

Court No. - 50

Case :- CRIMINAL REVISION No. - 496 of 2023

Revisionist :- Sheeba And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Ajay Kumar Jagdish

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

Heard learned counsel for the revisionists, learned AGA for the State and perused the material placed on record.

Instant criminal revision has been preferred against the impugned judgement and order dated 21.12.2022, passed by Additional Principal Judge, Family Court, Saharanpur, in Case no.1287 of 2021, under section 125 Cr.P.C.

Notice was issued to respondent No.2 but report has been received from CJM, Muzaffar Nagar that according to the police station report, he has left his abode five years ago and his current address is not known. A report of Gram Pradhan has also been filed in support of said report.

Learned counsel for the revisionists submitted that in spite of efforts, current address of respondent No.2 could not be known.

According to the factual matrix of the case, applicant No.1 filed a petition under Section 125 Cr.P.C. seeking maintenance from her husband, the opposite party for herself as well as for her three minor children, with averment that her marriage was solemnized with Imran 12 years ago according to the Muslim rites and rituals and she was living with him at village Harsauli. Three children born out of her wedlock with her husband. She stayed with her husband at her matrimonial place for three years of her marriage. However, she was subjected to constant harassment, torture and cruelty by husband and in-laws. The opposite party used to change his abode in different cities by taking houses on rent. he has also addicted with gambling and alcoholism. He was not paying any amount to applicants for maintenance. He also engaged in *maar-peet* with applicant no.1 and ultimately kicked her out alongwith her children four months prior to last Eil-ul-Adha and himself left his home. Applicant is residing with her children by taking a house on rent and earn her livelihood by working in different household as utensil and floor cleaner. The opposite party visited her rental place once in aberrated state, gave her beating, pronounced triple

talaq and also extended threat of life to her. Her husband works as contractor in brick kiln of transportation of brick from kilns and earns Rs.30000/- to Rs.35,000/- per month. He is able to provide maintenance to the applicants but he is neglecting his liability to maintain his wife and children. Notice was served on opposite party but he failed to appear before the court below and the proceedings were taken ex-parte against him. On perusal of pleading and evidence of applicants, concluded that the applicant No.1 is legally wedded wife of opposite party and the children were born out of their wedlock. The opposite party deserted the applicants deliberately and did not provide any maintenance to them. Consequently, the applicant No.1 was forced to live separately from her husband. Although, no documentary evidence has been adduced by the applicant No.1 in support of earning of opposite party but keeping in view the pleadings and uncontroverted statement of the applicant No.1, it appears that she is not possessed of any means to maintain herself. There is no evidence on record to the effect that the opposite party is suffering from any physical disability. Therefore, he may be supposed to be physically able person and capable of earning. As the applicants are wife and children of opposite party and they are not possessed of any financial means to support themselves. Therefore, this is moral, social, legal and religious liability of the opposite party to maintain his wife and children. There is no evidence on record that the opposite party has paid any maintenance to the applicants. Learned court below while considering the standard of both sides citing the judgement of Hon'ble Apex Court passed in the case of **Rajnish vs. Neha (2021) 2 SCC 324**, has fixed an amount of maintenance 1,000/- per month to applicant No.1 and at the rate of Rs.500/- per month to each of the applicant Nos.2,3 and 4. Thus, has awarded maintenance to the tune of Rs.2500/-, in aggregate to the applicant from the date of filing of applicant i.e. from year 2021.

Learned counsel for the revisionists submitted that the present revision has been filed by the revisionist for enhancement of maintenance as the amount fixed by the court below is a paltry amount and it is not possible for revisionist to keep their both ends meet at the meagre amount of Rs.2500/- per month for maintenance of four persons. The opposite party No.2 is possessed of sufficient means to maintain his wife and children and a reasonable amount befitting to financial needs of the revisionists is liable to be fixed by the court in present revision of this Court.

Learned AGA submitted that learned court below has observed in

impugned order that applicants have failed to adduce any documentary evidence in support of the income and earning of the opposite party.

Considering the rival submissions made by learned counsel for the parties, uncontroverted testimony of applicant No.1/revisionist No.1 herein, before the court below to commensurate her pleadings in maintenance petition, this Court is of considered opinion that the amount fixed in impugned judgement and order is a paltry amount and the revisionists cannot sustain themselves by such a meagre amount. This is well settled law that the amount of maintenance which is to be awarded by family court in maintenance proceeding should neither be a pittance nor a reward for separate living. The amount should be commensurate to economic needs of the applicants, befitting the standard of living, which they were enjoying while residing at the place of the opposite party after marriage between the spouse. The revisionist has also testified before the court below that the opposite party No.2 is possessed of sufficient means to maintain his wife and minor children. He works as a contractor in brick kilns in transportation of bricks from kilns and earns around Rs.30,000/- to 35,000/- per month by engaging in said work. The opposite party failed to appear before the court below even after service of notice and the case proceeded ex-parte against him. In this factual situation, the approach of the trial court while fixing such a paltry amount of maintenance cannot be countenanced. This is even not consistent with the common and general perception including market conditions of things essential for sustenance of a person. Therefore, the impugned judgement and order is liable to be modified as far as the quantum of amount of maintenance is concerned, whereas, the findings of court below on question of fact are affirmed.

In view of aforesaid, present criminal revision stands partly **allowed**.

It is directed that the amount of maintenance awarded to applicant No.1 Smt. Sheeba is enhanced from Rs.1,000/- to Rs.3,000/- per month and amount of maintenance to applicant Nos.2,3 and 4 is enhanced from Rs.500/- to Rs.2,000/- each, subject to other conditions mentioned in impugned judgement and order.

The impugned judgement and order passed by learned court below stands modified, accordingly.

Order Date :- 26.10.2023/Kamarjahan