

Court No. - 50

Case :- CRIMINAL REVISION No. - 3255 of 2023

Revisionist :- Gautam Gond

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

Counsel for Revisionist :- Shyam Dhar Gupta

Counsel for Opposite Party :- G.A.,Sunil Kumar Dubey,Thakur Azad Singh

Hon'ble Ram Manohar Narayan Mishra,J.

1. This criminal revision has been filed against the order dated 10.4.2023 passed by Additional Principal Judge, Family Court, Court no. 2, Azamgarh in Misc. Case No. 186 of 2021 whereby recall application under Section 126 Cr.P.C. has been allowed by the court below on condition that he shall deposit 50% of the amount of maintenance awarded to the applicant and it is also directed in the said order that on deposit of 50% of the amount of maintenance, which is due till 10.4.2023, ex-parte judgement dated 21.5.2019 will stand set aside. However, on failure to pay 50% of the said amount, order will stand in effective ipso facto.

2. Heard learned counsel for the revisionist, learned counsel for respondent no. 2 and learned AGA for the State.

3. Learned counsel for the revisionist submitted that revisionist/opposite party in original maintenance case no. 444 of 2018 under Section 125 Cr.P.C., which was instituted by respondent no. 2 wife of revisionist, seeking maintenance for herself from her estranged husband, wherein, she made allegation of demand of dowry, practice of matrimonial cruelty against the opposite party. Learned court below decided the application under Section 125 Cr.P.C. ex-parte and awarded Rs. 5,000/- per month as maintenance to the applicant, which is payable by the opposite party from the date of order i.e. 21.5.2019. The revisionist moved an application under Section 126 Cr.P.C. for recall of said ex-parte judgement and order, which was allowed by the court below by the impugned order dated 10.4.2023 subject to deposit 50% of the amount of maintenance awarded in the impugned order, which comes to the tune of Rs. 1,20,000/-. The revisionist is not in position to deposit said amount therefore, he submitted that the said amount of Rs. 1,20,000/- may be reduced to Rs. 50,000/- as the revisionist works in Delhi as daily-wager. He also keeps his mother alongwith him.

He earns Rs. 9,000/- per month from his job.

4. Per contra, learned counsel for respondent no. 2 submitted that revisionist failed to appear before the court below even after service of notice on him, which was held to be sufficient by order dated 13.12.2018. He neither appeared nor filed written statement in original maintenance case and the maintenance case was decided ex-parte by the court below vide impugned order dated 21.5.2019. The revisionist appeared before the court below after the impugned judgement and order and filed an application under Section 126 Cr.P.C., which was allowed by the impugned order on condition to deposit 50% of the amount of maintenance but the revisionist instead of paying the said amount of Rs. 1,20,000/-, filed present revision before this Court with a view to avoid payment of maintenance to his wife. The revisionist has deliberately not shown his actual income, infact, he earns Rs. 50,000/- per month. He is a skilled labour and earned a handsome amount but he has shown his income only Rs. 9,000/- only to avoid payment of maintenance to his wife.

5. Considering the rival submissions of learned counsel for the parties, materials on record and findings of the court below in the impugned order, which appears just and proper and no substantial modification is called for in the impugned order. However, in view of the prayer made by the revisionist, it is directed that the revisionist shall deposit 50% of the amount of maintenance as calculated in the impugned order to the tune of Rs. 1,20,000/- before the court below within two months from today @ Rs. 60,000/- per month. In case the revisionist fails to pay the said amount as directed in the impugned order, within two months, the ex-parte judgement and order dated 21.5.2019 will be effective.

6. The present revision is dismissed with above observations.

Order Date :- 27.10.2023

Dhirendra/