

Neutral Citation No. - 2023:AHC:202465

Judgment reserve on 11.7.2023

Judgment delivered on 27.10.2023

Court No. - 50

Case :- CRIMINAL REVISION No. - 1361 of 2023

Revisionist :- Rajesh Kumar Dwivedi

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

Counsel for Revisionist :- Suresh Kumar Maurya, Shubham Tripathi

Counsel for Opposite Party :- G.A., Anurag Prasad

Hon'ble Ram Manohar Narayan Mishra, J.

1. The instant criminal revision has been preferred against the judgment and order dated 08.02.2023 passed by learned Principal Judge, Family Court, Chitrakoot in Maintenance Case No.189 of 2020 Aryan (minor) and another Vs. Rajesh Kumar) under Section 125 of Criminal Procedure Code 1973 (herein after referred to as Cr.P.C.), Police Station Raipura, Chitrakoot, by the impugned judgment and order the court below has awarded a sum of Rs.18,000/- as maintenance to the applicant No.2 Meena Devi (wife) and Rs.2,000/- as maintenance to applicant No.1 Aryan (son) on monthly basis payable by opposite party Rajesh Kumar Dwivedi. The impugned maintenance is payable from the date of filing of application.

2. The factual matrix of the case in brief are that applicants filed petition under Section 125 Cr.P.C. with averments that marriage of applicant No.2 Meena Devi, was solemnized with opposite party Rajesh Kumar thirteen years ago and three sons namely Om, Sanjay and Aryan were born out of their wedlock. Opposite party -Rajesh Kumar was appointed as Shiksha Mitra after two years of marriage and was regularized as Assistant Teacher five years ago before filing of application dated 01.04.2020, he earns Rs.45,000/- per month as salary. The opposite party snatched two elder children from the applicant just after four months of the birth of third son and sent to her parental place. He did not pay any money to the applicant for her maintenance nor for his minor son, she was forced to reside at her parental place.

3. He further submitted that opposite party neglected petitioner No.2 after being regularized as Assistant Teacher, as he was planning to solemnize marriage with some other lady. The opposite party was summoned by the court, he filed written statement before the court below, wherein he refuted the version of petitioners and stated that petitioner No.2 operates a Cooperative Group of Self-serving Women as its Chairperson, she is also engaged in stitching and embroidery work, in this way she is having sufficient means to maintain herself. He further submitted that revisionist is serving as Assistant Teacher in Primary School, Lodhi Robertsganj, Sonbhadra U.P., who was appointed as Shiksha Mitra in education department in September 2016 and after serving for four years as Shiksha Mitra he was regularized as Assistant Teacher, but Government removed him from service in September, 2020 showing his standard of disability less than desired limit. However, his services are continuing on the strength of interim order dated 24.11.2020 passed by Hon'ble High Court in Writ A No.10086 of 2020 (Rajesh Kumar Dwivedi Vs. State of U.P. and 5 Ors). He further submitted that revisionist has taken house building advance from Government due to which half of his salary is deducted towards repayment of said housing loan. He has to maintain himself as well as two sons out of the remaining half of his salary, and there nothing remains with him which can be paid to the petitioners.

4. Revisionist further submitted that petitioner No.2 is able to maintain herself by her own resources. She has moved petition under Section 125 Cr.P.C., on being instigated by her parents. The petitioners examined PW1 Meena Devi, PW2 Ravikaran, PW3 Parmanand in support of their case, where as opposite party Rajesh Kumar examined himself as P.W.1, Raj Narayan as P.W. 2 and Buddha Vilas as P.W.3.

5. Learned trial court after appreciating the evidence on record gave finding to the effect that three children born out of from the wedlock of petitioner No.2 and opposite party, two children are school going who are residing with opposite party. The opposite party has admitted this fact in his written statement as well as in his testimonies before the court that he is posted as Assistant Teacher, his gross income is Rs.55,000/- and he gets Rs.49,000/- as salary. The petitioner No.2 is residing at parental home alongwith her minor son since 2016 and no maintenance has been paid by the opposite party during this period.

6. The contention of opposite party is that petitioner No.2 is having sufficient means to maintain herself is not liable to be subscribed. Petitioner No.2 has denied this fact that she is having independent source of income. P.W.2 mother of petitioner No.2 stated that since the time when petitioner No.2 came to reside with her parental home no person from side of her in-laws came to take her back.

7. Learned court below while considering the personal expenses as well as liabilities of two sons awarded Rs.18,000/- as maintenance to petitioner No.2 and Rs.2,000/- to petitioner No.1, till he attains the age of majority on monthly basis from the date of filing of application dated 01.10.2020.

8. Learned counsel for the revisionist submitted that learned court below misappreciated the evidence on record while passing the impugned order, the amount awarded as maintenance to the petitioners is excessive and beyond the financial capacity of the revisionist. The trial court has only considered the gross salary of the revisionist while quantifying the amount of maintenance and failed to consider the financial liabilities of the revisionist. The marriage of the revisionist with respondent No.3 was solemnized on 07.05.2007 about 16 years ago, three children born out of their wedlock are aged around 15, 14 and 7 years. The two children Om and Siddhartha are residing with the revisionist and the third one Aryan is living with respondent No.3, her mother. No demand of dowry was ever made from opposite party or his family members in the said marriage. The respondent No.3 left the home of the revisionist six years ago on 16.07.2016 after picking quarrel with revisionist together with her uncle Sri Munnu Tiwari whom she called. The revisionist visited the place of maternal uncle of petitioner No.2 several times to bring her back, but she did not return, in fact he was insulted by his in-laws. The respondent No.3 is an educated women, she runs a Women Self-Help Group wherein she is holding the post of President (Adhyaksh). She also earns enough for her livelihood by engaging in tailoring business, as she is quite good in stitching and embroidery skills.

