Court No. - 13
Case :- CRIMINAL REVISION No. - 1096 of 2024
Revisionist :- Deenanath Yadav
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another
Counsel for Revisionist :- Archana Yadav
Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Shri Ratensh Trivedi, Advocate has put in appearance on behalf of opposite party no. 2 in Court today and has filed Vakalatnama which is taken on record.

2. The opposite party no. 2 is present before this Court who has been identified by Shri Ratensh Trivedi, Advocate.

3. Heard

4. By means of the present revision, the revisionist has assailed the order dated 30.07.2024 passed by Additional Principal Judge, Family Court, Lakhimpur Kheri (in short "Family Court') in Criminal Misc. Case no. 644 (Smt. Sanju Vs. Deenanath Yadav).

5. Vide order under challenge, the Family Court, upon considering the undisputed income of the revisionist i.e. Rs. 30,000/- per month, directed the revisionist to pay Rs. 3,000/- per month from the date of filing of the application, under consideration, i.e. 29.09.2020 and Rs. 5,000/- per month from the date of order i.e. 30.07.2024.

6. On 10.09.2024, this Court passed the following order:

> *1. Heard.*
>
> *2. Learned counsel for the petitioner states that there is every likelihood of the parties entering into a settlement in case the matter is referred to the Mediation Centre of this Court.*
>
> *3. Considering the aforesaid, issue notice to respondent No.2.*
>
> *4. List on 03.10.2024 as fresh on which date the respondent No.2 shall remain before this Court either personally or through her counsel to indicate as to whether she is willing to go for mediation.*
>
> *5. It is further provided that in case an amount of Rs.25,000/- is deposited within 15 days from today before this court, no coercive action shall be taken against the petitioner.*
>
> *6. It is needless to mention that in case the petitioner fails to deposit the amount of Rs.25,000/- within a period of two weeks, benefit of this*

order shall not be available to him.

7. In terms of order of this Court, quoted above, the revisionist has deposited the amount to the tune of Rs. 25,000/- as appears from the Office Report dated 24.09.2024 and a copy of tender on record.

8. Based upon the instructions received from the opposite party no. 2 (wife of the revisionist), Shri Ratensh Trivedi, Advocate stated that the opposite party no. 2 does not want to place the matter before the Mediation and Conciliation Centre of this Court.

9. In the aforesaid background of the case, this Court proceeded to consider the merits of the order dated 30.07.2024, under challenge.

10. Impeaching the order under challenge, learned counsel for the revisionist states that the opposite party no. 2 is not entitled to the maintenance as awarded by the Family Court as she is a post graduate lady and she is earning sufficient amount from a teaching and tuition. However, to substantiate the same, no document has been placed on record.

11. It is also stated that the opposite party no. 2, on her own volition, left the matrimonial home as such, she is not entitled to the amount towards maintenance in exercise of power under Section 125 Cr.P.C.

12. Learned counsel for the opposite party no. 2 opposing the present revision stated that just to avoid the payment of the amount awarded by the Family Court vide order dated 30.07.2024, under challenge, the present revision has been filed.

13. In continuation, it is stated that in terms of the order of the Family Court, the revisionist is under obligation to pay Rs. 1,65,000/- till date.

14. It is also stated that on account of ill-treatment by the revisionist, the opposite party no. 2 was compelled to left the matrimonial house and as such, she is entitled to the amount of maintenance awarded by the Family Court.

15. It is also stated that prior to marriage, the opposite party no. 2 was engaged in Gayndevi School, however, on account of pressure created from the side of the revisionist, she was compelled to resign from the said job.

16. It is also stated that the amount awarded by the Family Court is a meager amount and a normal person cannot survive with this amount.

17. It is also stated that on one pretext or other, the revisionist is avoiding the payment of the amount of maintenance as awarded by the Family Court vide order dated 30.07.2024.

18. Considered the aforesaid and perused the records.

19. Before entering into the facts of the case, it would be apt to refer the observations made by the Hon'ble Apex Court in relation to dealing with the applications under Section 125 Cr.P.C.

