

Court No. - 86

Case :- CRIMINAL REVISION No. - 911 of 2019

Revisionist :- Anupam Chaudhary

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

Counsel for Revisionist :- Maruti Kumar Tripathi, Ram Lalit Chaudhary

Counsel for Opposite Party :- G.A., Ganesh Kumar

Hon'ble Ram Manohar Narayan Mishra, J.

1. Matter is being taken up on being mentioned being made by learned counsel for the revisionist.

2. Learned counsel for the revisionist submitted that he personally informed the counsel for the respondent No.2 Sri Ganesh Kumar regarding hearing of this case today through whatsapp message and hard copy of the message which has been received by learned counsels for the revisionist on his mobile set is being filed for kind perusal.

3. He further submitted that he has personally telephoned him also and he assured him that he will present at the time of hearing of the case; nevertheless he is not present right now case is too old and it requires hearing due to urgency. He also submitted that on last date also he personally informed learned counsel for respondent No.3, but he failed to appear and case is listed for today among top ten cases.

4. Instant Criminal Revision has been preferred against the judgment and order dated 14.12.2018 passed by Principal Judge Family Court Sant Kabir Nagar in Complaint Case No.145/11/2015 under Section 125 Cr.P.C. filed by the applicant Anumpama Chaudhary who is revisionist before this Court. By the impugned judgment the learned court below has dismissed the application under Section 125 Cr.P.C. filed by the revisionist.

5. Heard learned counsel for the revisionist, learned A.G.A. appearing for State and material on record including lower court record.

6. Learned counsel for the revisionist submitted that the marriage of revisionist was solemnized with opposite party No.2 Kanhaiya Lal on 11.05.2024 according to hindu rites and rituals. However, after some time of marriage when she started living in her matrimonial home, her husband and in-laws started demanding

Rs.2 lakh cash and one four wheeler as dowry. She informed this to her father, who visited her matrimonial home and expressed his inability to fulfill their demand. However, her husband and in-laws continued to harass and torture her due to non-fulfillment of demand of dowry. On 30.04.2015 at around 10:00 am the opposite party and her family members kicked out the applicant from her matrimonial home, after snatching her stridhan and gave her beating. The applicant filed an application under Section 125 Cr.P.C. before the family court against the husband/opposite for maintenance under Section 125 Cr.P.C. The opposite party appeared in maintenance case and had filed his objection, in which he stated that applicant is B.A. pass out and she is skilled in stitching, embroidery, painting and works at beauty parlour and thus she earns around Rs.20,000/- per month from her various sources of income. She left his home on 22.02.2015 on her own, however after taking clothes, ornaments and other things and shifter her parental home.

7. He next submitted that the learned family court had previously awarded maintenance at the rate of Rs.3,000/- per month in exparte order dated 20.02.2016 in the present case, but said order was recalled on application of respondent No.2. At present the court below has dismissed the application for maintenance awarded in the impugned order dated 14.12.2018, only with the observations that revisionist is able to maintain herself and on the basis of evidence it appears that she earns around Rs.6,000/- per month from Bigbazar where she is working. The applicant has stated that the opposite party is working as motor mechanic and earns around Rs.50,000/-. In fact, opposite party has concealed his actual income; he works as an Electric Wiring mechanic and earns sufficiently. He lastly submitted that the learned court below has dismissed the application under Section 125 Cr.P.C. without considering the relevant facts on record, the revisionist has become penniless, due to dismissal of her application under Section 125 Cr.P.C.. The impugned order deserves to be set-aside and a reasonable sum of money is liable to be awarded by this Court towards her maintenance in the interest of justice and also keeping in view her requirements.

8. Inasmuch as the opposite party being her husband is duty bound to maintain the applicant/revisionist.

9. Learned counsel for the revisionist further submitted that the matter is too old and revisionist prays that instead of remanding the case, in case of setting aside the impugned judgment this Hon'ble Court may fix a reasonable amount of maintenance which

will be payable to the revisionist in larger interest of justice.

10. Learned A.G.A. submitted that no interference is warranted in the impugned judgment and order, on account of observations of Court at page 2 of impugned order. In case this court finds the impugned order is not in accordance with law and fact, the same may be set-aside and matter may be remanded to trial court after fresh decision.

11. On perusal of impugned judgment and order it reveals that respondent No.2 appeared before the court below in issuance of summons issued by the court, and filed his written statement on 03.10.2017 in which he admitted factum of marriage and departure of the applicant to her matrimonial home after marriage, but he denied the allegations made by the applicant / revisionist against him and his family members. He has stated that the applicant had deserted the opposite party and started living at her parental place without sufficient cause. She refused to reunite with him, despite much efforts made by him in this regard. He has even filed a Suit for restitution of conjugal rights before family court, Basti. His father is no more, he has to bear responsibilities of her widowed mother and two unmarried sisters. He is anyhow managing his family by limited economic resources. The applicant is a qualified graduate, she is skilled in stitching, embroidery and beautician work, she earns around Rs.20,000/- per month by engaging in these works. She left the home of opposite party on 22.02.2015 along with her ornaments and clothes. She even threatened to commit suicide by jumping in river Saryu to exert pressure on opposite party and her parental side. The opposite party had informed S.P.. Basti in this regard on 31.03.2015 and this fact was found true in police inquiry. Opposite party examined herself as PW-1 and her father Santram as PW-2. She also filed extracts of Khatauni as 12-Kha/1 and 12-Kha/2 to show that the opposite party is possessed of agricultural land.

