IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 2nd OF FEBRUARY, 2024

CRIMINAL REVISION No. 260 of 2024

BETWEEN:-

LOKENDRA YADAV S/O RAMLAL YADAV, AGED ABOUT 43 YEARS, OCCUPATION: GUEST TEACHER R/O VILLAGE PALSUD POST PIPLYA TEHSIL MAHESHWAR DISTT. KHAROGNE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI BHAGWAN RAJ PANDEY - ADVOCATE)

AND

1. **ASHA D/O RAMSINGH, AGED ABOUT 39 YEARS, OCCUPATION: NOT KNOWN R/O VILLAGE PALSUD POST PIPLYA TEHSIL MAHESHWAR DISTT. KHARGONE AT PRESENT DHAR DISTT. DHAR (MADHYA PRADESH)**

2. **VIRAJ S/O LOKENDRA MINOR THROUGH MOTHER AND GUARDIAN ASHA D/O RAMSINGH, AGED ABOUT 39 YEARS, OCCUPATION: NOT KNOWN VILLAGE PALSUD, POST PIPLIYA, TEH. MAHESHWAR, DIST. KHARGONE AT PRESENT R/O DHAR (MADHYA PRADESH)**

3. **VISHAKHA D/O LOKENDRA MINOR THROUGH MOTHER AND GUARDIAN ASHA D/O RMSINGH, AGED ABOUT 39 YEARS, OCCUPATION: NOT KNOWN VILLAGE PALSUD, POST PIPLYA, TEH. MAHESHWAR DIST. KHARGONE, AT PRESENT D/O DHAR, DIST. DHAR (MADHYA PRADESH)**

.....RESPONDENTS

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

ORDER

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This is Criminal Revision u/S.19(4) of the Family Court Act, 1984 read with Sec.397/401 of Cr.P.C being aggrieved by the order dated 21.12.2023 passed by Family court, Dhar in Case No.MJCR 251/2023 whereby the application filed u/S.127 of the Cr.P.C has been rejected.

2. The respondents have filed an application u/S.125 of Cr.P.C for maintenance against the applicant. The Court, after evaluation of evidence of both the parties directed the applicant to pay Rs.2000/- each to the respondent No.2 and 3 minor children from the date of application i.e. from 17.8.2006. Being aggrieved by the said order, the applicant filed Cr.Revision No.3845/2023 before this Court. In the said revision, the applicant confined challenge to the said order only in respect of award of maintenance from the date of application and did not challenge the award of maintenance. Considering the aforesaid submissions and limited prayer of the applicant, the court disposed off the said revision petition with a direction to consider afresh the request of applicant after hearing both the parties if he files an application before the court in this regard. Thereafter the court has passed the fresh impugned order dated 22.12.2023 and rejected the prayer of the applicant to award the maintenance from the date of order instead of from the date of application.

3. Counsel for applicant submits that the respondents were not entitled for maintenance because the delay was on the part of the respondents and, therefore, court ought to have awarded the maintenance from the date of order and not from the date of application. He placed reliance on the judgment passed by the Apex Court in the case of ***Rajnesh Vs. Neha (2021) 2 SCC 324***.

4. After hearing learned counsel for applicant and upon perusal of the judgment passed by the Apex Court, I do not find any illegality in the impugned

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order. In the case of ***Rajnesh*** (supra) it has been held that the maintenance u/S.125 Cr.P.C be granted from the date of application. The relevant paragraphs of the said judgment are reproduced 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) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC. 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 the application.*
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> *110. In Shail Kumari Devi v. Krishan Bhagwan Pathak [Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839] , this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In Bhuwan Mohan Singh v. Meena [Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200] , this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.*
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> *111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from*

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the date on which the application for maintenance is filed before the court concerned."

5. I further do not find any merit in the contention of the applicant that since the respondents were prosecuting the remedies before this court and, therefore, the delay was caused on her part and, therefore, the maintenance could not have been awarded from the date of application. Prosecuting the statutory remedies by the respondents would not constitute delay in the trial. The proceedings were proceeded ex-parte against the respondents and because she did not appear on the various dates. He produced copy of the order dated 14.7.2023 passed in Cr.Revision No.1276/2021. Upon perusal of the said order, it appears that the trial court proceeded against the respondents on ex-parte and an application u/O.9 Rule 9 read with Sec.151 of CPC was dismissed. The respondents filed fresh Revision No.1276/2021 and this court allowed the said petitioner and the order impugned was set aside. The matter was remitted back to the Family Court.

6. Thus, in view of the law laid down in the case of ***Rajnesh*** (supra), I do not find any case for interference. The revision is dismissed.

(VIJAY KUMAR SHUKLA)
JUDGE

VM

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