

Neutral Citation No. - 2023:AHC:208329

Judgment reserved on 25.7.2023

Judgment delivered on 01.11.2023

Court No. - 50

Case :- CRIMINAL REVISION No. - 229 of 2023

Revisionist :- Payank Kaushal

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Indra Mani Tripathi

Counsel for Opposite Party :- G.A.,Brajesh Kumar Solanki

Hon'ble Ram Manohar Narayan Mishra,J.

1. By means of the instant criminal revision the revisionist has assailed the judgment and order dated 07.12.2022 passed by learned Additional Principal Judge, Family Court No.2, Bulandshahar in Misc. Crime No.661 of 2017 (Smt. Puja Kaushal and another Vs. Payank Kaushal) under Section 125 Cr.P.C., whereby the learned court below has allowed the application under Section 125 Cr.P.C. filed by the applicants who are respondent Nos.2 and 3 in present revision and directed the opposite party-present revisionist (Payank Kaushal) to pay Rs.7,000/- per month to applicant No.1 and Rs.3,000/- per month to applicant No.2 as maintenance from the date of filing of application to the date of judgment, and thereafter at the rate of Rs.10,000/- and Rs.5,000/- per month in aggregate to Rs.15,000/- per month as maintenance to opposite party No.2 and 3 (Smt. Puja Kaushal and Nitya Kaushal). The amount awarded to minor daughter Nitya Kaushal (daughter of applicant No.2) is payable to her till attainment of majority or till her marriage, which ever is earlier. The arrears of maintenance from the date of filing of application or from the date of judgment will be payable at the rate of Rs.10,000/- in four monthly equal installments, any amount obtained by the applicant will be adjusted towards maintenance awarded in the judgment.

2. Heard learned counsel for the revisionist, learned counsel for the respondents No.2 and 3, learned A.G.A. for the State and perused the material available on record.

3. The factual matrix of the case in brief are that applicant No.1 Smt. Puja Kaushal and opposite party Payank Kaushal are strange spouse, the wife filed an application under Section 125 Cr.P.C. for maintenance with an averments that her marriage was solemnized with opposite party according to hindu rites and rituals on 22.11.2011 and no demand of dowry was made from the side of opposite party prior to marriage. However, her family members spent about Rs.25 Lacs in the marriage. The opposite party and his family members began teasing the applicant No.1 (Smt. Puja Kaushal) for bringing less dowry started demanding flat and Rs.25 Lacs cash, subjected the applicant No.1 cruelty and engage her in marpeeth, due to non-fulfillment of demand of dowry. The applicant was blessed with a girl child namely Nitya Kaushal who was around four years of age at the time of filing an application under Section 125 Cr.P.C.. On 16.10.2014 the opposite party and his family members tried to kill applicant No.1 and kicked her out from their home alongwith her daughter and thus she was compelled to take shelter in her parental home. She did not have any source of income, she is residing at Bulandshahar at present alongwith her brother, who is an Advocate in Bulandshahar. The monthly salary of her husband is one lakh from all resources.

4. Learned court below issued notice to opposite party, who appeared and filed written statement, wherein he admitted factum of marriage with applicant No.1 and birth of applicant No.2 (Nitya minor) out of his wedlock with applicant No.1. He further submitted that applicant No.1 herself practised cruelty towards opposite party. She left her matrimonial home alongwith her daughter and her stridhan out of her own willingness and choice and started living separately from him. The opposite party got major operation at Medanta Hospital, Gurgaon, but she never visited him even during that period. He was suffering from serious disease since 2012, he again suffered a road accident on 24.01.2019, due to which he faced difficulty in walking. The applicant No.1 is B.Sc. B.Ed. and is teaching in some educational institution prior to marriage and still she is engaged in teaching work and earns around Rs.15000 to Rs.20000 per month and thus she is able to maintain herself and daughter.

