

Court No. - 79

Case :- CRIMINAL REVISION No. - 3112 of 2023

Revisionist :- Jitendra

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Gyan Prakash Mishra

Counsel for Opposite Party :- G.A.,Rakesh Kumar Yadav

Hon'ble Vipin Chandra Dixit,J.

Heard Sri Gyan Prakash Mishra, learned counsel for the revisionist, learned AGA for the State and Sri Rakesh Kumar Yadav, learned counsel for opposite party nos. 2 to 4. Perused the record.

This criminal revision has been filed against the order dated 25.4.2023 passed by learned Principal Judge, Family Court, Bulandshahr in Misc. Case No. 510 of 2023 (Jitendra vs. Smt. Pooja and others) by which application filed by revisionist under Section 126(2) Cr.P.C. was rejected.

It is submitted by learned counsel for the revisionist that learned Family Court had allowed the application filed on behalf of opposite party nos. 2 to 4 under Section 125 Cr.P.C. vide ex-parte judgment and order dated 26.8.2021 in Maintenance Case No.582 of 2018, by which revisionist was directed to pay maintenance of Rs.3500/- per month to opposite party no.2, who is wife of revisionist and Rs. 2000/- per month each to opposite party nos. 3 & 4 who are minor children of revisionist. The revisionist had moved an application under Section 126(2) Cr.P.C. for recall of ex-parte order dated 26.8.2021 alongwith delay condonation application which was rejected by the learned Family Court vide impugned order dated 25.4.2023. It is further submitted that the exparte order dated 26.8.2021 granting excessive maintenance to opposite party nos. 2 to 4 was passed without affording opportunity of hearing to the revisionist.

Learned counsel appearing on behalf of opposite party nos. 2 to 4 submits that learned Family Court has recorded the finding that despite service of notice, the revisionist did not attend the case. It is further submitted that the recall application was filed by revisionist on 25.4.2023 for recalling of order dated 26.8.2021 after more than one and half year. The delay has not been properly explained by the revisionist in the delay condonation application filed alongwith the application filed under Section 126(2) Cr..P.C., as such, same was dismissed by

the learned Family Court.

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

Learned Family Court had issued notices on the application filed under Section 125 Cr.P.C. The revisionist had failed to appear before the Family Court despite service of notice and as such, the case was proceeded ex-parte. The learned Family Court has allowed the application under Section 125 Cr.P.C. vide judgment and order dated 26.8.2021 whereby revisionist was directed to pay maintenance of Rs.3500/- per month to wife-opposite party no.2 and Rs. 2000/- per month each to opposite party nos. 3 & 4 who are minor children of the revisionist. The maintenance awarded by the learned Family Court is just and proper and cannot be said to be excessive in any manner. The application filed by the revisionist under Section 126(2) Cr.P.C. alongwith delay condonation application was rightly dismissed by the learned Family Court, as the revisionist has failed to explain the delay in filing the recall application and even has not disclosed the date of knowledge of ex-parte judgment. The learned Family Court has not committed any error in rejecting the application for delay condonation as well as application under Section 126(2) Cr.P.C. as barred by time.

In view of above, there is no illegality, infirmity or perversity in the impugned order which may warrant any interference by this Court. The criminal revision filed by husband is liable to be dismissed.

The criminal revision is **dismissed**, accordingly.

Order Date :- 1.12.2023

P.P.