

A MANOJ YADAV
v.
PUSHPA @ KIRAN YADAV & ORS.
(Criminal Appeal No. 107 of 2001)

B JANUARY 11, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Code of Criminal Procedure, 1973:

C s.125 – Maintenance to wife – Enhanced by High Court
to Rs.4000/- per month – Challenged – Plea that State
amendment allowed maintenance upto Rs.3000/- per month
only – HELD: Section 125 has been further amended in
D Madhya Pradesh by a subsequent amendment of 2004 which
does not contain any upper limit in the maintenance to be
granted u/s 125 and it is left to the discretion of the Magistrate
– Moreover, after the amendment to s.125, by the Code of
E Criminal Procedure (Amendment) Act, 2001 which deleted the
words “not exceeding five hundred rupees in the whole”, all
State amendments to s. 125 by which a ceiling has been fixed
to the amount of maintenance to be awarded to the wife have
become invalid.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 107 of 2011.

F From the Judgment & Order dated 23.1.2009 of the High
Court of Madhya Pradesh Judicature at Jabalpur, bench at
Gwalior in Criminal Revision No. 12 of 2008.

G S.K. Dubey, Shail Kr. Dwivedi, AAG, Kamini Jaiswal, Jai
Prakash Pandey, Shantanu Singh, Nikilesh Ramachandran,
Alok Pandey, Gopal Singh, Rituraj Biswas, Sanjay V. Kharde,
Asha Gopalan Nair, Kusumanjali Sharma, C.D. Milind Kumar,
Manoj Kr. Dwivedi, Ashutosh Kr. Sharma, Gunnam

Venkateswara Rao, Aviral Shukla, Upendra Mishra for the
appearing parties. A

The following Order of the Court was delivered

ORDER

Heard learned counsel for the parties. B

We also wish to express our appreciation of Ms. Kamini
Jaiswal, learned counsel, whom we had appointed as Amicus
Curiae in the case, and she has been of great assistance to
us. C

Leave granted.

This Appeal has been filed against the impugned judgment
of the High Court of Madhya Pradesh, Bench at Gwalior, dated
23.01.2009 passed in Criminal Revision No. 12/2008. That
judgment was given in a criminal revision filed against the order
dated 04.10.2007 of the learned Additional Family Court,
Gwalior granting maintenance of Rs. 1,500/- per month under
Section 125 Cr.P.C. to respondent No.1. Respondent No.1 by
means of her criminal revision applied for enhancement of the
maintenance. D E

By the impugned judgment the High Court has granted a
sum of Rs. 4,000/- per month as maintenance with effect from
01.01.2009 to the wife-respondent No.1 in this case. That order
has been challenged before us. F

Learned counsel for the appellant submitted that the
amount which could be granted as maintenance under Section
125 Cr.P.C. in the State of Madhya Pradesh could at most be
Rs. 3,000/- in view of the amendment to Section 125 Cr.P.C.
by Madhya Pradesh Act 10 of 1998. It appears that Section
125 Cr.P.c. has been further amended in Madhya Pradesh by
a subsequent amendment by Madhya Pradesh Act 15 of 2004
which does not contain any upper limit in the maintenance to H

be granted under Section 125 Cr.P.C. and it is left to the discretion of the magistrate. Hence, there is no substance in the submission of the learned counsel for the appellant.

Moreover, we are of the opinion that after the amendment to Section 125 Cr.P.C., which is a Central Act, by the Code of Criminal Procedure (Amendment) Act, 2001 which deleted the words "not exceeding five hundred rupees in the whole", all State amendments to Section 125 Cr.P.C. by which a ceiling has been fixed to the amount of maintenance to be awarded to the wife have become invalid.

For the reasons given above, there is no merit in the Appeal and it is dismissed accordingly.

R.P.

Appeal dismissed.