Court No. - 79

Case :- CRIMINAL REVISION No. - 1162 of 2023

Revisionist :- Jaskaran Singh
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Vinay Kumar Mishra
Counsel for Opposite Party :- G.A.,Mahendra Singh

Hon'ble Vipin Chandra Dixit,J.

Heard Sri Vinay Kumar Mishra, learned counsel for the revisionist, learned A.G.A. for the State, Sri Mahendra Singh, learned counsel appearing on behalf of opposite party no.2 and perused the record.

This criminal revision has been filed by the revisionist against the judgment and order dated 3.2.2023 passed by learned Principal Judge, Family Court, Etawah in Case No.218 of 2016 (Suman Kumari Vs. Jaskaran), by which application filed by opposite party no.2 under Section 127(1) Cr.P.C. was allowed and the maintenance was enhanced from Rs.1,500/- per month to Rs.5,884/- per month.

The brief facts of the case are that the opposite party no.2 had filed an application under Section 125 Cr.P.C. which was allowed by Additional Chief Judicial Magistrate, Court No.10, Etawah vide judgment and order dated 2.8.2003 directing the revisionist to pay maintenance at the rate of Rs.3,000/- per month to wife and Rs.2,000/- and Rs.1,000/- per month to minor children namely Suman and Pankaj respectively from the date of application i.e. 14.8.2001. The order dated 2.8.2003 was challenged by the revisionist and maintenance was modified by Additional Sessions Judge, Court No.4, Etawah vide order dated 12.2.2004 directing the revisionist to pay maintenance at the rate of Rs.1,500/- per month to wife and Rs.1,000/- per month each to minor children. The opposite party no.2 who is wife of revisionist had filed an application under Section 127(1) Cr.P.C. for enhancement of maintenance and learned Principal Judge, Family Court, Etawah vide order dated 3.2.2023 had allowed the application and enhanced the maintenance from Rs.1,500/- per month to Rs.5,884/- per month.

It is submitted by learned counsel for the revisionist that learned Family Court has committed gross illegality in enhancing the amount of maintenance from Rs.1,500/- per month to Rs.5,884/-

per month. It is further submitted that the revisionist is a retired employee getting pension of Rs.18,000/- per month and maintenance of Rs.5,884/- per month is very excessive. Lastly it is submitted that a major portion of pension is being spent in medicine and there is other liabilities of family, but this important aspect was not considered by the learned Family Court.

On the other hand, learned counsel appearing on behalf of opposite party no.2 submits that the opposite party no.2 was deserted by her husband without there being any sufficient reason and she resides at her parental house since 2003. The application filed by opposite party no.2 under Section 127(1) Cr.P.C. was allowed after about 19 years in the year 2023 and the maintenance has been enhanced upto Rs.5,884/- per month which cannot said to be excessive in any manner considering the pension of the revisionist which is Rs.18,000/- per month.

Admittedly, the opposite party no.2 is legally married wife of revisionist. The revisionist being husband of opposite party no.2 is morally bound to discharge his legal obligation of maintaining his wife. The husband cannot be heard to say that he is not in a position to earn enough to be able to maintain his wife.

Considering the rival submissions of learned counsel for the parties and looking the financial status of the parties, the maintenance enhanced by learned Family Court is slightly on higher side.

In view of above, the present criminal revision is partly **allowed** and the maintenance enhanced by learned Family Court is hereby reduced from Rs.5,884/- to Rs.5,000/- per month.

The entire arrears as on date shall be paid by the revisionist in three equal monthly instalments to the opposite party no.2, failing which it is open to opposite party no.2 to recover the arrears by filing application under Section 128 Cr.P.C.

The revisionist is directed to pay monthly maintenance and entire arrears indicated above in the bank account of opposite party no.2.

Order Date :- 27.10.2023
Kpy

Digitally signed by :-
KAVLESHWAR PRASAD YADAV
High Court of Judicature at Allahabad