

A.F.R.

Neutral Citation No. - 2023:AHC:221472

Reserved On: 03.08.2023

Delivered On: 22.11.2023

In Chamber

Case :- CRIMINAL REVISION No. - 4011 of 2022

Revisionist :- Ajay Kumar

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

Counsel for Revisionist :- Ashish Kumar Srivastava

Counsel for Opposite Party :- G.A., Lalji Yadav, Yashpal Yadav

Hon'ble Ram Manohar Narayan Mishra, J.

1. By means of instant criminal revision, the revisionist has assailed judgment and order dated 8.7.2022, passed by learned Additional Principal Judge, Family Court Room No.2, Kanpur Nagar, in Case No.939 of 2017 (Smt. Manorama vs. Ajay Kumar), under Section 125 Cr.P.C., whereby the original applicant has been awarded maintenance to the tune of Rs.1500/-, per month from the date of filing of application to the date of judgement and thereafter at the rate of Rs.2000/- per month onwards. The maintenance is payable by opposite party, who is revisionist before this Court. It is also directed in impugned order that any amount obtained by the applicant towards maintenance shall be liable to be adjusted.

2. 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 including impugned judgement and order.

3. The factual matrix of the case, in brief, are that the applicant Manorama, who is opposite party No.2 in present revision instituted a case under Section 125 (2) (d) Cr.P.C., in the Court of Principal Judge, Family Court, Kanpur Nagar, which is registered as application No.939 of 2017. The applicant stated therein that she is widow of late Sunderlal @ Raja Babu, who died on 8.4.1993. He was serving in Ordnance Parachute Factory. He died during tenure of his service and the opposite party, who

is son of the applicant born out of her wedlock with her late husband Sunderlal, obtained a job on death of his father under Dying in Harness Rules. He is also serving in Parachute Factory, Kanpur Nagar. The opposite party after getting the job under dying in harness rules parted his ways from the applicant and began to reside separately from her. He never took care of the applicant whereas in the affidavit filed by him at the time of joining, he had undertaken to taken care of his mother and family. The applicant is blessed with four sons apart from the opposite party Ajay Kumar, who are named as Anil Kumar, Pintu, Monu (differently abled) and Vikky. The applicant is an elderly and infirm lady. The opposite party is shirking from his liability to maintain his mother. The name of the applicant was entered in service record of her late husband in Ordnance Parachute Factory. She is presently residing in a mud house with thatched shed. She is unable to maintain herself. The opposite party is possessed of sufficient means to maintain his elderly mother. Therefore, he may be directed to pay Rs.10,000/- per month towards maintenance of his mother-the applicant.

4. Learned court below issued summon to opposite party, who appeared and filed written statement before the court below, in which he stated that Smt. Manorama contracted second marriage in the Court on 3.8.1981 with Munnu, son of Satallu, when she was pregnant with five months. She was not wife of Sunderlal and she is not having any share in movable and immovable property of deceased Sunderlal. Late Sunderlal, the father of opposite party, even lodged a case under Section 498 IPC against the applicant, in which he stated that she was abducted by Munnu and Ram Chander. Sunderlal solemnized marriage with one Geeta Devi. A memorandum was issued from Parachute Factory on 25.4.1997 in the name of Smt. Geeta Devi, in which she was referred as wife of late Sunderlal and at present, it is established that Geeta Devi is widow of late Sunderlal. The applicant Smt. Manorama is residing at Lucknow with her

husband Munnu. The name of Smt. Manorama was deleted in the service record of late Sunderlal and in her place the name of Smt. Geeta Devi is presently entered. The opposite party is not liable to maintain Smt. Manorama.

5. Learned court below after perusing the pleadings of the parties and the evidence adduced by the both sides, gave a finding that the applicant has stated in her evidence that she is mother of opposite party and wife of late Sunderlal @ Raja Babu. D.W.-1 Ajay Kumar has stated that Smt. Manorama Devi contracted second marriage on 3.8.1981 with Munnu, in which Banwari and Vinod Kumar, Advocates, were witnesses. In paragraph No.5 of said document of court marriage, it is stated that Munnu is husband of Manorama Devi, who was five months pregnant with Munnu. Smt. Manorama was ceased to be wife late Sunderlal since 3.8.1981 and she is not having any concerned with movable and immovable property of late Sunderlal. D.W.-1 Ajay Kumar admitted in cross-examination that Manorama stating his mother and he also admitted that the applicant Manorama, who is present before this Court, is his mother but he stated that she left him in his childhood alongwith his other siblings. His father contracted second marriage with Geeta Devi in year 1982. He lived with her mother Manorama Devi up to year 1981. He was nurtured by his step mother Geeta Devi.6.

6. Learned court below has observed that the opposite party has admitted in his evidence that Smt. Manorama Devi has given his birth and even she is subsequently contracted marriage with some other person, the relationship of son and mother will never cease. This fact is also not relevant that Manorama Devi had not nurtured him after contracting marriage with some other person.

