

Reserved on 19.01.2024

Delivered on 25.01.2024

Neutral Citation No. - 2024:AHC-LKO:6755

Court No. - 29

Case :- CRIMINAL REVISION No. - 1003 of 2023

Revisionist :- Adnan Shamir Ahmed

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

Counsel for Revisionist :- Jalaj Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Heard learned counsel for the revisionist, learned counsel for the opposite party No. 2 as well as learned AGA for the State.
2. Earlier parties were directed to appear in person before the Court. Revisionist is present before the court, however, opposite party No. 2 is not present.
3. During the course of proceedings the revisionist submitted that he does not want to enter into compromise with opposite party No. 2, hence there is no chance of mediation.
4. The revisionist has filed present revision under Section 19(4) of the Family Court Act, 1984 against the judgment and order dated 15.06.2023 passed by Principal Judge, Family Court, Lucknow in Criminal Case No. 710 of 2021. It is submitted that revisionist as well as opposite party No. 2 were having acquaintance through matrimonial site, namely, shaadi.com and they started meeting each other for about six months and marriage was solemnized on 25.02.2018 by their parents as arranged marriage. Opposite party No. 2 was living in Bangalore since last 5/6 years with his brother as she was doing her master course in Bangalore. Opposite party No. 2 is highly qualified lady having degree of MCA from New Horizon College of Engineering, Bangalore and she was working in Cerner Health Care at a monthly salary of Rs. 50,000/-. The revisionist was living with his parents in Bangalore itself and opposite party No. 2 pressurized him to leave the home of his parents and live separately with opposite party No. 2. During the period of Covid-19, revisionist informed opposite party

No. 2 that his job is in peril as companies are expelling their employees, therefore, opposite party No. 2 left the house of revisionist within 15 days taking along with her cash of Rs. 50,000/-, jewelry of mother and grandmother worth 20 lacs and the pre-paid card of HDFC Bank on the pretext of meeting her sister in Delhi. Revisionist booked her ticket from Bangalore to Delhi and, thereafter, she directly went to her parental home to Lucknow and never returned to Bangalore. Opposite party No. 2 without any rhyme and reason falsely implicate whole of his family in F.I.R. No. 38 of 2021 under Section 498A, 323, 506 I.P.C., ¾ of Dowry Prohibition Act and also under the provisions of Domestic Violence Act. It is further submitted that learned Trial Court did not properly consider the evidence of revisionist and wrongly decided the issue No. 3 in favour of opposite party No. 2. Opposite party No. 2 is living with her parents without any valid reasons and earning Rs. 50,000/- per month from his job in Cerner Health Care. It is further submitted that opposite party No. 2 used to consume liquor and she used to go to night clubs and when revisionist objected to it, she decided to live separately. It is also submitted that opposite party No. 2 developed extra-marital affairs with one Rutab Rehan and she used to spend quality time with him and as such the opposite party No. 2 was herself not willing to reside with him. Learned trial court did not consider all these facts and passed the impugned judgment and order dated 15.06.2023 without properly appreciating the evidence adduced by the revisionist. Hence, the impugned order is liable to be set-aside.

5. Both the parties were directed to appear in person in Court but opposite party No. 2 did not appear in person and revisionist submitted that he does not want to enter into compromise, therefore, finding that there is no fair chance of mediation, heard on merits.

6. Learned counsel for opposite party No. 2 submitted that admittedly, opposite party No.2 is the wife of revisionist and she is living with her parents in Lucknow. Revisionist demanded car after marriage as a dowry for which applicant provided from her own Bank account, thereafter, the family members of revisionist demanded Rs. 10,00,000/- for purchasing a flat and lastly, she was banished from her matrimonial house in May, 2020. It is further submitted that opposite party No. 2 demanded Rs. 30,000/- for her maintenance and Rs. 20,000/- as a lumpsum amount for expenditure of litigation, however, learned trial court awarded only Rs. 15,000/-. It is submitted that the order is passed on the basis of evidence on

record, there is no illegality, irregularity or perversity in the judgment, hence, it is prayed to dismiss the criminal revision.

7. I have heard the rival submissions advanced on behalf of the parties and perused the entire materials brought on record.

