

Court No. - 29

Case :- CRIMINAL REVISION No. - 1392 of 2023

Revisionist :- Rakesh Kumar Thru. Senior Section Engineer A.C
Coaching N.R Charbagh Lko.

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 2
Others

Counsel for Revisionist :- Satyendra Kumar Maurya, Neeraj
Sahu, Satyendra Kumar Maurya

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 and perused the entire materials brought on record.

2. Present criminal revision under Section-19(4) of the Family Courts Act has been preferred against the judgment and order dated 06.11.2023 passed by Additional Principal Judge-5, Family Court, Lucknow in Misc. Case No. 97C/2013 under Section 127(1) Cr.P.C., Smt. Arti and Anr. Vs. Rakesh Kumar by which the learned court below has allowed the application under Section 127(1) Cr.P.C. of the opposite party No. 3 enhancing the awarded amount of Rs. 2000/- per month in place of Rs. 1000/- and also enhancing monthly maintenance of Rs. 7000/- since 06.11.2023.

3. Learned counsel for the revisionist submitted that marriage of revisionist and opposite party No. 2 got solemnized on 23.01.2000 at Lucknow and opposite party No. 3 was born out of the wedlock of revisionist and opposite party No. 2. Opposite party No. 2 made quarrel with revisionist and left the house of revisionist on 12.09.2002. It is further submitted that revisionist filed a regular suit No. 1135 of 2002, under Section 9 of the Hindu Marriage Act against the opposite party No. 2 before the Principal Judge, Family Court, Lucknow which was withdrawn by the revisionist on the consent of

opposite party No. 2 on 11.10.2002 and entered for mutual divorce under Section 13(b) of the Hindu Marriage Act which was decreed on 17.03.2005. Thereafter, opposite party no. 2 and 3 filed a criminal case No. 1259 of 2002 on 17.10.2002 under Section 125 Cr.P.C. which was allowed on 29.11.2008 and Rs. 2000/- per month was awarded as maintenance to opposite party No. 2 and Rs. 1000/- per month was awarded as maintenance to opposite party No. 3. Again an application under Section 127(1) Cr.P.C. was moved for enhancing the awarded amount against the order dated 29.11.2008. Revisionist filed his objection and mentioned that opposite party no. 2 was appointed as Government Teacher in Prathmik Vidyalaya, Hardoi. Thereafter an amendment application is moved under Section 127 Cr.P.C. to the effect that opposite party No. 2 does not want to take her maintenance and the same was allowed on 05.06.2018. Opposite party No. 3 is the daughter of revisionist and opposite party No. 3 is now major as she has attained the age of 22 years. It is contended that learned trial court has not considered the above mentioned fact and enhanced the amount of maintenance. Opposite party No. 2 is a Government Teacher and she has the liability of looking after her daughter and she is capable of owning the responsibility of opposite party No. 3. After divorce, revisionist has also solemnized second marriage and he has three children from the second marriage. Learned trial court did not consider his liabilities while enhancing the maintenance amount, hence, impugned order is illegal and unwarranted, hence, it is prayed to set-aside the impugned order.

4. Learned counsel for opposite party No. 2 submitted that learned family court has stopped the maintenance of opposite party No. 2 on 05.06.2018 as she herself admitted in Court that she is working as teacher and she earn sufficient to maintain herself. It is also submitted on behalf of opposite party No. 2 that opposite party no. 3 was born out of the legal wedlock of revisionist and opposite party No. 2 and opposite party No. 3 is still studying and she needs maintenance

amount for maintaining her and for her further studies. It is further submitted that, though the opposite party no. 2 is maintaining her daughter, but, it is the liability of revisionist also to maintain opposite party No. 3 who is daughter of revisionist also, therefore, it is submitted that learned trial court passed the order according to the provisions of law, hence, the revision is liable to be dismissed.

5. Learned AGA for the State vehemently opposed the revision and submitted that the order passed by the Family Court is passed in accordance with law and there is no need warrant interference in the impugned order.

