

**Court No. - 29**

**Case :-** CRIMINAL REVISION No. - 1237 of 2022

**Revisionist :-** Sakina Bano And Another

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

**Counsel for Revisionist :-** Anand Kumar, Ashish Kumar

**Counsel for Opposite Party :-** G.A.,Jaleel Ahmad

**Hon'ble Mrs. Renu Agarwal, J.**

1. Present revision under section 19(4) of Family Court Act 1984, has been filed against the judgment and order dated 18.10.2022, passed by the Principal Judge, Family Court, Sultanpur, in Criminal Misc. Case No.854 of 2020(Shakina Bano and another Vs. Abbas Ahmad), by which the application under sections 125 Cr.P.C. moved by the revisionist has been rejected.

2. None appeared on behalf of opposite party no.2, however, Sri Jaleel Ahmad, advocate has filed his power on behalf of opposite party no.2, hence, the court has no option, but to decide the revision in absence of counsel for opposite party no.2.

3. Heard learned counsel for the revisionist and learned AGA for the State and perused the material brought on record.

4. It is submitted by learned counsel for the revisionist that woman has right to claim maintenance that cannot be denied only because she is capable to earn more money in compression to her husband. Even if the wife is earning, then also she is entitled for the determination of maintenance from her husband in accordance with the lifestyle of her husband in the matrimonial home. Learned counsel for the revisionist has relied upon the judgments of Hon'ble Apex Court in the cases of "**Sunita Kachwaha and Others Vs. Anil Kachwaha, (2014) 16 SCC 715** and "**Shailja and another Vs. Khobbanna, CRLMA-243/2022**". It is also submitted that Family Court has

denied the maintenance to revisionist no.1-Sakina Bano(wife) merely on the ground that she is running beauty parlour, and has a source of income for livelihood, which is totally perverse and liable to be set-aside.

5. From the perusal of the the impugned judgment it transpires that revisionist has passed high school and she was running beauty parlour, even before the marriage in Kureybhhar Township and she used to earned 20-25 thousand rupees per month. It is contended by the opposite party no.2 in the trial court that he is working as sweeper and according to his bank statement, his salary is Rs.34,154/- and after deducting the installment of loan i.e. Rs.17,108/-, the net salary of opposite party no.2 is 17,046/- per month. The family court has directed the opposite party no.2 to pay Rs.5,000/- per month towards the maintenance of revisionist no.2(Km. Reeva). Thereafter, a very meager amount i.e. Rs.12046/- remains with the opposite party no.2 to maintain himself. Learned trial court found that earning of revisionist/applicant is more than opposite party no.2 and the revisionist is capable to maintain herself as well as her minor daughter-Km. Reeva(opposite party no.2).

6. Learned counsel for the revisionist submitted that she was banished from her matrimonial home on 26.09.2020 and opposite party no.2 tried to set her ablazed, but she herself admitted in her cross examination that she was not medically examined nor any FIR was lodged by her in this regard. Prior to the incident dated 26.09.2020 revisionist attributed the charge against opposite party no.2 that on 15.04.2020 at about 3.00 P.M. she was beaten by opposite party no.2 and his family members. It was also contended by the revisionist in the FIR dated 14.10.2020 that 9 persons harassed her for the demand of car and Rs.2.5 lacs. Learned trial court found that there are

contradictions in the date of incident. There are also contradictions in the contents of FIR as well as the contents of petition moved under section 125 Cr.P.C. Learned trial court found that no medical examination report is on record. Revisionist admitted that she came to her parental home alongwith her minor daughter with her brother, where she was running a beauty parlour. It also transpires from the impugned judgment that opposite party no.2 is engaged for the job of sweeper in Mohanlalganj. He also tried to keep the revisionist with him separate from his other family members, but she was not ready to reside with opposite party no.2. Therefore, the trial court found that there is no sufficient ground for the revisionist to leave the matrimonial home and residing in her parental home. The cause of living separately in her parental home of the revisionist is not proved during the trial. There is fair admission on behalf of the revisionist that she is running beauty parlour and she is earning more than the net income of opposite party no.2. It is worth mentioning here that learned trial court has awarded Rs.5,000/- per month for revisionist no.2, who is the daughter of the couple.

7. So far as the cases of "**Sunita Kachwaha and Others VS. Anil Kachwaha**", is concerned, husband raised the contention that since the wife had sufficient income she would not require financial assistance from the husband. Hon'ble Supreme Court has held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

8. In the case of "**Shailja and anothers Vs. Khobbanna**", also Hon'ble Supreme Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. Court has to determine whether the income of wife is sufficient to enable to her to maintain herself in accordance with the life style of her husband in matrimonial home.

9. While applying these case law in the present scenario, it appears that opposite party no.2 is working as sweeper and according to his bank statement of his salary is Rs.34,154/- and after deducting the installment of loan of Rs.17,108/- the net salary of opposite party no.2 is 17,046/- per month is remains with him. The family court has directed the opposite party no.2 to pay Rs.5,000/- per month towards the maintenance of revisionist no.2(Km. Reeva). Thereafter, a very meager amount i.e. Rs.12,046/- remains with the opposite party no.2 to maintain himself. Hence the amount received by him from his salary is so meager to pay additional amount as maintenance to his wife, revisionist no.1, who is already earning more than her husband. If she were living in her matrimonial home, then the living status of revisionist no.1 would not be better than that, in which she is living now in her parental home.

10. From the perusal of the record it transpires that there is no illegality in the judgment as revisionist is earning more than the opposite party no.2 and the court has directed the opposite party no.2 only to pay Rs.5,000/- per month to revisionist no.2, the minor daughter of the couple. There is no illegality, irregularity or no miscarriage of justice is done to any of the party by the impugned judgment. dated 18.10.2022 and present revision is liable to be dismissed.

12. Accordingly, the revision is **dismissed**.

13. Let a copy of this order be sent to the court concerned for necessary compliance.

(Renu Agarwal,J.)

**Order Date :- 25.1.2024/VKG**