



2025:UHC:11552

Judgment Reserved on: 18.11.2025

Judgment Delivered on: 24.12.2025

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

Criminal Revision No.751 of 2023

Shivam Kumar

.....Revisionist

Vs.

State and others

.....Respondent

Presence:

Mr. M.K. Ray, learned counsel for the Revisionist.

Mr. Vipul Painuly, learned A.G.A. for the State of Uttarakhand.

Mr. Yogesh Pacholia, learned counsel, for Respondent Nos.2 and 3.

Hon'ble Ashish Naithani, J.

The present Criminal Revision arises out of an order dated 25.07.2023, passed by the learned Judge, Family Court I, Udham Singh Nagar, in Case No. 07 of 2022, "Vaishali vs. Shivam" instituted under Section 125 CrPC by Respondent No. 2.

2. As per the facts, the marriage between the Revisionist and Respondent No. 2 was solemnized on 16.02.2021 according to Hindu rites and customs. From the said wedlock, a daughter was born, who is arrayed as Respondent No. 3 through her natural guardian mother.

3. Respondent No. 2 filed an application for interim maintenance alleging that she and the minor child had been subjected to cruelty and harassment, that she was compelled to leave the matrimonial home, and that she had no independent source of income to maintain herself or the child. It was asserted that the Revisionist is an advocate earning substantial income and has neglected to maintain them.

4. The Revisionist filed objections to the interim maintenance application admitting the marital relationship and the paternity of the child, but



disputing the allegations of cruelty and dowry demand. It was asserted that Respondent No. 2 left the matrimonial home voluntarily without sufficient cause, that she is educated and capable of earning, and that she is not entitled to interim maintenance.

5. The Revisionist further pleaded that he is a junior advocate, suffering from cardiac ailments, has negligible income, and is dependent upon others for his treatment and livelihood.

6. Upon hearing the parties, the learned Family Court passed the impugned order granting interim maintenance of Rs. 5,000 per month in favour of Respondent No. 2 during the pendency of proceedings under Section 125 CrPC, holding that the wife had disclosed no income and that the husband could not avoid his obligation to maintain his wife and minor child.

7. Aggrieved by the said order, the Revisionist has preferred the present Criminal Revision under Sections 397 and 401 CrPC seeking setting aside of the interim maintenance order.

8. Learned counsel for the Revisionist submits that the impugned order suffers from material illegality and is based on presumption rather than evidence. It is contended that the learned Family Court failed to properly assess the income of the Revisionist and arbitrarily fixed a notional income without any factual foundation.

9. It is argued that Respondent No. 2 left the matrimonial home of her own volition without sufficient cause, and therefore, in view of Section 125 sub-section (4) CrPC, she is disentitled from claiming maintenance. Reliance is placed on the charge sheet and other materials to contend that the allegation of forced ouster was not substantiated.

10. Learned counsel for the Revisionist further submits that Respondent No. 2 is well educated and was employed prior to marriage, and that material was placed on record suggesting her continued engagement with a financial institution. It is contended that the learned Family Court ignored these aspects while granting interim maintenance.



11. It is also urged that the Revisionist is a junior advocate without a stable practice, suffering from serious cardiac illness, and burdened with medical expenses and family responsibilities, and that the grant of interim maintenance without considering these circumstances has caused grave prejudice.

12. Learned counsel for Respondent No. 2 submits that the impugned order is legal, reasoned, and passed after due consideration of the pleadings and affidavits of both parties. It is contended that interim maintenance is intended to prevent destitution and ensure basic sustenance during the pendency of proceedings.

13. It is argued that Respondent No. 2 specifically pleaded absence of any income and that the Revisionist failed to place any cogent or reliable documentary material before the Family Court to establish that she was gainfully employed at the relevant time.

14. Learned counsel further submits that the Revisionist's plea of low income and illness cannot absolve him of his statutory obligation to maintain his wife and minor child, and that the amount awarded is modest and reasonable, keeping in view the needs of the dependents and the cost of living.

15. Learned AGA, supporting the impugned order, submits that no perversity, illegality, or jurisdictional error is demonstrated, warranting interference under revisional jurisdiction, and that the Criminal Revision is liable to be dismissed.

16. Heard learned counsel for the Parties and perused the records.

17. The jurisdiction invoked under Sections 397 and 401 of the Code is supervisory and corrective in nature. It is well settled that a revisional court does not function as a court of appeal and cannot re-appreciate evidence or substitute its own view merely because another view is possible. Interference is warranted only where the order under challenge suffers from patent illegality, material irregularity, or perversity.



18. The impugned order arises from proceedings at an interlocutory stage, namely, an application for interim maintenance in a pending petition under Section 125 CrPC. At this stage, the Family Court is not required to adjudicate finally upon disputed questions of fact relating to desertion, cruelty, or conduct of the parties. The enquiry is necessarily prima facie and aimed at ensuring that the wife and minor child are not rendered destitute during the pendency of proceedings.

19. The marital relationship between the parties and the paternity of the minor child are admitted. The wife specifically pleaded absence of any independent source of income. The husband, while alleging that the wife was capable of earning or was employed, did not place before the Family Court any cogent documentary material conclusively establishing that she was, at the relevant time, in receipt of regular income sufficient to maintain herself and the child.

20. The learned Family Court took note of this evidentiary position and recorded that, in the absence of reliable proof of the wife's income, interim maintenance could not be denied merely on assertions regarding her educational qualifications or alleged earning capacity. This approach cannot be said to be contrary to law, as there is a clear distinction between capacity to earn and actual earning, particularly at an interlocutory stage.

21. The contention that the learned Family Court erred in assessing the income of the husband on a notional basis also does not persuade this Court to interfere. Where precise income is not forthcoming and the husband asserts minimal earnings without substantiating the same through credible material, the court is entitled to make a reasonable estimation for the limited purpose of interim maintenance. Such estimation is not an adjudication of final liability and remains open to reassessment upon evidence.

22. The amount of interim maintenance awarded, namely Rs. 5,000 per month, is modest. It cannot be characterised as excessive, arbitrary, or disproportionate so as to warrant interference in revision. The order reflects an



attempt to strike a balance between the needs of the wife and minor child on the one hand, and the pleaded constraints of the husband on the other.

23. The pleas raised by the Revisionist regarding alleged voluntary desertion, applicability of Section 125 sub-section (4) CrPC, medical condition, and financial hardship involve disputed questions of fact. These issues require appreciation of evidence and cannot be conclusively determined at the stage of interim maintenance, much less in revisional jurisdiction. The learned Family Court has consciously left these matters open for adjudication in the main proceedings.

24. This Court also finds no procedural impropriety or violation of principles of natural justice in the manner in which the learned Family Court has exercised its discretion. The impugned order discloses application of mind to relevant considerations germane to interim maintenance and does not suffer from perversity or jurisdictional error.

25. In revisional jurisdiction, this Court is not called upon to examine whether a different view could have been taken, but only whether the view taken by the court below is so unreasonable or illegal as to call for correction. On a careful evaluation of the record, this Court finds that the impugned order does not cross that threshold.

ORDER

For the reasons recorded hereinabove, this Court does not find any perversity, illegality, or jurisdictional infirmity in the order dated 25.07.2023, passed by the learned Judge, Family Court I, Udham Singh Nagar, in Case No. 07 of 2022, granting interim maintenance in favour of Respondent No. 2.

The Criminal Revision, therefore, fails and is accordingly **dismissed**.

Pending applications, if any, stand disposed of.

(Ashish Naithani J.)