9. He further submitted that revisionist was appointed as Shiksha Mitra in 2009 and was regularized as Assistant Teacher in Basic Education Department on 05.09.2016. However, subsequently he was removed from service showing his disability lower than the standard for appointment. He has challenged the removal order before this Court by way of writ petition being Writ A No.10086 of 2020 and he is

continuing as Assistant Teacher on the strength of interim order dated 24.11.2020 passed by this Court.

10. He further submitted that gross salary of revisionist is Rs.59,714/- as per his salary slip, but after repayment of loan amount and other compulsory deductions he gets only Rs.31,575/- as salary, and if he pays Rs.20,000/- as maintenance to the petitioners from the date of filing of application, a meager amount will be left with him for survival of himself and his two children, and by this meager amount it would not be possible for him to maintain two children as well as his parents. The respondent No.3 left her matrimonial house on her own, without any justifiable reason, whereas she was not ready to reside with him. She refused to live with him without any sufficient cause. Respondent No.3 has suppressed her income in the petition as well as before the court below. The petition for maintenance is barred under Section 125(4) Cr.P.C.

11. Per contra, learned counsel appearing for the respondent Nos. 2 and 3 submitted that there is no illegality, irregularity and perversity in the impugned order passed by the court below. The revisionist has possessed of sufficient means to comply the order passed by learned Principal Judge, Family Court, Chitrakoot. Revisionist has filed the present revision only to avoid payment of maintenance amount to the petitioners.

12. The findings of fact recorded by the learned trial court are based on pleadings and evidence on record and same need not be interfered with in the present revision.

13. The revisionist has filed his income tax returns for the financial year 2022-23 of Rs.4,70,300/-, 2020-21 of Rs.4,40,980/- and 2019-20 of Rs.4,64,304/- as gross salary respectively. He has also filed his salary slip from November-2022 issued by the Basic Education Department, U.P., which reveals that he is posted as Assistant Teacher in PS Lodhi School, Robertsganj, Sonbhadra, his gross earning is Rs.59,714/- and total deduction of Rs.28,139/- and net payable income is Rs.31,575/-. The revisionist has also filed the photocopy of pass book of saving bank account in Allahabad U.P. Gramin Bank in the name of "Bharatvansh Mahila" showing that respondent No.3 is working in some 'Women Self-Help Group' in which some amount is credited, but the transactions are not shown therein. Therefore, no inference can be drawn on the said pass book with regard to the income of said respondent No.3.

14. Learned counsel for the revisionist placed reliance on the judgment of Hon'ble Apex Court in **Chandrashekar Vs. Swapnil and another (2021) 12 SCC 624**, wherein Hon'ble Apex Court keeping in view the fact that net salary of government employee after compulsory deductions, recovery towards repayment of loan on monthly basis reduced the amount of monthly maintenance Rs. 20,000/- awarded by the courts below to Rs.10,000/- per month and past arrears were capped at the amount of Rs.6.64 lakhs which has already been paid. This amount of monthly maintenance was subject to increase at the rate of Rs.1,000/- per month commencing from next financial year. For succeeding years, the amount of maintenance stood increased by a further amount of Rs.1,000/- per month commencing from first day of April.

15. Learned counsel for the respondents placed reliance on the judgment of Hon'ble Apex Court in **Kaushalya Vs. Mukesh Jain (2020) 17 SCC 822**, wherein it is held that while setting-aside exparte decree and remanding the matter to family court, the order passed by the trial court for grant of maintenance shall operate as interim direction and arrears which are payable to appellant shall be paid over in six equal monthly installments.

16. According to salary slip of year 2022 the total earnings of the revisionist was around Rs.59,714/- and net payment was Rs.31,575/-. Thus, keeping in view the net income of the revisionist as well as the fact that he has to bear the responsibility of two elder children of the revisionist and also the amount awarded to respondent No.3 in the impugned judgment the amount fixed as maintenance appears to be exorbitant and not in consonance with the available financial resources of the revisionist and same is liable to be reduced accordingly. However, the finding of the trial court that respondent No.3 was compelled to reside separately from her husband due to sufficient reason is affirmed in present revision. Therefore, the impugned order is modified in following manner:-

I. The amount of maintenance awarded to the applicants is modified to the extent that applicant No.2 will be paid amount of Rs.7,000/- per month and applicant No.1 will receive the amount of Rs.2,000/- per month as maintenance from the date of filing of application to date of judgment dated 08.02.2023 and thereafter at the rate of Rs.10,000/- per month and Rs.2,000/- per months from the date of judgment on wards respectively.

II. Arrears from the date of filing of application to date of judgment on modified rates to be payable in five equal monthly installments and first installment is payable from 26.10.2023 and remaining installments will be paid in succeeding months. The arrears of maintenance from the date of judgment 08.02.2023 to October 2023 will be payable in sixth installment at the above modified rates. However, it is clarified that revisionist will have to pay an amount of Rs.10,000/- and Rs.2,000/- per month to the respondent Nos.3 and 2 on regular basis from 07.11.2023 onwards without any default.

III. Any infraction in compliance of aforesaid order will entail issuance of coercive process by the court below against the revisionist.

17. Accordingly, the revision is **allowed partly**.

Order Date :- 27.10.2023

Ashish/-