

Court No. - 27

Case :- CRIMINAL REVISION No. - 82 of 2024

Revisionist :- Rohit Jain

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko And Another

Counsel for Revisionist :- Ashok Kumar Singh, Ashish Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Pawan Kumar Mishra, Advocate holding brief of Sri Ashish Kumar Tiwari and Sri Rakesh Kumar Singh, learned A.G.A appearing on behalf of the State.

2. By means of the instant revision filed under Section 397/401 Cr.P.C., the revisionist has challenged the validity of judgment and order dated 18.04.2023 passed by Special Chief Judicial Magistrate (Custom), Lucknow in Complaint No. 271/2018, under Section 12 of the Protection of Women from Domestic Violence Act, 2005, whereby the revisionist has been ordered to pay Rs. 8,000/- per month as maintenance to his wife-the opposite party no. 2. The revisionist also seeks quashing of the judgment and order dated 14.12.2023 passed by the learned Additional District and Sessions Judge, Court No. 15, Lucknow, whereby Criminal Appeal No. 118/2023 filed by the revisionist against the aforesaid judgment and order dated 18.04.2023 has been dismissed.

3. The opposite party no. 2 is the wife of the revisionist and she had filed an application under Section 23(2) of the Protection of Women From Domestic Violence Act, 2005 in the court of Special Chief Judicial Magistrate, Lucknow, which was registered as Case No. 271/2018. It was stated in the application that the opposite party no. 2 got married to the revisionist on 19.02.2017. Being aggrieved by the harassment and insult meted out to her by her husband and family members, the opposite party no. 2 was residing at her parent's home since 11.05.2017. The revisionist is an engineer and he was working in a private organization and getting salary of Rs. 70,000/- per month and he used to earn Rs. 20,000/- per month more from other sources. It was also stated that the opposite party no. 2 has no source of income and she is unable to maintain herself.

4. On 07.09.2018, the Special Chief Judicial Magistrate,

Lucknow passed an order directing the revisionist to pay Rs. 8,000/- per month as interim maintenance to the opposite party no. 2.

5. On 10.12.2023, the revisionist filed an application for recall of the order dated 07.09.2018 stating that the order dated 07.09.2018 was an ex parte order, the opposite party has not complied with the directions issued by the Hon'ble Supreme Court in the Case of Rajneesh v. Neha and that the revisionist is unemployed and his family income is Rs. 20,000/- per month. The opposite party is already getting Rs. 1,500/- per month under an order passed on an application under Section 125 Cr.P.C. and Rs. 8,000/- per month awarded by the court as an interim maintenance is excessive.

6. It is mentioned in the order dated 24.01.2023 that the revisionist had previously filed an application under Section 25 of Protection of Women from Domestic Violence Act, 2005, which was rejected by means of an order dated 03.12.2018. However, the learned Magistrate allowed the application of the revisionist for the reason it is settled law that the application should be decided after giving an adequate opportunity of hearing to the parties.

7. After hearing the revisionist, the Special Chief Judicial Magistrate, Lucknow passed an order dated 18.04.2023 wherein it is recorded that the report submitted by the District Probation Officer supports the averments made in the complaint. After keeping in view the entire facts and circumstances of the case, the Magistrate has ordered the revisionist to pay a sum of Rs. 8,000/- per month to the opposite party no. 2 from the date of order i.e. 18.04.2023. As by means of the earlier order dated 07.09.2018, the revisionist had been directed to pay Rs. 8,000/- interim maintenance to the opposite party and the revisionist has made partial compliance of the previous order it was directed that the revisionist should pay arrear of maintenance also to the opposite party no. 2.

8. The revisionist filed Criminal Appeal No. 118/2023 against the aforesaid order dated 18.04.2023 which has been dismissed by means of a judgment and order dated 14.12.2023 passed by the Additional District and Sessions Judge, Court No. 15, Lucknow and the order dated 18.04.2023 passed by the Special Chief Judicial Magistrate, Lucknow has been affirmed.

9. The appellate court had framed the following two points for determination:-

(i) Whether the amount of Rs. 8,000/- per month fixed by the

trial court as interim maintenance is excessive?

(ii) Whether the order dated 18.04.2023 restores the previous order dated 07.09.2018, which had already been recalled by means of an order dated 24.01.2023?

