

Court No. - 79

Case :- CRIMINAL REVISION No. - 1707 of 2023

Revisionist :- Smt. Kanchan Rathore

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

Counsel for Revisionist :- Arun Kumar Tiwari, Namrata Tewari

Counsel for Opposite Party :- G.A., Ravi Sahu

Hon'ble Vipin Chandra Dixit, J.

Heard Sri Arun Kumar Tiwari, learned counsel for the revisionist, learned A.G.A. for the State, Sri Ravi Sahu, learned counsel appearing on behalf opposite party no. 2 and perused the record.

This criminal revision has been filed by the revisionist against the order dated 21.01.2023, passed by Additional Principal Judge, Family Court No. 2, Kanpur Nagar, in Case No. 278 of 2013, under Section 125 Cr.P.C. for enhancement of maintenance amount.

It is submitted by learned counsel for the revisionist that the application filed by the revisionist under Section 125 Cr.P.C. was allowed and a very meagre amount of Rs. 3,000/- per month has been awarded in favour of revisionist from 13.04.2018 to 31.12.2022. Thereafter, Rs. 4,000/- per month from 01.01.2023. It is further submitted that opposite party no. 2, who is husband of revisionist is working as tailor in Parashoot Factory and is getting salary of Rs. 60,000/- per month as disclosed by opposite party no. 2 himself. Lastly, it is submitted that the maintenance awarded by learned family court is dis-appropriate looking the monthly income of opposite party no. 2.

On the other hand learned counsel appearing on behalf of opposite party no. 2 submits that the revisionist without there being any sufficient reason has left the house of opposite party no. 2 and divorce petition being Divorce Petition No. 715 of 2017 filed by opposite party no. 2 was allowed ex-parte, vide judgment and order dated 13.04.2018. The revisionist has not challenged the ex-parte decree of divorce before this Court and the divorce decree between the parties has become final. It is further submitted that after the divorce, the opposite party no. 2 has remarried and two children were born with the wedlock of opposite party no. 2 and his second wife. Lastly, it is submitted that the opposite party no. 2 has the liability of his old parents, one disabled brother, wife and two children and as such, maintenance awarded by the learned family court is almost just and proper and no interference is required.

Considered the rival submissions of learned counsel for the parties and perused the record.

Admittedly, the revisionist is legally married wife of opposite party no. 2. The income of opposite party no. 2 was accepted as Rs. 60,000/- per month. The maintenance amount awarded to wife must be reasonable and realistic and looking the income of husband, the maintenance awarded by the learned Family Court appears to be dis-appropriate.

The Hon'ble Apex Court in the case of ***Rajnish Vs. Neha and Another*** reported in **(2021) 2 SCC 324** has laid down certain guide line for awarding just and reasonable maintenance. Relevant paragraph (i) and (ii) of Part III is quoted herein below:-

"(i) The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

*In **Manish Jain v Akanksha Jain**, (2017) 15 SCC 801 this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.*

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial

status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort."

Considering the financial status of the parties, monthly income of husband and his other liabilities, the Court is of the view that maintenance @ RS. 4,000/- per month is dis-appropriate and is liable to be enhanced to Rs. 10,000/- per month.

In view of above the criminal revision is partly allowed and judgment and order dated 21.01.2023, passed by Additional Principal Judge, Family Court No. 2, Kanpur Nagar, in Case No. 278 of 2013, is modified to the extent that revisionist is entitled to receive maintenance @ Rs. 4,000/- per month from the date of application filed under Section 125 Cr.P.C. i.e. 20.04.2013 and Rs. 10,000/- from the date of judgment i.e. 17.10.2023. The opposite party no. 2 is permitted to deposit the entire arrears as on date in six equal monthly installments.

Order Date :- 17.10.2023

sailesh