7. Section 125 (1) Cr.P.C. provides that if any person having sufficient means neglects or refuses to maintain his father or mother, unable to

maintain himself or herself, a Magistrate of first class may upon proof of such neglect or refusal could order such person to make a monthly allowance for the maintenance of his or such child, father or mother at such monthly rate, as such Magistrate thinks fit. According to the court below, the word father and mother is only used in the section. The right of first mother to seek maintenance from his son does not get extinguished only due to the fact that she had nurtured his son or she contracted second marriage with some other person. The relationship of mother and son is established between the applicant and opposite party. The learned court below has also held in impugned judgment that the applicant has stated in her evidence that she is unable to maintain herself and she resides in mud house with thatched shed. She is an elderly, infirm and helpless lady whereas her son works in Ordnance Parachute Factory, which is undertaking of Central Government. He is perfectly able to maintain the applicant, who is his mother. She is aged around 72 years. The opposite party works in a Central Government undertaking and job was obtained by him under dying in harness rules, after death of his father. Therefore, he is under obligation to maintain her mother, who is unable to maintain herself and with this finding learned Principal Judge has awarded the maintenance to the applicant in above manner.

8. Learned counsel for the revisionist submitted that opposite party No.2 Manorama Devi left the revisionist 36 years ago and contracted marriage with another person. She is having four children from second marriage and when they denied to maintain her, she filed this maintenance case against the revisionist. The revisionist is not under any obligation to maintain opposite party No.2. The opposite party No.2 contracted second marriage with Munnu during subsistence of her first marriage with late Sunderlal. She left her first husband without dissolution of marriage, due to which Sunderlal lodged an FIR under Section 498 IPC in the matter against Munnu. Sunderlal died in the year 1993 and thereafter revisionist

obtained a job under dying in harness rules in the same concern. The revisionist is complying with the orders of learned court below. The learned court below without considering the relevant facts of the case, allowed the application of opposite party No.2 and directed the revisionist to pay maintenance to her in impugned judgement and order whereas the relationship of mother and son does not exist between the parties. Therefore, the impugned order is not sustainable and liable to be set aside.

9. Per contra, learned counsel for the opposite party No.2 and learned AGA submitted that there is no illegality or irregularity in impugned order passed by learned court below. The amount awarded in impugned order is itself a very paltry amount by which the opposite party No.2 will face difficulty to make her both ends meet. Present revision has been filed by the revisionist only to delay the payment of maintenance to the opposite party No.2, who is his mother and this fact has been admitted in his evidence before the court below.

10. I have gone through the evidence of D.W.-1 Ajay Kumar, who has stated that his father Sunderlal @ Raja Babu died on 8.4.1993. He was aged around 27 years at that time. He is blessed with two offspring named as Padmini Kashyap and Avinash Kashyap. His father contracted second marriage with Geeta Devi in year 1982. The name of his mother was Manorama Devi, who is present before the Court. Manorama Devi contracted second marriage with Munnu Ram, son of Sattallu, a person of his mohalla. When his mother left home, the witness was one of four siblings. He was not having any sister. Manorama Devi contracted second marriage in year 1981. The witness was nurtured by his step mother Geeta Devi. It is wrong to say that Manorama Devi is his mother and he deliberately denies to maintain her. From perusal of statement of revisionist, who has been examined as D.W.-1 before the court below, it appears that on the one hand he is making contrary statement before the court and on the other hand he states that Manorama Devi is his biological mother. He born

out of her wedlock with his father Sunderlal @ Raja Babu and on the other hand he states that she is not her mother as she left him and his siblings in year 1981 and contracted second marriage with Munnu Ram. Whatever be, it may, the revisionist is treated as biological son of applicant and the finding of court below is correct on this point that there exists a relationship of mother and son between the revisionist and opposite party No.2 and this fact is proved by the evidence that the opposite party No.2 is unable to maintain herself. She is an elderly lady, who is not having any source of income. This fact is also not going to help the revisionist in his effort to avoid payment of a paltry sum of maintenance awarded in impugned judgement to his mother that succession case lodged by present opposite party No.2 against revisionist as Succession Case No.305/70 of 1993 was dismissed by the competent Court on finding that the applicant failed to establish this fact that she was legally wedded wife of deceased Sunderlal @ Raja Babu at the time of his death as this fact is proved on the basis of evidence that she contracted marriage with Munnu, son of Sattallu on 3.8.1981. The factum of son and mother is established between the parties and the revisionist is bound to maintain his elderly mother, who is unable to maintain herself. The revisionist cannot shirk his responsibility to maintain the applicant on the ground that she can seek maintenance from her remaining children. The revisionist has admitted in his evidence that he including four siblings were born out of the wedlock of the applicant and his late father Sunderlal @ Raja Babu. Finding of court below is based on evidence on record. The amount awarded in impugned judgement is a meagre amount, as stated in impugned order the revisionist is working in Ordnance Parachute Factory and is getting Rs.35,000 to Rs.36,000/- per month and is able to pay maintenance to her mother. Therefore, in these circumstances, the amount of Rs.1500/- per month from the date of application to date of judgement and Rs.2,000/- per month thereafter, awarded as maintenance to opposite

party No.2 needs no interference in present revision. Revision is devoid of merits and is liable to be dismissed.

11. In view of aforesaid, present revision stands **dismissed**.

12. However, it is open to opposite party No.2, the original applicant to seek alteration or enhancement of amount of maintenance allowance as awarded in impugned order by filing appropriate application under Section 127 Cr.P.C. before the court below, if she thinks fit.

Order Date :- 22.11.2023

Kamarjahan