

Neutral Citation No. - 2025:AHC:143766

Reserved on 12th August, 2025

Delivered on 20th August, 2025

Court No. - 91

Case :- CRIMINAL REVISION No. - 563 of 2024

Revisionist :- Anurag Dubey

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Dilip Kumar Goswami, Kunwar Bhadur
Dixit, Sanjay Kumar Singh

Counsel for Opposite Party :- Anurag Shukla, G.A.

Hon'ble Madan Pal Singh, J.

1. Heard Mr. Sanjay Kumar Singh and Mr. Manoj Kumar Srivastava, learned counsel for the revisionist, Mr. Anurag Shukla, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

2. The present criminal revision has been preferred with the prayer to set aside the judgment and order passed by the Principal Judge, Family Court, Mainpuri dated 9th November, 2023 in Case No. 234 of 2017 (Smt. Sandhya Dubey Vs. Anurag Dubey), under Section 125 Cr.P.C., Police Station-Kotwali, District-Mainpuri, whereby the Principal Judge has partly allowed the application filed by opposite party no.2 under Section 125 Cr.P.C. and directed the revisionist to pay Rs. 13,000/- per month towards maintenance allowance from the date of institution of the application i.e. 23rd May, 2017.

3. Factual matrix of the case is that the marriage of the revisionist was solemnized with opposite party no.2 on 26th April, 2014 in accordance with Hindu Rites and Rituals. After some time of marriage, the relationship between the revisionist and opposite party no.2 became strained and incompatible. Consequently, opposite party no.2 filed an application under Section 125 Cr.P.C. on 23rd May, 2017, which was registered as Case No. 234 of 2017 (Smt. Sandhya Dubey Vs. Anurag Dubey), Police Station-Kotwali, District-Mainpuri. The revisionist had filed detail objection reply on 28th November, 2019. After the oral as well as documentary evidence were led and after hearing the learned counsel for the parties, the court below has passed the impugned judgment. Hence the present criminal revision.

4. Contention of the learned counsel for the revisionist is that the Principal Judge without considering the facts and circumstances of the case and without applying his judicial mind has passed the impugned judgment directing the revisionist to pay Rs. 13,000/- per month towards maintenance allowance from the date of institution of the application i.e. 23rd May, 2017, which is per se illegal. Opposite party no.2 herself leaved her matrimonial house without any reason. The revisionist and his family members made all efforts to take her to their house but she did not return, as she herself did not wish to reside with the revisionist, therefore, she could not be entitled to any maintenance. It is then submitted that opposite party no.2 is an educated lady and is earning Rs. 20,000/- by taking tuitions. Lastly, it is submitted by the revisionist that the revisionist filed original suit no. 141 of 2018 under Section 13 of the Hindu Marriage Act before the Principal Judge, Family Court, Kannauj and the same has been allowed vide judgment and order dated 29th April, 2023 and according to the direction issued in the said judgment, the revisionist had given permanent alimony to opposite party to the tune of Rs. 15,00,000/- (rupees fifteen lakhs only).

5. Learned counsel for the revisionist referring to the judgment of the Hon'ble Supreme Court in the case of **Jatinder Kumar Sapra Vs. Anupama Sapra dated 17th February, 2025 passed in Civil Appeal No. 6088 of 2024** has stressed that when the revisionist has given permanent alimony to the tune of Rs. 15,00,000/- as per the judgment of the Principal Judge dated 23rd April, 2023, opposite party no.2 is not entitled to any maintenance allowance as awarded under the impugned judgment.

6. On the cumulative strength of the aforesaid, learned counsel for the revisionist states that the impugned judgment passed by the court below cannot be legally sustained and is liable to be set aside.

7. On the other-hand, learned counsel for opposite party no.2 and the learned A.G.A. for the State has opposed the present criminal revision by submitting that there is no illegality or infirmity in the

impugned judgment so as to warrant any interference by this Court in exercise of revisional jurisdiction.

8. Apart from the above, learned counsel for opposite party no.2 states that it is the revisionist that he had filed the divorce suit in which judgment had been passed by the family court against which first appeal has been preferred by opposite party no.2 before this Hon'ble High Court which is pending consideration. It is also submitted that opposite party no.2 had never demanded any permanent alimony nor she had taken the same from the family court which had been deposited by the revisionist pursuant to the judgment of the family court. It is, thus, submitted that since opposite party no.2 has not obtained the permanent alimony and the judgment has also been challenged before this Court, the impugned judgment awarding maintenance allowance in favour of opposite party no.2 is sustainable in the eyes of law. He, therefore, submits that the present criminal revision is liable to be dismissed.

9. In rejoinder, learned counsel for the revisionist submits that since the decree/judgment of divorce passed by the Family Court has not been stayed by the First Appellate Court i.e. the Hon'ble High Court wherein the first appeal filed by opposite party no.2 against the decree of divorce, the same becomes finality as on date and as per the judgment of the Hon'ble Supreme Court in the case of **Jatinder Kumar Sapra (Supra)**, judgment and order of maintenance does not prevail over the decree of divorce.

10. I have considered the submissions advanced by the learned counsel for the parties and have gone through the records of the present criminal revision.

11. Two Issues are up for consideration before this Court:

(i) Whether the award of Rs. 13,000/- towards monthly maintenance allowance in favour of opposite party no.2 under the impugned judgment and order of the court below is excessive?

(ii) Whether, after permanent alimony has been awarded in a decree of divorce by the trial court under Section 13 of the Hindu Marriage Act on

original suit filed by the revisionist, opposite party no.2 is still entitled to maintenance allowance?

12. For deciding the issue no.1, it is necessary for this Court to refer to the statement of prosecution witnesses and defence witnesses recorded before the court below during the course of trial in the case under Section 125 Cr.P.C.

