

Court No. - 29

Case :- CRIMINAL REVISION No. - 1221 of 2023

Revisionist :- Sourabh Kumar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 2 Others

Counsel for Revisionist :- Ramakar Shukla, Subodh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal, J.

1. The present revision under Section 19(4) of the Family Courts Act has been preferred by the revisionist against the order dated 08.08.2023 passed by the Principal Judge, Family court, Lakhimpur Kheri in Criminal Case No. 208 of 2022 under Section 125 Cr.P.C Police Station Hyderabad District Lakhimpur Kheri whereby the interim maintenance application of the opposite party Nos. 2 and 3 was allowed and the revisionist was directed to pay Rs. 1,000 per month to opposite parties No. 2 and 3 and Rs. 3,000 for expenses in litigation.

2. It is submitted by the learned counsel for the revisionist that the revisionist never performed marriage with opposite party no.2. The opposite party No. 3 did not born in the wedlock of the revisionist and opposite party No. 2. The revisionist never cohabit with the opposite party No. 2. According to the application under Section 125 Cr.P.C the revisionist never performed marriage with the revisionist according to the Hindu law, therefore, the opposite party No.2 is not the legally wedded

wife of the revisionist. It is further submitted that the learned trial court did not take into account the fact that the opposite party no.2 is not the legally wedded wife of the revisionist, hence the order of the family court suffers from infirmity and is liable to be set aside.

3. Per contra, learned A.G.A submitted that when the husband of opposite party No. 2 expired, the revisionist solemnized marriage with the opposite party no.2 and a daughter is born to him in the wedlock. It has to be tested on the basis of evidence whether the marriage was legal or not, the order of the family court is interlocutory in nature, hence the revision is not maintainable.

4. I have heard learned counsel for the revisionist and perused the record.

5. From the perusal of the record, it transpires that the marriage of the opposite party No.2 was solemnized with the brother of the revisionist, namely Amit Kumar on 11.06.2015. A daughter was born in the wedlock of opposite party No.2 thereafter, Amit Kumar expired after two years of marriage. The opposite party No. 2 continued to live in her matrimonial house. The revisionist made sexual relations with the opposite party No. 2. Later on 28.05.2020 a joint marriage affidavit/ agreement was executed by both the parties and opposite party No.3 was born

in the wedlock of the present revisionist and opposite party No.2. The marriage agreement is brought on record as annexure No. 5. The aforesaid affidavit is also signed by the applicant as well as opposite party No. 2 and two witnesses, namely, Vivek Kumar and Pankaj Kumar.

6. Learned counsel for the revisionist submitted that there is no custom to marry by this agreement and no matrimonial rights are created in favour of the parties from this agreement, hence, opposite parties No. 2 is not legally wedded wife of the revisionist. Hence the revisionist is not liable to pay maintenance to opposite party No. 2.

7. At this stage the above mentioned certificate (Annexure No. 5) goes to show that the revisionist as well as opposite party No. 2 lived as husband and wife and one child is born out of the wedlock. The affidavit/ agreement of marriage is on record and the legality of the same is to be seen during the evidence.

8. Interim maintenance is awarded by Court to meet necessary expenditure of litigation and maintenance. The impugned order is passed on the application for interim maintenance which is interlocutory in nature and the impugned order is subject to the final disposal of maintenance application filed by opposite party No. 2.

9. The Criminal Procedure Code or any other procedural statute

fails to pay any definition for interlocutory order. The Apex Court tried to give an idea about what qualifies as interlocutory order. In ***Amarnath and others Vs. State of Haryana*** reported at **1977 AIR 2185**, the Court by majority of opinion that *"the term interlocutory order in Section 397(2) has been used in restricted sense and not in any broad and artistic sense. It merely denotes an order of a purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties. Any order which substantially affects the rights of accused, or decides the certain rights of parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the Code"*

9. In ***Madhu Limaye Vs. State of Maharashtra*** reported at **1978 AIR 47** the Apex Court rejected the commonly understood meaning of interlocutory order as converse to final order. The Court concluded that there may be order passed during the proceedings that may not fall in either of water tight compartments of final order or interlocutory order. Hon'ble Apex Court made an important observation in the judgment that *"A judgment or order may be final for one purpose and interlocutory for another or final as to the part and*

interlocutory as to a part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required..... An interlocutory order though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals."

10. In **V.C.Shukla Vs. State through CBI** reported at **1980 AIR 962**, Hon'ble Apex Court held that

"the natural meaning of interlocutory order has to be understood i.e. in contradistinction to the final order. So far as the order fixing maintenance pendente lite under Section 24 of the Hindu Marriage Act and orders under Section 23 of the Domestic Violence Act are concerned they are like judgments as they have separate proceedings and the conclusions depends upon the rights of the parties. So far as interim maintenance in the provisions of Section 125 Cr.P.C is concerned it is a preventive remedy rather than being remedial or punitive. The order therein can be modified or cancelled at any stage. The interim maintenance provided in Section 125 Cr.P.C is the provisional arrangement and they do not decide the final determination of the status and personal rights of the parties. The word "interim" meaning in the meantime or in the meanwhile, the word that interim maintenance cannot be said to be final in its essence."

11. In the present dispute the revisionist is the son of the opposite party and moved an application for interim maintenance till the disposal of the application moved by him under Section 125 Cr.P.C. Rejection of interim maintenance do not inspire that the court has decided the rights of the parties to full and final hence, the revision is legally not maintainable.

12. Thus in view of the aforesaid discussions, the impugned order being an interlocutory order cannot be challenged in revision, hence, is liable to be dismissed as such.

13. The revision is accordingly, dismissed.

(Renu Agarwal,J.)

Order Date :- 3.11.2023
Nadeem/ karan