20. The Hon'ble Apex Court in the case of **Anju Garg and another vs. Deepak Kumar Garg**, reported in **2022 SCC OnLine SC 1314**, observed as under:-

> *"9. At the outset, it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, as observed by this Court in **Bhuwan Mohan Singh v. Meena (2015) 6 SCC 353**. This Court in the said case, after referring to the earlier decisions, has reiterated the principle of law as to how the proceedings under Section 125 Cr.P.C have to be dealt with by the Court. It held as under:*
>
> *"In **Dukhtar Jahan v. Mohd. Farooq [(1987) 1 SCC 624 : 1987 SCC (Cri) 237]** the Court opined that : (SCC p. 631, para 16)*
>
> *16. "… Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner."*
>
> *8. A three-Judge Bench in **Vimala (K.) v. Veeraswamy (K.) [(1991) 2 SCC 375 : 1991 SCC (Cri) 442],** while discussing about the basic purpose under Section 125 of the Code, opined that : (SCC p. 378, para 3)*
>
> *3. "Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife."*
>
> *9. A two-Judge Bench in **Kirtikant D. Vadodaria v. State of Gujarat [(1996) 4 SCC 479 : 1996 SCC (Cri) 762]**, while adverting to the dominant purpose behind Section 125 of the Code, ruled that : (SCC p. 489, para 15)*
>
> *15. "… While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."*

*10. In **Chaturbhuj v. Sita Bai [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356]**, reiterating the legal position the Court held : (SCC p. 320, para 6)*

*6. "… Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in **Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508]** falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in **Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787]**."*

*11.Recently in **Nagendrappa Natikar v. Neelamma [(2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346]**, it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children".*

*10. This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provisions under Section 125 of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In **Chaturbhuj v. Sita Bai (2008) 2 SCC 316**, it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India."*

21. In the case of **Sanjeev Kapoor vs. Chandana Kapoor and others**, reported in **(2020) 13 SCC 172**, the Hon'ble Apex Court while considering the applicability of Section 362 Cr.P.C. in relation to the proceedings/case instituted under Section 125 Cr.P.C., on the "aims and objects" of Section 125 Cr.P.C., observed as under:-

"23. Before we proceed to look into the legislative scheme of Section 125 CrPC, we need to notice few rules of interpretation of statutes when the court is concerned with the interpretation of a social justice legislation. Section 125 CrPC is a social justice legislation which orders for maintenance for wives, children and parents. Maintenance of wives, children and parents is a continuous obligation enforced. This Court had occasion to consider the interpretation of Section 125

CrPC in Badshah v. Urmila Badshah Godse [Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51] . In paras 13.3 to 18, the following has been laid down: (SCC pp. 196-98)

> *"13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.*
>
> *14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:*
>
> *'It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication. [Keynote address on "Legal Education in Social Context" delivered at National Law University, Jodhpur on 12-10-2005, available on last accessed 25-12-2013.] '*
>
> *15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.*
>
> *16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose.*

> *But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.*
>
> *17. Cardozo acknowledges in his classic [Benjamin N. Cardozo, The Nature of Judicial Process (Yale University Press, New Haven, 1921).]*
>
> *'… no system of jus scriptum has been able to escape the need of it.'*
>
> *and he elaborates:*
>
> *'It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. … There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a Judge's troubles in ascribing meaning to a statute. …*
>
> *Says Gray in his lectures [John Chipman Gray, The Nature and Sources of the Law.] :*
>
> *"The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."'*

18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — libre recherché scientifique i.e. "free scientific research". We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 CrPC, to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano [Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 : 1985 SCC (Cri) 245] to Shabana Bano [Shabana Bano v. Imran Khan, (2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873] guaranteeing maintenance rights to Muslim women is a

classical example.

24. The closer look at Section 125 CrPC itself indicates that the court after passing judgment or final order in the proceedings under Section 125 CrPC does not become functus officio. The section itself contains express provisions where order passed under Section 125 CrPC can be cancelled or altered which is noticeable from Sections 125(1), 125(5) and 127 CrPC, which are to the following effect:

> ***"125. Order for maintenance of wives, children and parents.—****(1) If any person having sufficient means neglects or refuses to maintain—*
> *(a) his wife, unable to maintain herself, or*
> *(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
> *(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
> *(d) his father or mother, unable to maintain himself or herself,*
> *a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*
> *Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:*
> *Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:*
> *Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.*
> *Explanation.—For the purposes of this Chapter—*
> *(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;*
> *(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.*
> ***
> *(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her*

husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.
*****

127. Alteration in allowance.—*(1) On proof of a change in the circumstances of any person, receiving, under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.*

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil court, any order made under Section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage.

