

Court No. - 27

Case :- CRIMINAL REVISION DEFECTIVE No. - 110 of 2024

Revisionist :- Preeti And Another

Opposite Party :- State Of U.P. Thru. Director Prosecution U.P. Lucknow And Another

Counsel for Revisionist :- Neeraj Tripathi, Kunwar Ravi Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

(I.A. No. 1 of 2024)

1. Heard Sri Kunwar Ravi Prakash, the learned counsel for the revisionists, Sri Anurag Verma, the learned AGA-I for the State and perused the record.
2. By means of the instant application filed under Section 5 of the Indian Limitation Act, the revisionists have prayed for condonation of delay of 105 days in filing the revision.
3. The reason assigned in the affidavit filed in support of the application for condonation of delay is that on 12.07.2023 the revisionist no. 1 had met with an accident in which she had suffered injuries and had to undergo surgical operation and her movement was restricted.
4. The cause shown is sufficient and the delay in filing revision is hereby condoned.

Order on Memo of Revision

5. By means of the instant revision filed under Section 19(4) of the Family Courts Act, the revisionists have challenged the validity of the judgment and order dated 24.08.2023 passed by the Additional Principal Judge, Family Court No. 8, Lucknow in Criminal Misc. Application No. 348 of 2018, under Section 125 of the Cr.P.C., whereby as against the claim for payment of Rs. 25,000/- towards maintenance of the revisionists, the Family Court had passed an order on 04.04.2018 directing the opposite party no. 2 to pay a sum of Rs. 6,000/- only

per month to the revisionist no. 2 towards his interim maintenance and the claim for maintenance to revisionist no. 1 has been rejected. However, the Family Court directed the opposite party no. 2 to pay the entire amount of arrears of interim maintenance to the revisionists.

6. The Family Court has held that the opposite party no. 2 has stated that the revisionist no. 1 is an educated lady and she is capable to maintain herself. She had withdrawn Rs. 3,70,000/- from the joint account held with the opposite party no. 2 and has retained that money.

7. In her statement, the revisionist no. 1 had admitted that he takes some jobs off and on. In her cross-examination, she has admitted that she has withdrawn money from the account of opposite party no. 2.

8. Keeping in view the aforesaid facts, the Family Court came to the conclusion that the revisionist no. 1 is not entitled to receive any maintenance from the opposite party no. 2.

9. When the revisionist no. 1 has already withdrawn Rs. 3,70,000/- from the joint account held with the opposite party no. 2, without the consent of the opposite party no. 2 and has appropriated that money and that she is an educated lady, although she has concealed her qualification in the affidavit filed before this Court and she has claimed that she is merely literate, and when the revisionist no. 1 has admitted that she takes up jobs off and on, the family court has not committed any error or illegality in declining claim of the maintenance to the revisionist no. 1. The amount ordered to be paid to the revisionist no. 2 as maintenance i.e. Rs. 6,000/-, does not appear to be meager, taking into consideration the income of the opposite party no. 2, which is Rs. 32,300/- per month.

10. Sri Kunwar Ravi Prakash has relied upon the decision in the case of **Chaturbhuj v. Sita Bai**: (2008) 2 SCC 316, wherein the Hon'ble Supreme Court has held that:

"8. In an illustrative case where the wife was surviving by begging, it

would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In *Bhagwan Dutt v. Kamla Devi* [(1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83] it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC."

11. He has also relied upon another decision of the Hon'ble Supreme Court in ***Sunita Kachwaha v. Anil Kachwaha***: (2014) 16 SCC 715, wherein the Hon'ble Supreme Court has held that:

"8. The learned counsel for the respondent submitted that the appellant wife is well-qualified, having postgraduate degree in Geography and working as a teacher in Jabalpur and also working in the Health Department. Therefore, she has income of her own and needs no financial support from the respondent. In our considered view, merely because the appellant wife is a qualified postgraduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.

9. The Family Court had in extenso referred to the respondent's salary and his economic condition. The respondent is stated to be an Engineer in PHE, Kota. He is in government service and according to the pay certificate then produced before the Family Court, he was getting salary of Rs 20,268 per month. In her evidence, the appellant wife has also stated that the respondent owns a very big house of his own in which he is said to have opened a hostel for boys and girls and is earning a substantial income. She has also stated that the respondent owns another house at Talmandi Sabji, Kota, Rajasthan and is receiving rental income of Rs 4500 per month. Having regard to the salary and economic condition of the respondent, the Family Court has awarded maintenance of Rs 3000 to the wife and Rs 2500 to each of the daughters, in total Rs 8000 per month. It is stated that the maintenance amount awarded to the daughters has been subsequently enhanced to Rs 10,000 per month. The maintenance amount of Rs

3000 per month awarded to the wife appears to be minimal and in our view, the High Court ought not to have set aside the award of maintenance. The learned counsel for the appellants prayed for enhancement of the quantum of maintenance to the appellant wife. We are not inclined to go into the said submission, but liberty is reserved to the appellant wife to seek remedy before the appropriate court."

12. The observations made in the aforesaid cases were based on the peculiar facts and circumstances of those cases, where the employment of the wife was not proved whereas in the present case the wife has herself admitted that she has withdrawn Rs. 3,70,000/- from the bank account of the husband without his consent and she has further admitted that she is educated and she takes up jobs off and on. Therefore, the law laid down in the aforesaid cases, in view of the peculiar facts of those cases, would not apply to the facts of the present case.

13. Therefore, there is no illegality in the impugned order warranting interference in the revisional jurisdiction of this Court.

14. The revision lacks merit and the same is ***dismissed*** at the admission stage.

Order Date :- 29.3.2024

Pradeep/-