Court has committed no error in granting interim maintenance.

Heard both the parties and perused the record.

The object of the provision contained in Section 125 of CrPC is to prevent vagrancy and destitution. The Court needs to find out requirement of the wife to maintain standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs of the wife for such moderate living can be fairly determined if her separate income, if any, is taken into account together with the earning of husband and his responsibilities. It is aimed at ameliorating the agony, anguish and financial suffering of a woman, who had left her matrimonial home so that some suitable arrangement can be made to enable her to sustain herself. The purpose of interim maintenance

is to provide help to the spouse to sail through the process of litigation and to ensure atleast subsistence living.

The learned Judge of the Family Court after hearing both the parties concluded as under :-

उभयपक्ष ने एक दूसरे पर जो आरोप—प्रत्यारोप लगाये हैं, उनका निराकरण उभयपक्षों की साक्ष्य के उपरांत ही किया जाना संभव होगा, किन्तु यह तथ्य विवादित नहीं है कि आवेदिका, अनावेदक की विवाहिता पत्नी नहीं है। आवेदिका किन कारणों से से अनावेदक से पृथक रह रही है यह उसने स्पष्ट रूप से अपने आवेदन में बताया है फिर भी उक्त तथ्य साक्ष्य उपरांत गुणदोष पर निराकृत होगा। लेकिन यदि पत्नी साथ रहती तो उसके भरण—पोषण का दायित्व पति पर था तो पृथक रहने से पति उस दायित्व से वंचित नहीं हो जाता है। साक्ष्य के उपरांत यदि आवेदिका उचित कारणों से अलग रहना पाई गई तो भरण—पोषण की पात्र होगी अन्यथा नहीं। ऐसी दशा में आज की स्थिति में वादकालीन भरण—पोषण राशि निर्धारित करना है। गुणदोषों पर जैसी साक्ष्य प्रस्तुत होगी वैसा अवधारण किया जा सकता है।

अतः उपरोक्त समस्त परिस्थितियों को देखते हुये आवेदिका का आवेदन आंशिक रूप से स्वीकार किया जाकर अनावेदक को आदेशित किया जाता है कि वह आवेदिका को आवेदन दिनांक से 5000/— (पांच हजार) रुपये प्रतिमाह एवं पुत्र सुयश को 1000/—एक हजार रुपये प्रतिमाह अन्तरिम भरण—पोषण राशि इस प्रकरण के अंतिम निराकरण तक अदा करे। यदि आवेदिका अन्य किसी प्रकरण में भरण—पोषण की राशि प्राप्त कर रही है तो उक्त राशि इस प्रकरण में दिलाई गई राशि में समायोजित की जावेगी।

The aforementioned conclusion appears to be superficial and cursory merely based on assumption. The material on record relating to source of income and the standard of living of the parties has not been duly discussed.

The Supreme Court in case of *Rajnesh Vs. Neha (2021) 2 SCC 324* considering the issues relating to grant of interim-maintenance, observed that the maintenance is decided on the basis of pleadings of the parties and some amount of guess work. Both the parties submit scanty material and do not disclose correct details. Keeping that in view, the Supreme Court laid down the procedure to streamline grant of maintenance. These guidelines were laid down in exercise of power under Article 136 read with Article 142 of Constitution of India prescribing a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in every proceeding relating to maintenance. The aforementioned directions are extracted as under:-

“72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the [Constitution of India](#):

72.1. (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

The Supreme Court also prescribed standard formats of Affidavit

of Disclosure of Assets and Liabilities for non-agrarian deponents and the affidavit for agrarian deponents.

The Supreme Court in case of *Aditi alias Mithi versus Jitesh Sharma 2023 SCC Online SC 1451* expressing anguish over non-compliance/improper compliance of the directions laid down in case of *Rajnesh* (supra) and directed re-circulation of the judgment for compliance thereof.

The copy of Affidavit of Disclosure of Assets and Liabilities submitted by Balram Dixit and Kiran Dixit show that most of the entries are filled cursorily without providing requisite particulars. Consequently, learned Principal Judge could not consider availability of source of income with the parties and their standard of living before the matrimonial discord. Non-compliance with the guidelines in its true spirit and substance is not acceptable.

In view of the above, the impugned order dated 08.02.2023 is set aside with the direction that both the parties shall submit fresh Affidavits of Disclosure of Assets and Liabilities with complete particulars in compliance with the directions of the Supreme Court laid down in case of *Rajnesh* (supra). Learned Additional Judge to the Principal Judge, Family Court, Gwalior shall ensure strict compliance with the guidelines. If any

of the affidavit is lacking in requisite particulars, learned Judge shall demand relevant particulars from concerned party. This exercise shall be completed within 15 days. If any of the parties fails to comply with the directions, appropriate action with regard to non-compliance may be taken against such party. Learned Principal Judge on consideration of the affidavits and material on record, pass an order afresh on application for interim-maintenance.

Accordingly, the revision-petition is **disposed of** with aforementioned directions.

(SANJEEV S KALGAONKAR)
JUDGE

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