

**Renu Gupta Vs. Devendra Kumar**

**Renu Gupta Vs. Devendra Kumar**

**SooperKanoon Citation :** [sooperkanoon.com/1182649](http://sooperkanoon.com/1182649)

**Court :** Madhya Pradesh

**Decided On :** Mar-21-2014

**Judge :** N.K. Gupta

**Appeal No. :** Criminal Revision No. 623 of 2010

**Appellant :** Renu Gupta

**Respondent :** Devendra Kumar

**Judgement :**

1. The applicant has preferred the present revision against the order dated 26.2.2010 passed by the learned Principal Judge, Family Court, Rewa in Misc. Criminal case No.16/2009, whereby the maintenance application of the applicant was dismissed.

2. The facts of the case, in short, are that, the applicant and the respondent were married on 9.5.2002 at Satna. The applicant has preferred an application under Section 125 of the Cr.P.C. with the facts that for the first year after her marriage, there was no problem to her. In December, 2003, she was sent to her parents house and she resided with her parents and uncle in their house but, thereafter, the respondent did not take her back and refused to maintain her. A notice was sent by the respondent and the applicant replied on 4.2.2006. Thereafter, the respondent had lodged a divorce petition before the competent Court and on 27.9.2008, the trial Court passed the decree of divorce against the applicant. The

appeal is pending before the High Court. Actually, the applicant was harassed in the house of the respondent. She mentioned so many incidents of harassment done with her. She mentioned the income of the respondent to be Rs.300/- per day and she claimed a maintenance of Rs.3,000/- per month.

3. In reply of the application, the respondent denied all the allegations. He has submitted that it was the applicant who deserted the respondent and therefore, he moved a petition for divorce and decree of divorce was granted. The respondent is an unemployed person, who is getting pocket money of Rs.20/- to 25/- per day from his father, who is a pensioner of Railways. Since the applicant was found at fault and decree of divorce was granted in favour of the respondent, therefore, the applicant could not get any maintenance under Section 125 of the Cr.P.C. and therefore, it is prayed that the application may be dismissed.

4. The learned Principal Judge, Family Court, after considering the evidence adduced by the parties and looking to the facts and circumstances of the case, dismissed the maintenance application of the applicant.

5. I have heard the learned counsel for the parties.

6. In the present case, the learned Principal Judge Family Court, Rewa did not assess the dependency of the applicant and capacity of the respondent to pay the maintenance. Quantum of maintenance was not determined and the application was dismissed in omnibus manner. Therefore, it is for this Court to decide that what was the expenditure of the applicant. Whether the respondent is capable to pay the same and what would be the quantum of maintenance and whether the applicant could get the maintenance amount, without residing with the respondent.

7. Renu Gupta (P.W.1), Rajendra Prasad (P.W.2) and Sarju Sharan (P.W.3) have stated about the income of the respondent that he has a small shop of coconut and other materials for pooja before a temple and he was earning a sum of Rs.300/- per day from that shop, whereas the respondent Devendra Gupta (D.W.1) has accepted that there was a small shop (Tapra) (kiosk), which was initiated by the father of the respondent and occasionally, the respondent was also sitting at that shop. Both the parties did not show any other source of income of

the respondent. In such a small shop, the respondent cannot get a huge income of Rs.300/- per day. If transaction of Rs.3,000/- is done in a day then, it is possible that the respondent could earn a sum of Rs.300/- per day. Though it is alleged by the respondent that shop was of his father but, it is admitted that the father of the respondent is a pensioner from Railways and therefore, he was getting a handsome pension from the department and therefore, it was not possible for the father of the respondent that he would have run the shop, whereas his son is unemployed. Under such circumstances, the testimony of the respondent cannot be accepted on this count and the testimony of the witnesses of the applicant can be accepted that the respondent is running a kiosk of coconut and other pooja material before a temple. Looking to the size of shop etc., where the witnesses of the applicant could not show that the temple is very big, it cannot be presumed that the respondent was earning a sum of Rs.300/- per day. It is established that the respondent is not suffering from any disability and therefore, it is expected from him that being a healthy person, he could earn the earnings fixed by the Collector for an unskilled person. Such earning was Rs.110/- per day in those days in which the order was passed by the Principal Judge, Family Court and therefore, the earnings of the respondent may be assessed as Rs.3,500/- per month.