13. While deciding issue no. 3 the learned Court below reached at the conclusion that the opposite party is not in any employment and have no source of income, as well as Court below, on the basis of evidence on record found that the opposite party (wife) living separately from her husband having sufficient reasons. In the statement of opposite party no.2 as P.W.-1, she has narrated that the marriage of opposite party no.2 was solemnized with the revisionist on 26th April, 2014 in which the revisionist had taken cash of Rs. 10,00,000/- (rupees ten lakhs only), one SUV-500 Car, golds and other house hold articles. She further stated that for additional demand of dowry to the tune of Rs. 20,00,000/- (rupees twenty lakhs only), he used to torture and harass her. When the revisionist exerted more pressure, the father of opposite party no.2 had purchased a 1/3rd share of Gata No. 238 from one Shakuntala in her favour on 22nd June, 2024 to the tune of Rs. 10,00,000/- (rupees ten lakhs only) but the revisionist got the said land transferred in the name of his mother, fraudulently. She further stated that thereafter the revisionist again used to torture her for fulfilment of additional demand of dowry to the tune of Rs. 20,00,000/- and when the said demand had not been fulfilled, on 23rd February, 2015, the revisionist left the opposite party no.2 to her parental place and till then, he never took her to his place. He also never gave her any maintenance allowance. It has also been stated by opposite party no.2 that from the farming and taking tuition, the revisionist earns Rs. 80,000/- per month.

14. In the statement given by Sanjeev Shukla, uncle of the revisionist, who had been produced on behalf of the revisionist as D.W.-2 before the trial court, it has been stated that the revisionist is the only child of his parents. He has one tractor and two cars. The revisionist has rented his

house to Bank of India. He also stated that he had purchased the agricultural field from one Shakuntala on his own money.

15. From the aforesaid statements, it can be inferred that not only the reasons were sufficient for living separately by the opposite party from her husband but also, that a person like the revisionist, who, is single child of his parents, has agricultural field, owns a tractor and two cars, has given his house on rent and also gives tuition, and also purchases agricultural land, must earn not less than fifty thousand per month.

16. Under such circumstances, this Court finds that the monthly maintenance allowance at Rs. 13,000/- per month as awarded by the court below in favour of opposite party no.2 under the impugned judgment is not excessive. The same is as per the judgment of the Apex Court in the case of **Kulbhushan Kumar vs Raj Kumari & Anr.** reported in (1970) 3 SCC 129, wherein it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the wife.

17. Consequently, the issue no.1 is decided in favour of opposite party no.2.

18. So far as the issue no.2 is concerned, this Court may record that admittedly decree of divorce/judgment and order dated 29th April, 2023 passed in Original Suit No. 141 of 2018 under Section 13 of the Hindu Marriage Act by the Principal Judge wherein the permanent alimony has been granted in favour of opposite party no.2, is subjected to challenge in the first appeal filed by opposite party no.2 which is pending consideration before this Court.

19. However, it was contended on behalf of opposite party no.2 that the permanent alimony awarded by the trial court without any application being made by opposite party no.2 (wife). It was also contended that in the decree of divorce/judgment and order dated 29th April, 2023 passed in Original Suit No. 141 of 2018 under Section 13 of the Hindu Marriage Act, there is no mention that the permanent alimony constitutes a full and final settlement of all claims including any maintenance obligations which are available to a wife.

20. Since the decree of divorce/judgment and order dated 29th April, 2023 passed in Original Suit No. 141 of 2018 under Section 13 of the Hindu Marriage Act is challenged before this Court in a first appeal filed by opposite party no.2, therefore, this Court in exercise of revisional jurisdiction cannot express any opinion on the permanent alimony with regard to the correctness/legality or otherwise of the same as the Hon'ble Appellate Court where the first appeal is pending is higher Court than this Court.

21. It is true that from the date of filing of application under Section 125 Cr.P.C., no single penny has been given by the revisionist to opposite party no.2. Moreover, the primary objective of granting permanent alimony is to ensure that the dependent spouse is not left without any support and means after the dissolution of the marriage in future.

22. It is admitted to opposite party no.2 that by the decree of divorce, permanent alimony to the tune of Rs. 15,00,000/- (rupees fifteen lakhs only) has been awarded by the trial court in favour of opposite party no.2. The same is right or wrong, is subject matter of challenge before the Appellate Court. However, in the opinion of the Court, opposite party no.2 is still entitled to maintenance allowance from the date of filing of application under Section 125 Cr.P.C. till the date of passing of the decree of divorce.

23. Consequently, the judgment and order passed by the Principal Judge, Family Court, Mainpuri dated 9th November, 2023 in Case No. 234 of 2017 (Smt. Sandhya Dubey Vs. Anurag Dubey), under Section 125 Cr.P.C., Police Station-Kotwali, District-Mainpuri is modified to the extent that the revisionist shall pay maintenance allowance to opposite party no.2 from the date of filing of application under Section 125 Cr.P.C. i.e. 23rd May, 2017 and till the date of decree of divorce i.e. 29th April, 2023 at the rate of Rs. 13,000/- per month. The total arrears of maintenance allowance is approximately 9,50,000/- (rupees nine lakhs and fifty thousand only), out of which Rs. 2,00,000/- (rupees two lakhs only) shall be paid by the revisionist to opposite party no.2 by 7th

September, 2025 and rest of the amount of arrears of maintenance allowance i.e. Rs. 7,50,000/- shall be paid by the revisionist in 12 equal installments by 7th day of each calendar month, which will commence from 7th October, 2025 onwards.

24. The present criminal revision is partly **allowed**.

25. There shall be no order as to costs.

(Madan Pal Singh, J.)

Order Date :- 20.8.2025

Sushil/-