

Court No. - 50

Case :- CRIMINAL REVISION No. - 2113 of 2023

Revisionist :- Ranjan Singh

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

Counsel for Revisionist :- Deepak Singh

Counsel for Opposite Party :- G.A.,Avinash Pandey,Ram Naresh

Hon'ble Ram Manohar Narayan Mishra,J.

Heard learned counsel for the revisionist, learned counsel for the opposite party No.2, learned AGA for the State and perused the material placed on record.

Instant criminal revision has been preferred against the impugned judgement and order dated 20.3.2023, passed by Additional Principal Judge, Family Court, Court No.3, Kanpur Nagar, in Case no.888 of 2017 (Smt. Ritu Singh vs. Ranjan Singh), under Section 125 Cr.P.C., whereby the application under Section 125 Cr.P.C. filed by Smt Ritu Singh/opposite party No.2 herein, has been partly allowed by the court below and opposite party/revisionist is directed to pay Rs.9000/- per month as maintenance to the applicant from the date of judgement and at the rate of Rs.4500/- per month from the date of filing of application i.e. from year 2017 to the date of judgement. The amount of maintenance is payable on 10th of each calender month. It is also directed in impugned judgement that any interim maintenance or maintenance obtained by the applicant in any other proceeding shall be liable to be adjusted towards the maintenance awarded in this judgement.

Learned counsel for the revisionist submitted that this is a case of matrimonial discord the twin spouse. However, the applicant admitted in her statement before the court below on 22.2.2023 that she is willing to reside with her husband but the said fact has not been considered by the court below while partly allowing the application and no effort is being made to explore the possibility of re-union of the parties by the court below. He further submitted that the amount awarded in impugned judgement and order is excessive as the revisionist has to bear other family responsibilities out of his earning is derived by private job in Delhi. He is still ready to take and keep his wife i.e. opposite party no. 2 with him but she is living separately from the revisionist without any just and sufficient cause. The opposite party no. 2 has concealed the

fact in her affidavit of income and liabilities filed before the court below pursuant to the judgment of Hon'ble Apex in **Rajnesh Vs. Neha, (2021) 2 SCC 324** that she has been receiving Rs.4,500/- per month as interim maintenance under Section 12 of Domestic Violence Act, pending before the court of Magistrate in district Kanpur Nagar. The revisionist has been paying at the rate of Rs. 9,000/- per month from the date of judgment to the opposite party. Prior to this, an *ex parte* judgement was passed against the revisionist by the court below on 10.11.2022 wherein the revisionist was directed to pay Rs. 10,000/- per month to the applicant, however, said judgment was set-aside on the application of the revisionist. The applicant has stated in her evidence as P.W.- 1 before court below during the cross-examination that as her mother has been suffering from paralysis and her father suffered from heart attack and she is taking care of her parents. This shows that the applicant is living separately from the revisionist out of her own free will and not due to practice of of any sort of matrimonial cruelty practised against her by the revisionist as alleged in the petition. Learned court below has not considered the amount of Rs. 4,500/- per month as awarded under Section 12 of the Domestic Violence Act while passing impugned order. Therefore, the amount award in the impugned order is liable to be reduced slightly in the interest of justice. Revisionist is also paid part of arrears of maintenance awarded in this impugned order.

Per contra, learned counsel for the opposite party no. 2 submitted that the applicant was compelled to reside separately from her husband and shifted to the place of her parents being subjected to domestic violence and matrimonial cruelty. It is wrong to say that she disassociated with her husband without any sufficient cause or reason. Learned court below has given a finding of fact that the applicant is living separately from her husband due to sufficient reason. The court below has observed in impugned order that the monthly salary of revisionist is Rs.42,677/- at that time and he works in Delhi Golf Course as Assistant Hospitality Manager. Although he has stated that he spends Rs.41,500/- under different heads in Delhi and he has to bear the cost of litigation.

Considering the rival submissions made by learned counsel for the parties, it is admitted fact that the revisionist works as Assistant Hospitality Manager in Delhi Golf Course and his monthly salary was stated to be Rs. 42,677/-. The amount awarded in impugned order is less than 25% of his monthly salary and it cannot be said to be excessive or unreasonable. Inasmuch as the arrears from the date of filing the application to the date of judgment are assessed

and awarded at the rate of Rs. 4,500/- per month only and the learned court below has also clarified in impugned judgment that any interim maintenance or maintenance received by the applicant apart from this order will be liable to be adjusted towards the maintenance award in present order. Therefore, I find no irregularity, illegality or perversity in the impugned judgment. The revision is devoid of merit and is liable to be dismissed.

In view of aforesaid the present revision stand **dismissed**.

However, it is clarified that any amount obtained by the opposite party no. 2 as interim maintenance in proceeding under Section 12 of Domestic Violence Act will be adjusted towards arrear of maintenance awarded in impugned judgment.

Order Date :- 17.10.2023

Kamarjahan