10. While deciding the first point, the learned appellate court held that the revisionist is an engineer and he is capable of earning a respectable amount. Keeping in view the special qualification of the revisionist, the amount of Rs. 8,000/- per month fixed as an interim maintenance cannot be said to be excessive.

11. While deciding the point no. 2, the appellate court held that although the application for interim maintenance had been filed on 06.04.2018, the trial court had directed the revisionist to pay interim maintenance w.e.f. 07.09.2018 only and the Magistrate has granted relief to the revisionist against the payment of interim maintenance from the date of application. The trial court has not enforced the order which had been set aside but has fixed the date 07.09.2018 for commencement of the liability of payment of interim maintenance.

12. A copy of the affidavit of assets and liabilities of the revisionist had not been annexed with the revision and the same has been brought on record along with a supplementary affidavit. A perusal of a copy of the affidavit of assets and liabilities of the revisionist, which was filed before the Magistrate, indicates that although the revisionist has claimed that his 62 years old father is there in his family, he has not disclosed the income of his father. Although there is a specific entry in the format of affidavit of assets and liabilities for annexing medical records of any person suffering from any medical condition and although the revisionist has claimed that his father is suffering from various old age related ailments and heart disease, no medical records have been annexed with the affidavit of assets and liabilities by the revisionist. The revisionist has not disclosed the deposits made by him in bank, post office or other bodies during past three years and he has left the space meant therefor in the form of affidavit of assets and liabilities blank. The revisionist has claimed that he is participating in the family business of spare parts of cycle and rickshaw but no evidence has been annexed in support of this claim.

13. From the aforesaid facts, it appears that the revisionist has concealed relevant and material facts from the court which was is dealing with the complaint under the Protection of Women from Domestic Violence Act. The revisionist has even not

approached this Court with clean hands and has concealed relevant and material information from this Court also.

14. The magistrate had passed an order for payment of interim maintenance to the opposite party no. 2 on 07.09.2018. The applicant had filed an application under Section 25 of the Protection of Women from Domestic Violence Act but this fact has not been disclosed by the revisionist. In the appellate order dated 14.12.2023, it is recorded that after the order dated 07.09.2018 was passed by the Magistrate, the revisionist had filed an application under Section 27 r/w 25(2) of Protection of Women from Domestic Violence Act, which had been rejected by means of an order dated 03.12.2018 and the revisionist was directed to pay the entire amount to the complainant in compliance of the order dated 07.09.2018. The revisionist had filed an appeal against the order dated 03.12.2018 and he had also filed an application for recall of the order dated 07.09.2018. The application for recall was allowed by means of an order dated 24.01.2023 subject to payment of a cost of Rs. 1,000/- and thereafter the order dated 18.04.2023 was passed after hearing the revisionist. Appeal No. 249/2022 filed by the revisionist was dismissed by means of an order dated 25.05.2023 passed by the Session Judge, Lucknow. These facts had been concealed by the revisionist while filing Appeal No. 118/2023. The appellate Court has recorded that he appellant had not approached with clean hands.

15. These facts have not been disclosed even in the memo of revision or in the affidavit filed in support of the interim relief application. The discretionary revisional jurisdiction cannot be exercised in favour of a litigant who conceals relevant and material facts from the court.

16. A revision under Section 397 of the Criminal Procedure Code is a discretionary remedy and while exercising discretion, the Court has to take into consideration the entire facts and circumstances of the case, including the conduct of the revisionist, which has been taken into consideration as noted above.

17. When this Court examined the facts of the case that the revisionist has filed the instant revision against an order dated 18.11.2023 passed by the Magistrate directing the revisionist to pay interim maintenance to his wife. The Magistrate had ordered the matter to be put up on 15.05.2023 for further orders as the order dated 18.04.2023 was merely an interlocutory order. As the order is interlocutory in nature, the magistrate is yet to take a final decision regarding payment of maintenance to the opposite party no. 2. The revisionist has not disclosed as

wot what has transpired in the proceedings before the magistrate after passing of the order dated 18.04.2023.

18. In view of the aforesaid discussion, I am of the considered view that the order dated 18.04.2023 passed by Special Chief Judicial Magistrate (Custom), Lucknow does not suffer from any illegality and it does not need any interference by this Court in exercise of its revisional power.

19. Accordingly, the revision is dismissed.

Order Date :- 8.2.2024

Pradeep/-