

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

ORDER

Harwan Singh Vs. State of Raj. & others.

SB CRIMINAL REVISION PETITION NO.967/2008.

Under Section 397 read with Section 401 of the
Code of Criminal Procedure.

DATE OF ORDER: 29th August, 2008.

PRESENT
HON'BLE MR. JUSTICE S.P. PATHAK

Mr. Mohan Swaroop Sharma for the petitioner.
Mrs.Nirmala Sharma PP for the State.

BY THE COURT:

This revision petition under Section 397 read with section 401 Cr.P.C. has been filed against the order dated 25.3.2008 passed by the learned Judge, Family Court, Ajmer in Criminal Case No.141/2003 whereby maintenance @ Rs.800/- per month to non-petitioner no.1 and Rs.400/- to non-petitioners no.3 and 4 each has been awarded.

Briefly stated, the facts for the disposal of this revision petition are that the petitioner is the husband of non-petitioner no.2 Smt. Asha Devi. Non-petitioners no.3 and 4 are Kanhaiya and Ramu born to them. Since the petitioner started neglecting his wife and thrown her out, an application was moved by the non-petitioner no.2 before the learned Judge, Family Court, Ajmer stating therein that the marriage between the parties was performed in the year 1999. After some days of the marriage, the

behaviour of the petitioner and his family members towards the non-petitioner wife changed and they started torturing her and also started demanding dowry. It is also stated that the non-petitioner gave birth to two male children. Since the non-petitioner did not fulfill the demand, she was thrown out of the house and having no source of income, she sought maintenance from the petitioner. A reply to the application was filed wherein factum of marriage has not been controverted but stated that the non-petitioner has left the house at her own sweet will. The non-petitioner no.2 examined herself and her mother. The petitioner examined four witnesses; himself, Banney Singh, Karam Singh and Raj Kumar. The learned Judge, Family Court after hearing both the sides granted maintenance @ Rs.800/- per month to the wife and Rs.400/- to the non-petitioner nos.3 and 4 each.

It is contended that the non-petitioner is indulged in the business of illicit liquor and since the petitioner was not cooperating her, therefore, she had left the house. It is also contended that the petitioner filed an application under section 9 of the Hindu Marriage Act for restitution of conjugal rights at Bharatpur. It is after receiving the notice of the petition, this application under section 125 Cr.P.C. was moved. It is also contended that no harassment was given to non-petitioner nor any demand of dowry was made.

I have considered the submissions made before me and perused the impugned order passed by the learned Judge,

Family Court.

In the instant case, the admitted position is that the petitioner and the non-petitioner are husband and wife, out of their wedlock non-petitioners no.2 and 3 were born. In relation to the income of the petitioner, the learned Judge, Family Court came to the conclusion that the petitioner was having agricultural land and his monthly earning was approx. Rs.5,000/- per month, therefore, considering the income awarding maintenance @ Rs.800/- per month to the wife and Rs.400/- per month to non-petitioners no.3 and 4 each from the date of passing of the order. I do not find that the amount of maintenance awarded to the non-petitioners is at higher side. It further appears from the perusal of the impugned order that the circumstances became such that it was not possible for the non-petitioner to stay with the petitioner.

In the above circumstances when it is found that the non-petitioner was having no source of income then the order passed under section 125 Cr.P.C. awarding maintenance to the non-petitioners appears to be legal, just and proper requiring no interference by this court in its revisional jurisdiction. The revision petition is devoid of merit and is liable to be dismissed.

In the result, the revision petition stands dismissed.

(S.P. PATHAK,J)