5. Learned court below after perusing the pleadings and evidence adduced by the parties gave a finding that applicant No.1 legally wedded wife of opposite party, and applicant No.2 (daughter) is born out of their wedlock, she has been living separately from her husband due to sufficient reason. Applicant No.1 is not able to maintain herself and her minor daughter, and this is not proved that she is not having independent source of income.

6. Learned court below reliance on the judgment of Hon'ble Apex Court in **Sunita Kachwaha and others Vs. Anil Kachwaha (2014) 16 SCC 715**, wherein Hon'ble Apex Court held that the proceedings under Section 125 Cr.P.C. is summary in nature merely because the appellant wife is qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. In so far as her employment as teacher in Jabalpur, nothing was placed on record before the family court or in the High Court to prove her employment and her earnings, in any event, merely because the wife was earning something, it would not be a ground to rejected her claim for maintenance.

7. Learned court below also recorded finding that opposite party is a M.B.A. degree holder, he was running firm of his own, which was registered in his name, he is possessing a four wheeler vehicle and comes to Agra to look after his case by his own vehicle. He has submitted in his evidence that his own expenses are around Rs.10,000/- to Rs.15,000/- per month. Keeping in view the social, economical and local family background of the parties the court fixed the maintenance as aforesaid.

8. Feeling aggrieved by the impugned judgment and order of the trial court, the revisionist filed present revision with prayer to set-aside the impugned judgment and order passed by the court below.

9. Learned counsel for the revisionist submitted that he has categorically submitted before the court below that he was employed at the time of marriage. He fell ill in the year 2012 and during entire period of his illness he was ignored by the applicant No.1, she did not take care of him and even fail to visit him whenever he is hospitalized and operated. The impugned order of the court below is perverse and against the evidence on record. The respondent No.2 left the matrimonial home alongwith her stridhan and taking her minor daughter with her, out of her own sweet will and against the wishes of

the revisionist and his family members. She is serving in primary school and gets the salary of Rs.20,000/- per month. He is victim of cruelty practiced by his wife and in-laws. The revisionist has also filed a case of restitution of conjugal rights under Section 9 of the Hindu Marriage act, inasmuch as notice has been issued to respondent No.2, but on application of respondent No.2, the case was transferred from Agra to Bulandshahar. The respondent No.2 has instituted many cases against the revisionist at the behest of her brother Rakesh Dixit. She has virtually ruined the life of the revisionist by throwing a number of cases against him and for that reason he was forced to resign from his Bank Service. He sold his entire property and suffered from depression and illness. He has to shoulder the responsibility of two brother, two widowed sister-in-law, two minor niece, even in a situation when he is unemployed presently. The revisionist has filed a photo copy of income certificate issued by Tehsildar Agra dated 23.12.2022, wherein the monthly income of the revisionist has been assessed as Rs.7,000/- per month and annual income as Rs.84,000/-.

10. Learned counsel for the revisionist cited and placed reliance on **Bhaskarrao Uttamrao Patil (Chopde) Vs. Sau. Sumanbai @ Kokilabai Bhaskarrao Patil (Chopde) 2017 (3)AIR Bombay (R) (Cri) 954**, wherein it is held that in terms of sub-section 4 of Section 125 Cr.P.C. the wife is residing separately from husband without sufficient cause or reason or has refused to live with the husband or that she is living separately by mutual consent. The wife is not entitled to claim maintenance from her husband.

11. He further submitted that in another case **Amrendra Nath Bagui Vs. Smt. Gauri Rani in Criminal Revision No.227 of 1990 Calcutta High Court** held that where a separate living proceeds from the common desire of the husband and the wife to live separately whatever the reason for the desire may be, it may be, it is certainly by mutual consent. In that case the wife is not entitled to claim maintenance under Section 125 Cr.P.C.. She may be entitled to maintenance under the Hindu Marriage Act or in an action for the enforcement of the alleged agreement for maintenance but sub-section (4) of Section 125 which governs the whole of Section 125 including sub-Section (1) is a clear bar to her claim for maintenance.