8. Marriage of the parties is admitted and it is also admitted that opposite party No. 2 left the house on 31.05.2020. In the impugned judgment it is mentioned that the father of opposite party No. 2 stated on oath that she was banished from her matrimonial home for demand of Rs. 10,00,000/- and flat. It is also stated on oath by P.W.-2 that he was informed by his daughter on 30.05.2020 that she was beaten by revisionist then his daughter went to police station where parties compromised. After lodging of the F.I.R., case was sent for mediation but mediation failed. It is uncontroverted fact that revisionist booked the ticket for opposite party No. 2 who was willing to visit her sister at Delhi. There is no reasonable cause as to why opposite party No.2 went to her sister instead of going to her parents at lucknow. Hence, it goes to show that visit was planned visit by opposite party No. 2 to visit her sister at Delhi.

9. Revisionist submitted that her wife is living in extra marital relationship with one Rutab Rehan and he has filed the photograph of his wife with Rehan as Annexure No. 1. It is further submitted on behalf of the revisionist that she consumes liquor and the coloured photographs is filed as Annexure No. 1. The objection filed by revisionist against the application moved under Section 125 Cr.P.C. is also on record as Annexure No. 3 which goes to show that the ground of living in extra-marital relationship was not placed before the trial court, hence, the matter was not considered at the time of judgment. It is the admission on behalf of the revisionist that he is a software engineer. Learned trial court believed on ITR in which gross income of the revisionist in financial year 2021-22 is shown as Rs. 10,19,958/- and Rs. 9,99,004/- in the financial year 2022-23 and he is the Team Lead Developer in TCS. The paper regarding his income is produced by the opposite party in which his salary is shown as Rs. 85,400/- per month, however, in pay-slip of April-2022, paper No. Ga25/7, Rs. 1,10,255/- is shown as gross income of revisionist. The salary is variable, hence, the amount may vary year to year but there is no denial that he is Team Lead Developer in TCS company.

10. Revisionist has shown his yearly expenditure from 18, July, 2020 to 5th July, 2021 as Rs. 2,44,000/-. It is also submitted on behalf of revisionist that he is repaying his loan of Rs. 15,000/- per month. Learned counsel for the revisionist submitted that opposite party No. 2 is well educated and she has completed her B.C.A. from Bishop Cotton Women's Christian College and her M.C.A. from New Horizon College of Engineering, Bangalore and she was working in Cerner Health Care since July, 2016 till August, 2019. There is no denial on behalf of opposite party No. 2 that she has done her M.C.A. and she was working in the above mentioned company, however, it is submitted on behalf of opposite party No. 2 that due to backache and slip-disc, she has left her job.

11. Learned trial court found that, however, opposite party No. 2 left her job at that time but she is capable of earning and she may join at any time whenever she wishes to join the job. It is also submitted on behalf of the revisionist that opposite party No. 2 is doing share business using the account of her brother and she want to marry with someone else, therefore, trial court partly allowed the application and awarded Rs. 15,000/- per month as maintenance.

12. During the course of this revision, revisionist has deposited Rs. 55,000/- in the month of October and rest of the amount he brought at the date of hearing in cash but as the opposite party No. 2 was not present in person (under the direction of this Court), the amount could not be paid to her on that day. It is further submitted on behalf of the revisionist that in the light of order of this Court dated 21.12.2023, he is paying Rs. 15,000/- per month to opposite party No. 2.

13. From the above discussion it is apparent that marriage is admitted, opposite party No. 2 is living separately with her parents since 31.05.2020, she has done her MCA and she was working in Cerner Health Care at a monthly remuneration of Rs. 50,000/-. It is evident from the record that she has left her job. It is the contention of the revisionist that she is earning her livelihood from share-market from the account of her brother, there is no proof that there is any source of income at the present date. The contention of consuming liquor or living in a live-in relationship with Rehan was not taken at the time of filing his objection against the application under Section 125 Cr.P.C., hence, these contentions were not considered by the Family Court at the time of passing the judgment. Revisionist has ample opportunity to get modified the impugned judgment by way of filing

application under Section 127 Cr.P.C. on the ground of extramarital relation or any other ground available to him.

14. Hence, there is no illegality, irregularity or perversity in the judgment. Nothing is brought into my notice to show that any of the fact or evidence is not considered at the time of trial. Hence, the revision is liable to be dismissed at this stage.

15. However, it is open for revisionist to move application under Section 127 Cr.P.C. for modification, if required. The revisionist shall continue to pay Rs. 15,000/- as directed by the Court till the order is modified by the Family Court. The arrears of maintenance shall be paid in accordance with the order of the trial court, if yet not paid within 10 days.

15. In view thereof, revision is hereby **dismissed**.

(Renu Agarwal,J.)

Order Date :- 25.1.2024
Karan