

Court No. - 50

Case :- CRIMINAL REVISION No. - 5360 of 2022

Revisionist :- Arun Rathaur

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Sunil Kumar Srivastava

Counsel for Opposite Party :- G.A., Virendra Prakash

Hon'ble Ram Manohar Narayan Mishra,J.

This criminal revision has been filed against the judgement and order dated 24.11.2022 passed by Principal Judge, Family court, Shahjahanpur in Case No. 342 of 2018 (Smt. Keerti and another vs. Arun Rathaur) under Section 125 Cr.P.C., P.S. Sadar Bazar, District Shahjahanpur whereby the court below has awarded maintenance to the tune of Rs. 4,000/- and Rs. 2,000/- per month to the applicants, who are wife and minor son of opposite party, present revisionist, which is payable from the date of filing of application dated 16.8.2018.

Heard Sri Arunesh Narayan Tripathi holding brief of Sri S.K. Srivastava, learned counsel for the revisionist and learned counsel for respondent nos. 2 and 3 and perused the record.

Factual matrix of the case in brief are that the applicant filed an application seeking maintenance from opposite party under Section 125 Cr.P.C. with averments that marriage of applicant no. 1 was solemnized with opposite party on 4.3.2016 according to Hindu rites and rituals in which father of applicant no. 1 had given sufficient dowry according to his capacity but her husband and in-laws were not satisfied. They started demand of additional dowry and due to non fulfillment of demand of dowry they used to give beating to the applicant no. 1 and subjected to harassment and matrimonial cruelty. Father of applicant no. 1 tried to persuade husband and in-laws of applicant no. 1 with the assistance of other people but they did not change their behaviour. In 2017 after Bhaiyadooj festival she was again beaten by her husband and in-laws when she was pregnant. She was compelled to live separately from her husband at the place of her parents. On 7.2.2018 when she was residing at her parental place, her husband and in-laws came at her place and forced her to make signature on divorce paper and again gave beating to her. Her elder sister came in the meanwhile and saved her anyhow. The couple was blessed

with a male child on 8.2.2018 out of wedlock in which all expenses were born by father of the applicant no. 1. She is presently living with her minor son at her parental place. She is having no any source of income. Her parents are old. The opposite party runs an agency of Patanjali products. He is also having ten house shop in town Mohammadi. He has a Maruti Van and DCM carriage vehicle, which he runs on fare and his monthly earning from all sources is around Rs. 75,000/- per month. The applicant prayed for granting monthly maintenance to the tune of Rs. 25,000/- for herself and Rs. 10,000/- for her minor son.

The opposite party was served and appeared before the court. He filed written statement in which he denied the allegations made against him in application for maintenance. Learned court framed as many as five issues on the basis of pleadings of the parties and held that applicant is legally wedded wife of opposite party and her son Utkarsh is born out of wedlock. The applicant no. 1 is living separately from her husband with reasonable cause/ sufficient reason. The opposite party, who is husband of applicant no. 1, is deliberately neglecting to maintain the applicants, who are unable to maintain themselves. The applicants are entitled to get maintenance from the opposite party.

Learned court below observed that object of granting alimony is to ensure that dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. Income of respondent/wife is not proved by her husband, this is not proved that she is having any independent source of income to meet out her necessary expenses and an able bodied husband must be presumed to be capable of earning sufficient money to maintain his wife. With above finding court below awarded maintenance to the applicants as aforesaid from the date of filing of application in the light of judgment of **Rajnesh vs. Neha and others, (2021) 2 SCC 324**. Feeling aggrieved by the impugned order, the opposite party has filed present criminal revision before this Court.

Learned counsel for the revisionist submitted that revisionist was earlier running a business of tentage, however, it was closed due to hardship occurred during outbreak of covid-19 pandemic and now he is not having any regular occupation. He works as labourer to meet out his daily needs. He is not in a position to pay Rs. 6,000/- as maintenance to the applicants that too from the date of filing of application in the year 2018 as same is beyond his financial capacity. The respondent no. 2 filed application for grant of maintenance on wrong and misconceived facts with a view to harass the revisionist. The respondent no. 2 herself forced the

revisionist to live separately from his parents and other family members. The allegations of matrimonial cruelty leveled against the revisionist and his family members is false and unfounded. He works as a labourer in a shop. Due to closure of business, GST registration number allotted to the revisionist has been cancelled by the competent authority on the ground of failure to pay outstanding dues on 4.3.2021 and copy of order of cancellation of GST is annexed as annexure -2 to the affidavit. Learned counsel for the revisionist prayed for reduction of amount of maintenance awarded in the impugned judgement and order substantially.

Per contra, learned counsel for respondent no. 2 submitted that revisionist is having sufficient source of income as he runs two vehicles, Maruti van and one DCM carriage van on rent. He is filing income tax return. Findings of the court below with regard to ability of the revisionist to pay maintenance is based on reasoned findings and same may not be interfered in the present revision being finding of fact. The revisionist himself admitted and stated his occupation as business in the affidavit dated 20.5.2019 filed in support of the application u/s 482 No. 21148 of 2019.

Learned counsel for the revisionist further submitted that business of revisionist was closed after filing of said affidavit dated 20.5.2019 and situation remains that revisionist is out of business since 2021 as his GST registration has been cancelled by the competent authority on 4.3.2021, which was allotted to him on 7.1.2017. The business was previously operated in the name of M/s New Rathaur Tent and Light House.

Findings of the court below is based on evidence adduced by the parties before the court below. I find no infirmity or legal error in the impugned order passed by the court below and same is not required to be interfered in present revision. This is admitted fact that revisionist was engaged in a business at the time of filing of application u/s 482 Cr.P.C., his business was closed in the year 2021 due to outbreak covid-19 pandemic. However, keeping in view the totality of facts and circumstances of the case, evidence adduced by the parties, it appears that revisionist has possessed sufficient means to provide maintenance awarded in the impugned order. I find no cogent reason to interfere with substantial portion of the order as no illegality or infirmity is found in the said impugned order. However, keeping in view the pleadings and statement of the revisionist and considering huge arrear of maintenance, some relaxation in the form of installments is liable to be given to the revisionist to ensure smooth payment of arrear of maintenance to the respondents.

Therefore, it is directed that arrear of maintenance, which is Rs. 6,000/- in aggregate payable to the applicants, will be payable in six equal monthly installments from the date of filing of application till October, 2023 and first installment will be payable from 16th November, 2023 and subsequent installments will follow in each succeeding month. Apart from that revisionist will have to pay amount of maintenance awarded in the impugned order on regular basis from month of November, 2023 onwards.

This criminal revision is dismissed with above observations.

Order Date :- 31.10.2023

Dhirendra/