12. Per contra, learned counsel for the respondent Nos. 2 and 3 stated that revisionist is possessed of sufficient means to maintain his wife and daughter. The respondent No.2 has denied any independent source of income and only due to the fact that she has achieved higher education, she may not be presumed to be earning. The revisionist failed to establish his case that respondent No.2 works as a teacher in some school and earns Rs.20,000/- per month. The amount awarded by the learned court below is minimum amount for sustenance of her minor daughter and same needs no interference in the present revision. The respondent No.2 has calculated her expenses as Rs.20,000/- per month in her statement of assets and liabilities.

13. The finding of facts recorded by the court below are based on the basis of evidence record and as a matter of principle may not be interfered in revision.

14. The statements of the witnesses in proceedings under Section 125 Cr.P.C. are filed in present revision as Annexure No.4 . A.P.W1 Smt. Puja stated that she has received education upto Graduation, her marriage with opposite party was settled through news paper advertisements, she was residing separately from her husband just after two and quarter years of her marriage. She is not aware as to how many cases are instituted by her.

15. In cross-examination she has feigned ignorance regarding illness and operation of husband. She stated that she was not able to maintain herself. The revisionist has filed various papers in support of his version that he is suffering from fatty infiltration of liver. He was hospitalized in Medanta, Gurgaon from 26.08.2015 to 29.08.2015 for surgery.

16. Revisionist was summoned in a complaint case instituted by his father-in-law in the year 2015 under Section 323, 498-A I.P.C. read with Section 4 of Dowry Prohibition Act. Whereas revisionist has filed petition under Section 9 of the Hindu Marriage Act in the year 2015 for restitution of conjugal rights against his wife Smt. Puja Kaushal, the Respondent No.2-Smt. Puja Kaushal has filed a Suit for divorce under Section 13 of the Hindu Marriage Act in the year 2015 seeking decree of divorce. Her petition under Section 13 of the Hindu Marriage Act was allowed vide order dated 28.02.2019 passed by Learned Additional District and Session Judge/ 4th FTC Bulandshahar.

17. The revisionist has filed photo copy of money receipts accepted by respondent No.2 on different dates alongwith D.D. No.000040, which is annexed as Annexure No.19 in present revision. He has also filed order sheet of the Court below which reveals that various amount she have been received by respondent No.2 from the revisionist and received a draft of Rs.50,000/- on 06.08.2021. However, the income certificate issued by the Tehsildar is not a conclusive document with regard to income of the revisionist.

18. Learned trial court has rightly concluded that opposite party is a highly educated person, he was operating a firm in his name, previously he is also having a four wheeler. Learned court below also rightly concluded that applicant is not having any independent source of income sufficient to maintain herself. However, considering the fact that revisionist has stated that his firm has got closed at present, and his income is not sufficient to pay the amount awarded as maintenance in the impugned order to the respondent Nos. 2 and 3; he has to bear huge medical expenses due to severe health complications and he has established this fact by producing his medical documents, the amount awarded in the impugned judgment and order is liable to be modified up to some extent so far as quantification of amount of maintenance is concerned, to keep this in consonance with estimated income, expenses and liabilities of the revisionist. Therefore, it is directed that revisionist will pay Rs.7,000/- per month to the applicant No.1 and Rs.3,000/- to applicant No.2 from the date of filing of application to date of judgment and subsequent to thereof on uniform basis and enhancement of maintenance from the date of judgment, from Rs.7,000/- to Rs.10,000/- and Rs.3,000/- to Rs.5,000/- is set-aside accordingly. The other terms and conditions imposed in the impugned order passed by learned court below will remain intact with above modification. The revision is **partly allowed** in the manner.

19. It is further clarified that any amount paid towards maintenance pursuant to impugned order by the revisionist to applicants-respondents will be adjusted towards arrears of maintenance as modified by this order.

Order Date :- 01.11.2023

Ashish/-