

1 CRR-4380-2023
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA
ON THE 27th OF MAY, 2024**

CRIMINAL REVISION No. 4380 of 2023

BETWEEN:-

**SMT. MAHIMA W/O VED PRAKASH PATEL, AGED 24
YEARS, OCCUPATION: HOUSEWIFE R/O 87 SHARDHA
SHRI COLONY, BARFANIDHAM, INDORE (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI PEYUSH JAIN - ADVOCATE)

AND

**VED PRAKASH PATEL S/O SHRI ACCHELAL JI PATEL,
AGED 28 YEARS, OCCUPATION: LOCO PILOT R/O 110/1
SUREKHA COLONY, CIVIL WARD NO. 9, DAMOH.
PRESENT ADD: CCOR, NEW KATNI JUNCTION, KATNI.
OTHER ADD: DIVISIONAL RAILWAY MANAGER,
RUNNING BRANCH, JABALPUR (MADHYA PRADESH)**

.....RESPONDENT

(NONE PRESENT FOR THE RESPONDENT)

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

ORDER

This revision petition u/S 19(4) of the Family Courts Act has been filed by the petitioner/wife being aggrieved by the order dated 22.08.2023 passed by I Additional Principal Judge, Family Court Indore in MJC No.1443/2021, whereby the learned trial Court has partly allowed interim maintenance application filed by the petitioner/wife and awarded her Rs.3,500/- per month from 25.04.2023.

2. It is admitted fact that the petitioner/wife and respondent/husband got

married on 22.04.2021 as per Hindu rites and rituals. It is also admitted fact that the respondent/husband is working in Indian Railway as an Assistant Loco Pilot.

3. The petitioner/wife has filed an application for maintenance u/S 125 of Cr.P.C., and has also filed an application for interim maintenance stating that after marriage, she used to live with respondent/husband at her matrimonial house. Thereafter, her husband started to harass her physically and mentally, in furtherance of demand of dowry of Rs.50,00,000/- and a Creta car and for other domestic reasons as well. In furtherance of the aforesaid, the respondent had deserted petitioner/wife. Since 21.06.2021, she has been living at her maternal house. On 13.10.2021, the petitioner/wife had lodged an FIR for demand of dowry against respondent/husband and his family members at P/S Mahila Thana, Indore. The petitioner has no source of income to maintain herself. While the respondent is in a government job and receives salary of Rs.70,000/- per month. Therefore, the respondent is capable to maintain the petitioner but he denied to maintain her. She sought interim maintenance of Rs.30,000/- per month and counsel's fees Rs.25,000/- in lump sum.

4. The respondent/husband in his reply has denied all the averments made in interim maintenance application, except admitted facts and pleaded that after marriage, the behaviour of petitioner/wife was not fair with respondent/husband and his family members. She used to argue for trivial domestic causes and did not use to perform house chores. The petitioner/wife used to intimidate the respondent and his family members that she will commit suicide. The respondent/husband and his family members never demanded dowry from the petitioner/wife. She has lodged a false FIR against the respondent and his family

members. The petitioner/wife herself does not want to live with the respondent/husband. The petitioner/wife on 21.06.2021, left to Indore and started to live at her maternal house. She took all her Stridhan i.e., gold and silver ornaments with herself. She did not return to the respondent/husband's house despite of several attempts of exhorting her. The respondent did not desert her but she herself opted to not live with respondent/husband. The petitioner is a graduate lady and runs a beauty parlour shop from where she earns a sum of Rs.50,000/- per month. She receives monthly Rs.30,000/- from rent. Father of the petitioner/wife also has ample sources of income. Therefore, she is capable to maintain herself. It is also submitted that Family Court, Damoh in a matter of restitution of conjugal rights has awarded her interim maintenance, wherein she is getting Rs.1,500/- per month by the respondent/husband. Respondent/husband earns Rs.29,561/- per month as salary. Therefore, application for interim maintenance is liable to be rejected.

