

Court No. - 79

Case :- CRIMINAL REVISION No. - 1614 of 2023

Revisionist :- Rahul Dubey

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

Counsel for Revisionist :- Sarvesh Kumar Dubey

Counsel for Opposite Party :- G.A., Sushil Dubey

Hon'ble Vipin Chandra Dixit, J.

Heard Sri Sarvesh Kumar Dubey, learned counsel for the revisionist, Sri Sushil Dubey, learned counsel for opposite party No.2 and learned AGA appearing for the State.

This criminal revision has been filed by the revisionist against the judgment and order dated 21.1.2023 passed by learned Additional Principal Judge, Family, Mainpuri in Maintenance Case No. 146 of 2017(Smt. Kalpana Dubey @ Rinku vs. State of U.P. & another) by which application under Section 125 Cr.P.C of opposite party no.2 was allowed and revisionist was directed to pay maintenance of Rs.7000/- per month to his wife-opposite party no.2.

It is submitted by learned counsel for the revisionist that maintenance awarded by learned Family Court is highly excessive and without any basis. It is further submitted that learned Family Court without recording any finding in respect of income of the revisionist and also without considering comparative hardship of revisionist, has awarded very excessive maintenance in favour of opposite party no.2, who is wife of revisionist.

On the other hand, learned counsel for opposite party no.2 submits that maintenance of Rs.7000/- per month awarded by the learned Family Court cannot said to be excessive in any manner looking to the status of the revisionist. The revisionist is well educated man having degree of B.P.Ed and he is owner of 40 bighas land. He also earned Rs.20,000/- per month by selling milk.

Admittedly, opposite party no.2 is legally married wife of the revisionist. The revisionist being husband of opposite party no.2 is morally bound to discharge his legal obligation of maintaining his wife in any circumstance. The husband cannot be heard to say that he is not in a position to earn enough to be able to maintain his wife. In the present case, as the revisionist has not frankly disclosed his income, an adverse inference can be drawn against

him.

Now it is the settled position of law that when the husband does not disclose before the court the exact amount of his income and when question of maintenance of wife arises, the presumption would be against the husband and the obligation of the husband is on a higher pedestal.

Learned Family Court has not recorded any finding in respect of income of the revisionist. The agricultural land belongs to father of revisionist. The wife has not produced any evidence to prove the income of Rs.20,000/- per month by selling milk. In absence of any evidence regarding income of the revisionist, the maintenance of Rs.7000/- per month awarded by learned Family Court is slightly on higher side.

In view of above, the revision is **partly allowed**. The judgment and order dated 21.1.2023 passed by learned Additional Principal Judge, Family, Mainpuri in Maintenance Case No. 146 of 2017(Smt. Kalpana Dubey @ Rinku vs. State of U.P. & another) is modified to the extent that maintenance is reduced from Rs.7000/- to Rs.5000/- per month. The revisionist is directed to pay entire arrears of maintenance as on date to opposite party no.2 at the rate of Rs.5000/- per month from the date of filing of application under Section 125 Cr.P.C in six equal monthly installments, failing which it is open for opposite party no.2-wife to recover the same by filing application under Section 128 Cr.P.C.

Order Date :- 22.11.2023
P.P.