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order—

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under Section 125, the civil court shall take into account that sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order."

25. In Section 125 CrPC the expression used is "as the Magistrate may from time to time direct". The use of the expression "from time to time" has purpose and meaning. It clearly contemplates that with regard to the order passed under Section 125(1) CrPC, the Magistrate may have to exercise jurisdiction from time to time. Use of the expression "from time to time" is in exercise of jurisdiction of the Magistrate in a particular case. Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edn. defines "time to time" as follows:

"Time to time. As occasion arises."

26. The above legislative scheme indicates that the Magistrate does not become functus officio after passing an order under Section 125 CrPC, as and when the occasion arises the Magistrate exercises the jurisdiction from time to time. By Section 125(5) CrPC, the Magistrate is expressly empowered to cancel an order passed under Section 125(1) CrPC on fulfilment of certain conditions.

27. Section 127 CrPC also discloses the legislative intendment where the Magistrate is empowered to alter an order passed under Section 125 CrPC. Sub-section (2) of Section 127 CrPC also empowers the Magistrate to cancel or vary an order under Section 125. The legislative scheme as delineated by Sections 125 and 127 CrPC as noted above clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where the court passing a judgment or final order disposing of the case can alter or review the same. The embargo as contained in Section 362 is, thus, clearly relaxed in the proceedings under Section 125 CrPC as indicated above.

28. The submissions which have been pressed by the learned counsel for the appellant were founded only on embargo of Section 362 and when embargo of Section 362 is expressly relaxed in the proceedings under Section 125 CrPC, we are not persuaded to accept the submission of the counsel for the appellant that the Family Court was not entitled to set aside and cancel its order dated 6-5-2017 in the facts and circumstances of the present case."

22. In the case of **Chander Parkash Bodh Raj vs. Shila Rani Chander Prakash: 1968 SCC Online Del 52**, the Delhi High Court has held that :

"an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."

23. The Hon'ble Apex Court in the case of **Rajnesh vs. Neha , (2021) 2 SCC 324 : (2021) 2 SCC (Civ) 220 : 2020 SCC OnLine SC 903 at page 347** has approved the above law laid down by the Delhi High Court.

24. The Hon'ble Apex Court in **Kulbhushan Kumar Vs. Raj Kumari, (1970) 3 SCC 129** has held that 25% of the husband's net salary would be just and proper to be awarded as maintenance allowance to the wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the financial capacity of the husband to make the payment.

25. In **Kalyan Dey Chaudhary Vs. Rita Dey Chaudhary Nee Nandy, (2017) 14 SCC 200,** the Hon'ble Apex Court has followed the quantum of maintenance fixed by the Hon'ble Apex Court in **Kulbhushan Kumar (supra)** that 25% of net income of the husband should be paid to the wife as maintenance.

26. Considering the aforesaid including the undisputed income of the revisionist i.e. Rs. 30,000/- per month and the amount awarded by the Family Court i.e. 3,000/- per month from 29.09.2020, the date of filing of application, and Rs. 5,000/- per month from the date of passing the order in the case i.e. 30.07.2024 and also the law down by the Hon'ble Apex Court in the judgments, referred above, this Court finds no illegality, irregularity, or jurisdictional error in the order impugned dated 30.07.2024.

27. The instant revision is accordingly **dismissed**. No order as to costs.

28. The amount deposited by the revisionist to the tune of Rs. 25,000/- in terms of order dated 10.09.2024 shall be released in his favour forthwith.

29. The copy of the order be sent to the trial court concerned forthwith.

Order Date :- 3.10.2024
Mohit Singh/-

Digitally signed by :-
MOHIT SINGH
High Court of Judicature at Allahabad,
Lucknow Bench