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

7. It is admitted that revisionist and opposite party no. 2 solemnized marriage in 23.01.2000 at Lucknow and opposite party No. 3 was born from the valid wedlock of parties. Due to a quarell between the parties, opposite party No. 2 left the house of revisionist on 12.09.2002, therefore, revisionist filed a regular suit No. 1135 of 2002 under Section 9 of the Hindu Marriage Act before the Principal Judge, Family Court, Lucknow which was withdrawn with the consent of opposite party No. 2 on 11.10.2002 as the parties consented for mutual divorce. Revisionist and opposite party No. 2 jointly filed petition under Section 13(b) of the Hindu Marriage Act on 08.10.2002 which was registered as case crime No. 1258 of 2002 and was decreed on 17.03.2005, thereafter, opposite party No. 2 and 3 (wife and daughter) filed a criminal case No. 1259 of 2002 on 17.10.2002 under Section 125 Cr.P.C. which was allowed on 29.11.2008 awarding the maintenance of Rs. 2000/- to opposite party No. 2 and Rs. 1000/- to opposite party No.3. An application under Section 127(1) is also moved on behalf of opposite party No. 2 and 3 to enhance the maintenance amount awarded vide order dated 29.11.2008. It is also admitted fact that opposite party No. 2 is a Government Teacher.

8. Learned counsel for the revisionist submitted that opposite party No. 3 is now 22 years old and, therefore, she is not entitled for any maintenance amount. Learned counsel submitted that after getting decree of divorce, revisionist performed second marriage and from their wedlock, three children were born and revisionist is performing his duty towards his present children and wife also.

9. Section 125(1)(b) of the Cr.P.C. reads thus:-

"125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain -

(a).....

(b).....

(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 [* *] [The words "not exceeding five hundred rupees in the whole" omitted by Act 50 of 2001, w.e.f. 24.9.2001.], 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.*

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,"

As per Section 3(1) of the Indian Majority Act, 1875 "Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before."

10. A bare reading of the above provisions goes to show that child below age of 18 years is entitled to get maintenance amount from his father irrespective of the fact that she is married or unmarried. The Act provides that father shall maintain his minor married daughter if her husband is not capable of maintaining her.

11. Admittedly, in this case, the daughter (opposite party No. 3) has attained age of majority and she is 22 years of age now, therefore, there is no provision to provide maintenance to the daughter who has attained majority under the provisions of Section 125 Cr.P.C., however, opposite party no. 2 is not remedyless.

12. Chapter-III of the The Hindu Adoptions and Maintenance Act, 1956 deals with the maintenance provisions. Section 20(1) of The Hindu Adoptions and Maintenance Act, 1956 provides that :-

"20. Maintenance of children and aged parents.—*(1) Subject to the provisions of this section a Hindu is bound, during his or her life-time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.*

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property."

Therefore, the provisions of claiming maintenance after attaining majority is not available under Section 125 Cr.P.C., however, she or he can claim maintenance under Section 20(3) of The Hindu Adoptions and Maintenance Act.

13. From the impugned judgment, it transpires that application under Section 127(1) Cr.P.C. was moved for enhancement of maintenance amount in year 2013 when the opposite party No. 3 was studying in

Class VI, which was decided by the Court finally on 06.11.2023. It also transpires that the order of enhancement of maintenance was to be effective from the date of application. At the time of moving this application, opposite party No. 3 was minor girl of 12 years, hence, at the time of her minority opposite party No. 3 was entitled to get the maintenance from her father. At the time of decision however, opposite party No. 3 has become major, who at the time filing of the application was minor. Revisionist is under obligation to pay towards her maintenance for this period during which she was minor, hence, the fact that opposite party No. 3 has attained the age of majority has no count at this stage. There is no illegality, irregularity or perversity in the impugned order, therefore, the revision is liable to be dismissed.

13. In view thereof, Revision is hereby **dismissed**.

14. Revisionist is directed to pay the total amount due as maintenance towards his daughter in two easy installments payable quarterly.

15. Let the order passed today to sent to the Court below for necessary information and compliance.

(Renu Agarwal,J.)

Order Date :- 22.1.2024/Karan