8. It is apparent that the respondent claimed that he was getting the pocket money from his father and therefore, he was not expected to spend for house running etc. and therefore, looking to his income, a sum of Rs.1,500/- may be left with the respondent for his own expenditure and remaining amount of Rs.2,000/- may be given by the respondent to the applicant, if she is entitled to get the maintenance.

9. So far as the dependency is concerned, it is established that the applicant is not earning at all but, status of both the parties is not shown in such a manner that the applicant could get a handsome amount for her maintenance. Looking to the status of the parties, a maintenance of Rs.2,000/- per month would be sufficient to the applicant. The applicant has submitted that she was getting some maintenance under Section 24 of the Hindu Marriage Act in the divorce petition but, she told about her daily allowances for the attendance of the case and railway fare to visit the Court. However, she did not mention the amount of interim

maintenance granted by that Court. Under such circumstances, it would be proper to assess the maintenance of the applicant to be a sum of Rs.2,000/- per month.

10. So far as the condition that the applicant is not residing with the respondent and therefore, she would not be entitled for any maintenance is concerned, it would be apparent that the applicant has filed the present maintenance application after getting the decree of divorce. Grant of maintenance may be assessed for wife and for divorced wife in a separate manner. If a wife wants maintenance from her husband then, she has to show the reasons as to why she does not want to reside with her husband otherwise, she cannot get the maintenance. In the present case, if the evidence given by various witnesses of the parties is assessed then, if there was some problem to the applicant in the house of the respondent and she was ousted from the house by the respondent then her family members or she would have tried to get the settlement with the respondent. As submitted by the learned counsel for the respondent, it is true that the applicant left the house of the respondent in the year 2003 but, she did not file any FIR against the respondent and her family members in last six years. She has lodged an application for maintenance after getting the decree of divorce. Looking to the evidence of various witnesses of both the parties, it would be apparent that the applicant was residing with her uncle and not with her father and mother and her uncle was adamant not to send the applicant to the house of her husband. If the applicant had any problem with the respondent and his family members then, certainly she should have lodged an FIR under Section 498-A of IPC or tried to get the resolution of that problem. She simply said that since nobody came to take her, therefore she did not visit to the house of the respondent. Such casual reply does not give favour to the applicant. That reply indicates that she had no problem in the house of the respondent. Hence, there was no ground with the applicant to get the maintenance without residing with the respondent.

11. However, the applicant has filed the present maintenance application after the decree of divorce. Though an appeal is pending and decree of divorce is stayed but, still since a decree of divorce is passed and the applicant has filed the present application as a divorced wife then, it cannot be said that she has lodged an application for maintenance with delay. The learned counsel for the applicant has

placed his reliance upon the judgment passed by Hon'ble the Apex Court in case of Rohtas Singh Vs. Smt.Ramendri and others , [AIR 2000 SC 952], whereby it was held that the maintenance application can be accepted for a divorced wife, who does not have any means to maintain herself. In the present case, though the applicant was not entitled to get any maintenance before a decree of divorce because she herself refused to reside with her husband but, at present, she is a divorced wife and therefore, it cannot be said that she may be denied with the maintenance, if she does not reside with her husband. It is established that the applicant is unable to maintain herself and therefore, being a divorced wife, it is the duty of her previous husband to provide the maintenance. Under such circumstances, the learned Principal Judge, Family Court has committed an error of law and fact in dismissing the application under Section 125 of the Cr.P.C. filed by the applicant as a divorced wife.

12. On the basis of the aforesaid discussion, it would be apparent that being a divorced wife, the applicant is entitled to get maintenance from the respondent. The applicant herself did not file any application for maintenance since long and therefore, it would not be proper to grant the maintenance from the date of the application. Consequently, the revision filed by the applicant is hereby allowed. The impugned order passed by the learned Principal Judge, Family Court is hereby set aside. The applicant would be entitled to get the maintenance of Rs.2,000/- per month from the respondent from the date of the order till the date when decree of divorce is quashed. If decree of divorce is quashed in the appeal then, from that date, the applicant would not be entitled to get any maintenance from her husband. No orders as to cost.

13. A copy of the order be sent to the trial Court alongwith its record for information and compliance.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**