

**Court No. - 11**

**Case :-** CRIMINAL REVISION No. - 892 of 2024

**Revisionist :-** Smita Agarwal And 2 Others

**Opposite Party :-** Saurabh Kumar Agarwal

**Counsel for Revisionist :-** Piyush Kumar Agarwal

**Hon'ble Abdul Moin,J.**

1. Objections filed today in Court by Sri Ankit Kumar Pandey, learned counsel for the respondent be kept on record.

2. Sri Piyush Kumar Agarwal, learned counsel for the revisionist states that he does not intend to file any reply to the same and prays that the matter may be heard and decided finally. Accordingly, the Court proceeds to hear and decide the matter finally.

3. Heard Sri Piyush Kumar Agrawal, learned counsel for the revisionist, as well as Sri Siddharth Sinha and Sri Ankit Kumar Pandey, learned counsel for the respondents.

4. The contention of learned counsel for the revisionist is that the revisionist had filed an application under Section 125 Cr.P.C. before the learned Family Court which has been registered as Case No.533 of 2020 in re: Smita Agrawal vs. Saurabh Kumar Agrawal. Learned court has granted interim maintenance vide order dated 22.01.2021, a copy of which is Annexure-3 to the revision.

5. As considering the judgment of Hon'ble Supreme Court in the case of **Rajnish vs. Neha and another** reported in **AIR 2021 SC 569** the respondent/husband was required to file an affidavit whereby he was also required to file ITRs for the relevant years, in this case for the years 2004-2005 and 2019-2020 which had not been filed by the respondent consequently an application numbered as 38 Ga, a copy of which is Annexure-21 to the revision, was filed by the revisionist praying for drawing adverse inference against the respondent for not filing the complete the details of assets and liabilities.

6. Initially, the learned Court vide order dated 08.07.2024, a copy of which is Annexure-1 to the revision, directed the respondent to produce the said ITRs by the next date failing which adverse inference would be drawn against him and the matter would be proceeded.

7. It is contended that subsequent thereto on 23.07.2024 the learned Court has granted time in infinity to the respondent to produce the relevant records although observing that in case he fails to produce the the records adverse inference would be drawn against him and disposed of the application no. 38-Ga as well as the objections filed

against the same namely 41-Ga.

8. Being aggrieved with the order dated 23.07.2024 the instant revision has been filed.

9. The argument of learned counsel for the revisionist is that once the court vide order dated 08.07.2024 specifically required the respondent to file the aforesaid documents by the next date of which the next date was 23.07.2024 consequently the learned court should have drawn adverse inference against the respondent in not filing the said documents but there cannot be any occasion for the learned court to have granted time in infinity for filing the said documents and to have proceeded further with the matter.

10. The further argument is that in case time was being granted to the respondent to file the said documents then at least cross examination should have been put on hold and the matter should not have proceeded further.

11. No other ground has been raised by the learned counsel for the revisionist.

12. On the other hand, Sri Siddharth Sinha, learned counsel for the respondent, has raised a preliminary objection regarding maintainability of the revision by contending that the order dated 23.07.2024 does not fall within the ambit of being a final order, or even for that matter an interlocutory order deciding an issue consequently the instant revision would not be maintainable.

13. Responding to that learned counsel for the revisionist has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Amarnath and others vs. State of Haryana and others – 1977 (4) SCC 137** to contend that the Hon'ble Supreme Court has considered as to when would an interlocutory order fall within the ambit of being a final order so as to entertain a revision under the provisions of Section 397 of the Cr.P.C., and in the instant case, under Section 19(4) of the Family Court Act, 1984 and consequently instant revision would be maintainable.

14. On merits, Sri Siddharth Sinha, learned counsel for the respondent, has argued that the learned Court vide order dated 23.07.2024 has in fact granted time to the respondent to file the aforesaid documents and has also recorded that in case the said documents are not filed then adverse inference would be drawn by it and consequently the adverse inference would be drawn at the time of passing of a final order in case the respondent fails to file the said documents and in the instant case once the interim maintenance has already been granted to the revisionist consequently there is no infirmity in the order dated 23.07.2024.

15. Sri Sinha also indicates that this Court while exercising jurisdiction under Article 227 of the Constitution upon a petition being filed by the respondent namely petition Under Article 227 No.1473 of 2024 in re: Saurabh Kumar Agrawal vs. Learned Court of Principal Judge, Family Court, vide judgment and order dated 22.03.2024, a copy of which is Annexure-22 to the revision, has disposed of the said petition with a direction to the learned trial court to decide the application filed under Section 125 Cr.P.C. expeditiously i.e. within six months without granting any unnecessary adjournments and as such the learned court is also under obligation to decide the application under Section 125 Cr.P.C. within time stipulated by this Court.

16. Having heard learned counsel for the parties and having perused the record as well as the arguments as raised by the learned counsel for the contesting parties, it emerges that an application under Section 125 of the Cr.P.C has been filed by the revisionist against the respondents claiming maintenance. By means of an order dated 22.01.2021, an interim maintenance has already been granted to the revisionist.

17. In terms of judgment of the Apex Court in the case of **Rajnesh (supra)** the respondent-husband was required to file the ITRs for the year 2004-2005 & 2019-2020 which were not filed by him. The learned trial Court vide order dated 08.07.2024 required the respondent herein to file the said ITRs by the next date failing which adverse inference would be drawn against him.

18. On 23.07.2024 i.e the next date fixed in the matter, the relevant ITRs were not filed by the respondent herein which has resulted in the learned trial Court granting him time to file the said documents and it was also indicated that in case the said documents are not filed then adverse inference would be drawn against him. The applications filed by the revisionist for drawing adverse inference as well as the objections namely 41 Gha filed against the same have been disposed of and the matter has been proceeded further.

19. Raising a challenge to the order dated 23.07.2024 on the grounds as aforesaid that the Court in fact should have drawn adverse inference while passing the order dated 23.07.2024 and there cannot be any occasion for the learned trial Court to have granted time in infinity for filing the said documents, the instant revision has been filed.

20. Admittedly, there is already an order passed by this Court under Article 227 of the Constitution of India vide judgment and order dated 22.03.2024 directing the learned trial Court to decide the application filed under Section 125 Cr.P.C expeditiously say within six months. The said period of time is set to lapse in September, 2024.

21. Admittedly, till date the respondent has failed to file the ITRs for the relevant years which has resulted in the learned Court directing for filing of the same failing which adverse inference would be drawn. The adverse inference can always be drawn by the learned trial Court in case the said documents are not filed at the time of taking a final decision in the matter but once there is already an order of interim maintenance in favour of the revisionist herein consequently, merely because the learned Court has granted time to file the said documents and also indicated to file the said documents but no time period has been specified but also indicating that adverse inference would be drawn in case the said documents are not filed, obviously the said inference would be drawn at the time of passing of the final order and thus non-filing of the documents will not restrain the Court from proceeding further with the matter.

22. Thus, keeping in view the aforesaid discussion, this Court does not find any occasion for interference with the order impugned on merits.

23. Accordingly, the instant revision is dismissed.

**Order Date :- 9.8.2024**

A. Katiyar