

**Court No. - 50**

**Case :-** CRIMINAL REVISION No. - 1370 of 2023

**Revisionist :-** Mohammad Shadab

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

**Counsel for Revisionist :-** Pradip Kumar Shukla

**Counsel for Opposite Party :-** G.A.

**Hon'ble Ram Manohar Narayan Mishra,J.**

As per office report, notice has been served on respondent no. 2. However, none appeared on behalf of respondent no. 2.

Heard learned counsel for the revisionist and learned AGA for the State.

This criminal revision has been filed against the judgement and order dated 19.1.2023 passed by Additional Principal Judge, Family court no. 3, Kanpur Nagar in Case No. 1845 of 2021 (Mohd. Shadab vs. Smt. Darkhsha Begam and other) under Section 126(2) Cr.P.C., filed by the revisionist, who is opposite party in Maintenance Case No. 187 of 2016 (Smt. Darkhsha Begam and others vs. Mohd. Shadab), which was decided ex-parte against the revisionist vide order dated 25.5.2019. In said ex-parte judgement, revisionist was directed to pay Rs. 15,000/- as maintenance on monthly basis to the applicant Smt. Darkhsha Begum and her minor son in aggregate. The application under Section 128 readwith Section 125(3) Cr.P.C. was allowed by the impugned order and ex-parte judgement was set aside with condition that revisionist shall keep on paying at the rate of Rs. 7,500/- per month to the applicants to meet out her necessary expenses from ex-parte judgement dated 25.5.2019 to the date of order dated 19.1.2023. It is also directed in the impugned order that in case of non compliance of the condition, the applicants will be at liberty to enforce amount of maintenance by filing application under Section 128 readwith Section 125 Cr.P.C. and any amount awarded previously towards maintenance will be adjusted to this amount.

Learned counsel for the revisionist submitted that he has paid amount of Rs. 1,00,000/- in compliance of order dated 19.1.2023. The amount of Rs. 7,500/- as imposed by setting aside the judgement is excessive and it requires some mitigation as revisionist is labourer and he is having no any regular job. He left his job in Saudi Arabia due to compelling reasons. He is aggrieved by the condition of payment of Rs. 7,500/- per month from the date of filing of application to the date of order imposed while allowing the application under Section 126 Cr.P.C.

Section 126(2) provides as under:-

"All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proceed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons- cases: Provided that if the Magistrate is satisfied that the person against whom an order for

payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper."

Per contra, learned AGA submitted that there is no illegality, irregularity or perversity in the impugned order passed by the court below. The amount of interim maintenance awarded and condition imposed by order dated 19.1.2023 is just and reasonable and half of the amount awarded in the ex-parte judgement needs no interference in the criminal revision.

This Court finds no substantial legal or factual error in the impugned order passed by the court below. However, amount of Rs. 7,500/- per month directed to be paid as condition for recall of the ex-parte order dated 25.5.2019 in the impugned order from 25.5.2019 to 19.1.2023 is excessive and same is liable to be reduced to some extent. Therefore, this Court direct that amount of interim maintenance of Rs. 7,500/- per month from the date of ex-parte judgement to the impugned order dated 19.1.2019 is reduced to Rs. 6,000/- per month and the impugned order will stands modified accordingly.

The revisionist is directed to pay balance of any outstanding amount to be paid from the date of filing of application dated 25.5.2019. The arrears of interim maintenance will be calculated @ Rs. 6,000/- per month from 25.5.2019 to 19.1.2023 and any amount remaining outstanding will be paid within two months by the revisionist to the applicants and no further time shall be given to the revisionist for payment of outstanding amount. Failing which the coercive measures shall be taken against the revisionist.

With the above observations, this criminal revision is disposed of.

**Order Date :- 17.10.2023**

Dhirendra/