



2025:AHC:169834

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 172 of 2024

Kapil

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Shiva Shanker Yadav
Counsel for Opposite Party(s)	:	Ashish Pandey, G.A.

Court No. - 91

HON'BLE MADAN PAL SINGH, J.

1. Heard Shiva Shanker Yadav, learned counsel for the revisionist, Shri Ashish Pandey, learned counsel for the opposite party no.2 as well as learned AGA appearing for the State-opposite party no.1 and perused the record.

2. The instant criminal revision is directed against the judgment and order dated 07.12.2021 passed by Gram Nyaylaya, Tehsil Badaut, District Baghpat in Case No. 157 of 2019 (Smt, Anju Vs. Kapil and others), under Section 12 of the Domestic Violence Act as well as order dated 16.11.2023 passed by learned Additional Sessions Judge/Special Judge SC/ST Act, Baghpat in Criminal Appeal No. 92 of 2022 (Computer No. 92/2022) Kapil Vs. Smt. Anju and another), Police Station Badaut, District Baghpat, whereby the application of opposite party no.2 under Section 12 of the Domestic Violence Act was allowed ex-parte and the revisionist was directed to pay Rs.5,000/- per month as maintenance and Rs.3,000/- for maintaining residential accommodation and further directed the revisionist to pay Rs.10,000/- to the opposite party no.2 as mental and physical cruelty caused by the revisionist.

3. The facts of the case in brief are that the marriage of the opposite party no.2 was solemnized with the revisionist on 19.11.2018 according to the Hindu Rites and Rituals. On 13.12.2018, the opposite party no.2 has left the house of the revisionist and started living with her parents. On 22.02.2019, the opposite party no.2 has filed an application under Section 12 of the Domestic Violence Act, 2005, claiming maintenance from the revisionist before the Gram Nyalaya, Tehsil Baraut, District Baghpat. The case was registered as Case No. 157 of 2019. Learned Magistrate, Gram Nayalaya, Tehsil Badaut, District Baghpat vide ex-parte order dated 07.12.2021 has

allowed the application of the opposite party no.2 under Section 12 of the Domestic Violence Act and directed the revisionist to pay Rs.5,000/- per month as maintenance to the opposite party no.2 from the date of application. Being dissatisfied by the order dated 07.12.2021, the revisionist has filed Criminal Appeal No. 92 of 2022 (Computer No. 92/2022) Kapil Vs. Smt. Anju and another) before the Additional Session Judge/Special Judge, SC/ST Act, Baghpat. The learned Additional Session Judge/Special Judge, SC/ST Act, Baghpat, vide order dated 16.11.2023 dismissed the appeal filed by the revisionist and affirmed the ex-parte order dated 07.12.2021 passed by the learned Magistrate, Gram Nayalaya, Tehsil Badaut, District Baghpat.

4. The sole argument of the learned counsel for the revisionist is that the marriage of the opposite party no.2 was solemnized with the revisionist on 19.11.2018 according to the Hindu Rites and Rituals without any demand of dowry. The behaviour of the opposite party no.2 towards the revisionist and his other family members were not up to the mark, therefore, keeping in view the misbehaviour, the father of the revisionist has separated the opposite party no.2 along with revisionist from his family and in this regard a news also published in the daily newspaper, namely, "Dainik Savera Times" on 18.12.2018. Learned counsel for the revisionist further submits that on 13.12.2018 the opposite party no.2 has left her matrimonial house and started living at her parental house. Learned counsel further submits that when the opposite party no.2 did not turn up, the revisionist has filed proceedings under Section 9 of the Hindu Marriage Act before the Principal Judge, Family Court, Panipat for restitution of conjugal rights. The case was registered as Case No. HMA-129 of 2019 on 05.01.2019 and vide order dated 02.09.2019 a decree for restitution of conjugal rights has been passed in favour of the revisionist.

5. Learned counsel for the revisionist also submits that the notice of the case under Section 9 of the Hindu Marriage Act was served upon the opposite party no.2, soon thereafter, she has filed the proceedings under Section 12 of the Domestic Violence Act on 22.02.2019, only with a view to unnecessary harass the revisionist. The proceedings of the D.V. Act has been allowed ex-parte and the appeal preferred against the said order has also been dismissed. In the last, learned counsel for the revisionist submits that despite decree for restitution of conjugal rights, the opposite party no.2 did not turn up to live with the revisionist, despite these facts, the revisionist requests for setting aside the orders impugned at the cost of Rs.50,000/- and the trial court may

be directed to decide the proceedings afresh after hearing the parties.

6. On the other hand, learned counsel for the opposite party no.2 and learned AGA appearing for the State-opposite party no.1 stated that the orders passed by the trial court are perfectly just and proper, and as such, the orders impugned do not call for any interference by this Court

7. On considering the facts and circumstances of the case, argument advanced on behalf of the parties and of learned AGA and perused the judgment and orders of the trial court, it is admitted case that the opposite party no.2 is the legally wedded wife of the revisionist. It is also admitted that since 13.12.2018 the opposite party no.2 has left the matrimonial house and started living with her parents. The revisionist has tried his level best to take back the opposite party no.2 and when she did not turn up, the revisionist has filed proceedings under Section 9 of the Hindu Marriage Act before the Principal Judge, Family Court, Panipat for restitution of conjugal rights, which was allowed and thereafter the opposite party no.2 with the intention to cause unnecessary harassment has filed the proceedings under Section 12 of the Domestic Violence Act, 2005, which was allowed ex-parte vide order dated 07.12.2021 against which the revisionist has filed criminal appeal, which too was dismissed vide order dated 16.11.2023.

8. In view of the above, this Court is of the considered opinion that the opposite party no.2 did not comply the decree of Section 9 of the Hindu Marriage Act and has instituted the proceedings under the D.V. Act only with a view to harass the revisionist, therefore, it would be appropriate to set aside the impugned orders at the cost of Rs.50,000/- and remit the matter back to the trial court to hear and decide the proceedings under Section 12 of the DV Act afresh after providing adequate opportunity of hearing to the parties concerned.

9. Accordingly, instant criminal revision is allowed and the impugned orders dated 07.12.2021 passed by Gram Nyaylaya, Tehsil Badaut, District Baghpat in Case No. 157 of 2019 (Smt, Anju Vs. Kapil and others), under Section 12 of the Domestic Violence Act as well as order dated 16.11.2023 passed by learned Additional Sessions Judge/Special Judge SC/ST Act, Baghpat in Criminal Appeal No. 92 of 2022 (Computer No. 92/2022) Kapil Vs. Smt. Anju and another), Police Station Badaut, District Baghpat, are set aside at the cost of Rs.50,000/- to be deposited by the revisionist before the

trial court within fifteen days from today, which shall be payable to opposite party no.2-Anju.

10. The trial court is directed to decide the proceedings under Section 12 of the D.V. Act, afresh after providing proper opportunity of hearing to the parties concerned to adduce their respective evidence in support of their case, as expeditiously as possible, preferably within a period of three months from the date of production a certified copy of this order before it. However, it is provided the revisionist shall continue to pay the maintenance of Rs.5,000/- per month to the opposite party no.2 till the proceedings under Section 12 of the D.V. Act is decided finally. In case of default of payment, the trial court would be at liberty to proceed in the matter in accordance to law without any reference to this Court.

11. It is made clear that the trial court would be at liberty to decide the matter afresh by taking additional evidence, if required, without being influenced by any of the observations made herinabove.

12. Office is directed to transmit the lower court record to the trial court forthwith.

September 22, 2025
Prajapati RK

(Madan Pal Singh,J.)