12. The opposite party examined himself as DW-1 and Durgesh Chandra Shukla as DW-2 in supports of his pleadings and written statements and filed certain documents by list of papers as documentary evidence. Learned trial court framed four issues in the case and after appreciating the evidence on record gave a finding that opposite party who has stated in his affidavit that he earns his livelihood by engaging in work as private electric wireman on daily and contract basis, on judicial basis it is established that an able bodied person, even if he does not do any work he is supposed to be competent to maintain his wife and also supposed to have sufficient means to maintain his wife. The

learned trial court has also observed that the applicant has denied the fact that she is an earning lady, yet she has admitted that she knows work of stitching, embroidery and beautician. She has taken training of beautician and an evidence in this regard has been filed as 22-Kha/5. Therefore, opposite party has successfully proved this fact that applicant is not a disqualified lady, it is also proved by evidence on record that she was getting Rs.6,000/- per month from V-market; she has stated that the opposite party earns more than Rs.50,000/- per month by working as a motor mechanic. However, this statement appears to be exaggerated because in the city like Basti it is not believable that a person will earn Rs.50,000/- a month by working as a motor mechanic.

13. Learned court below has also given a finding that from evidence on record it appears that the revisionist has left her matrimonial home without sufficient cause. She has stated in cross-examination that on first occasion she remained in her matrimonial place for twenty days, thereafter she stayed in her parental place for six to seven months; she again went to her matrimonial home and remained there for two and half months to three months. With above finding, learned trial court has dismissed the application under Section 125 Cr.P.C. filed by the applicant/revisionist.

14. On perusal of record it reveals that Maintenance Case No.145/11/2015 under Section 125 Cr.P.C. was initially allowed exparte, and the opposite party was directed to pay Rs.3,000/- as maintenance on monthly basis to the applicant Smt. Anupama Chaudhary from the date of order. Opposite party was granted an opportunity to file objection on application for maintenance. The marriage of parties was solemnized on 11.05.2014 according to hindu rites and rituals and the revisionist was sent off to her matrimonial place in the marriage itself.

15. On perusal of evidence of applicant Smt. Anupama Chaudhary and her witness Santram it appears that there is clear allegation of demand of dowry and matrimonial cruelty against the opposite party and his family, which resulted in separate living of the revisionist from her husband and in-laws. She has denied the suggestion given during cross-examination from the side of opposite party that she went to Ayodhya on 27.05.2015, having been angry she has alleged that opposite party and his family members used to engage in marpeet with her, they would abused her and threatened her with life. She was subjected to torture by opposite party and his family. This fact has been corroborated by evidence of PW-2 Santram, who is father of the applicant.

16. Therefore, on the basis of positive and reliable evidence tendered during hearing of the case, it cannot be held that the applicant left her matrimonial home without any sufficient reason as it does not found support from evidence on record. Therefore, the approach and finding of learned court below to dismiss the application under Section 125 Cr.P.C. filed by the revisionist in terms of section 125 (2)Cr.P.C. is not sustainable and deserves to be set-aside. Therefore finding of learned court below on this count is not supported with evidence on record and is perverse.

17. Section 125(4) Cr.P.C. provides that "no wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."

18. During hearing of present case, PW-1 the applicant and PW-2 her father have testified that due to demand of dowry, her husband had been tortured and harassed by opposite party and his family; therefore she was compelled to live separately from her husband and it was not without sufficient reason.

19. Thus the finding of learned court below in this regard is set-aside. So far as the quantum of maintenance is concerned, the learned trial court has given a finding that the applicant appears to be earning around Rs.6,000/- per month at page 5 of the impugned judgment and said finding need not be disturbed in present revision being finding of fact based on evidence on record. However, this is trite law that only due to the reason that the applicant's wife is earning some money from her own resources would not absolve the duty of the husband to maintain her upto the standard which she was accustomed to live when she was residing alongwith her husband at her matrimonial place.

20. Keeping in view the totality of the facts and circumstances of the case and the personal earnings of applicant by engaging in some odd jobs. It would be appropriate and justified that the opposite party be directed to pay Rs. 3,000/- per month as maintenance to the applicant from the date of filing of this application till date of judgment in the light of the judgment of Hon'ble Supreme Court in **Rajnish Vs. Neha 2021 (2) SCC 324** and at the rate of Rs.4000/- per month from date of judgment onwards.

21. The learned Principal Judge Family Court Sant Kabir Nagar

date 14.12.2018 in Complaint Case No.145/11/2015 under Section 125 Cr.P.C. is set-aside. The opposite party No.2 (Kanhaiya Lal) is directed to pay maintenance to the revisionist at the rate of Rs.3,000/- per month in the said maintenance case from the date of filing of application on 26.06.2015 to date of judgment. The arrears of maintenance from 26.06.2015 to December 2024 will be payable by five consecutive monthly installments and first installment will be payable in January, 2025. The calculation chart of installments be placed before the court below by opposite party No.2 for its approval by court below; apart from payment of arrears the opposite party will keep on paying the maintenance to the applicant/revisionist at the rate of Rs.4,000/- per month from January, 2025 which will be payable on 15th of each month.

22. The revision stands **partly allowed**, accordingly.

Order Date :- 12.12.2024

Ashish/-