5. The learned trial Court after hearing both the parties and considering affidavits filed by the parties as prescribed by the Apex Court in the case of ***Rajnish V Neha And Anr.* [(2021) 2 SCC 324]** was *prima facie* of the view that the petitioner/wife has no source of income therefore, she is unable to maintain herself, while the respondent/husband receives Rs.29,561/- per month as salary. Therefore, he is capable to maintain his wife. Accordingly, the learned trial Court awarded the interim maintenance in favour of the petitioner/wife as mentioned above. The learned trial Court has also directed that if the petitioner/wife is receiving maintenance in any other case, then this amount shall be adjusted with the same.

6. Learned counsel for the petitioner submits that in the last page of the impugned order the trial Court, it observed that it is apposite to provide interim

maintenance from the date of filing of maintenance application but thereafter, she awarded maintenance from filing of affidavits by the petitioner i.e., 25.04.2023, which is contradictory. It is also submitted that interim maintenance should be awarded 25% of the net salary of the husband but the trial Court has awarded only Rs.3,500/- as interim maintenance. Therefore, interim maintenance should be enhanced up to Rs.30,000/- per month. He has placed reliance on the case of **Rajnish V Neha And Anr [(2021) 2 SCC 324]**.

7. I have heard learned counsel for the petitioner and perused the records.

8. The Apex Court in the case of **Kulbhushan Kumar v. Raj Kumari and Anr [(1970) 3 SCC 129]** has opined that 25% of the net salary of the husband would be just and proper to be awarded as maintenance to the wife which has been followed by the Apex Court also in the case of **Kalyan Dey Chowdhary v. Rita Dey Chowdhary Nee Nandy [(2017) 14 SCC 200]**.

9. The Delhi High Court in the case of **Sapna Paul v. Rohin Paul [(2024) SCC 372]** has observed as under:-

*Keeping in view the income of the parties and the judgment of the Supreme Court in **Kulbhushan Kumar v. Raj Kumar, (1970) 3 SCC 129**, which was reaffirmed in the judgment of the Supreme Court in **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy, (2017) 14 SCC 200**, I am of the view that it would be just and proper that twenty-five percent of the net income of the Husband be granted to the Wife as interim maintenance.*

10. The Apex court in the case of **Rajnish (Supra)** has observed as under:-

“109. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of the order in Section 125(2) of

Cr.P.C., it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 of Cr.P.C. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of application.”

11. In the instant case, it appears from affidavit filed by the respondent/husband that his monthly salary is Rs.29,561/-. He has shown his parents as dependents and there is no other liability on him. The respondent/husband has not mentioned age of his parents and their independent source of income and expenditure. It also appears from affidavit filed by petitioner/wife that she has no source of income and she also filed a case under Domestic Violence Act against the respondent which is pending for disposal.

12. Considering the monthly income of the respondent, 25% of the same would be around Rs.7,400/-. But the trial without considering the ratio observed by the Apex Court in the case of **Kulbhushan Kumar (Supra)** has awarded lesser amount for maintenance. Therefore, interim maintenance awarded by the learned trial Court is to be enhanced.

13. On perusal of the record, it appears that the petitioner had filed maintenance application in the month of November, 2021 and had filed affidavit on 25.04.2023 hence, the learned trial Court has awarded maintenance since 25.04.2023 which appears to be just and proper.

14. In the view of aforesaid discussion, revision petition filed by the petitioner is partly allowed. Interim maintenance awarded by learned trial Court in favour of the petitioner/wife is enhanced to Rs.7,000/- from Rs.3,500/- per month. If the petitioner is getting maintenance in any other case, then the same shall be adjusted. Other condition of the impugned order is hereby affirmed.

15. Accordingly, the revision petition stands **disposed of**.

(PRAKASH CHANDRA GUPTA)
JUDGE

Shruti

