

Court No. - 29

Case :- CRIMINAL REVISION DEFECTIVE No. - 408 of 2023

Revisionist :- Jai Waris @ Ziyay Waris

Opposite Party :- State Of U.P Thru. Prin. Secy. Home Civil Secr. Lko.
And 3 Others

Counsel for Revisionist :- Ram Kumar Srivastava Ram Kumar,Shubham
Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Heard learned counsel for the revisionist, learned AGA for the State-respondent and perused the material brought on record.
2. The present revision has been filed on behalf of the revisionist under section 19(4) of Family Courts Act, 1985 against the judgment and order dated 06.06.2018 passed by learned Principal Judge, Family Court, Unnao, in Case No.268 of 2016 (Smt. Ayasha Bano and others Vs. Jay Waris @ Ziyay Warish), under section 125 Cr.P.C. as well as order dated 18.07.2023 passed by learned Additional Principal Judge, Family Court, Court No.2, Unnao, in Case No.270 of 2018 (Ayasha Bano Vs. Ziyay Waris), under section 125(3) Cr.P.C. alongwith condonation of delay of 25 days in filing the present revision.
3. It is contended by counsel for the revisionist that revisionist has no knowledge about ex-parte order dated 06.06.2018 passed by the trial court and he came to know about the ex-parte order dated 06.06.2018 when recovery warrant was issued against him in the proceeding under section 125(3) Cr.P.C. Revisionist is suffering from mental deacease before the year 2015 and his treatment of mental deacease are going on continuously. The certificate of mental illness issued by the CMO, Lucknow is filed as annexure no.7 to the revision. As per the certificate it reveals that revisionist is 90% mentally ill and the conditional of revisionist is not likely to be improve.

4. In the above mentioned circumstances, the delay condonation application is allowed and the delay of 25 days in filing the present revision is hereby condoned.

5. It is further contended by learned counsel for the revisionist that due to his mental illness the revisionist was incapable to file this revision, so he has filed this revision through his mother. Therefore, he prayed to set-aside the order dated 06.06.2018 and 18.07.2023.

6. On the other hand, learned AGA has very vehemently opposed the aforesaid contention and submitted that by means of order dated 06.06.2018 the trial court directed the revisionist to pay the amount of maintenance of Rs.2,000/- per months to the opposite party no.2 and Rs.1,000/- each to the opposite party nos.3 and 4, respectively till they attend the age of majority and the same is not paid by the revisionist till date, hence the revision is liable to be dismissed.

7. From the perusal of order dated 06.06.2018 it appears that revisionist never produced any medical evidence or document before the trial court regarding his mental illness and for the first time when application under section 125(3) Cr.P.C. was moved by the opposite party no.2, the trial court considered the mental condition of the revisionist and directed him to deposit 10% of total amount of arrears due to the opposite party no.2.

8. The medical certificate issued by the CMO Lucknow disclosed that revisionist is 90% mentally ill hence proceeding cannot be initiated against him under section 125(3) Cr.P.C. by the trial court and same should be kept on hold in accordance with the provisions of section 328 Cr.P.C.

9. In the aforesaid circumstances, the order dated 18.07.2023 is hereby set-aside and the trial court concerned is directed to decide the application of

the revisionist, if moved, under section 328 Cr.P.C. in accordance with the provisions of law, within two months.

10. The revisionist shall appear before the trial court concerned through his next friend for taking part in the proceeding under section 125(3) Cr.P.C.

11. With the aforesaid observation and direction the revision is disposed of.

(Renu Agarwal,J.)

Order Date :- 7.11.2023
VKG