



2025:AHC:157705

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 472 of 2024

Satyendra Narayan Pandey

.....Revisionist(s)

Versus

State Of Up And 2 Others

.....Opposite
Party(s)

Counsel for Revisionist(s) : Arvind Kumar, Manoj Kumar Singh,
Prayag Lal Kushwaha, Vinod Kumar Rai
Counsel for Opposite Party(s) : G.A., Gaurav Gautam, Srishti Singh

Court No. - 91

HON'BLE MADAN PAL SINGH, J.

1. Heard Mr. Arvind Kumar, learned counsel for the revisionist, Mr. Gaurav Gautam, learned counsel for opposite party nos. 2 and 3 and the learned A.G.A. for the State.

2. This criminal revision has been filed by the revisionist under Section 397/401 Cr.P.C. questioning the judgment and order dated 13th December, 2023 passed by the Principal Judge, Family Court, Chandauli, in Maintenance Petition (Case) No. 393 of 2019 (Jyoti Pandey & Another Vs. Satyendra Pandey), under Section 125 Cr.P.C. Police Station-Chandauli, District-Chandauli, whereby the trial court while partly allowing the application filed by opposite party nos. 2 and 3 under Section 125 Cr.P.C. has directed the revisionist to pay Rs. 5,000/- per month to opposite party no.2 and Rs. 3,000/- to opposite party no.3 towards maintenance allowance on 13th day of each calendar month from the date of filing of application under Section 125 Cr.P.C.

3. Learned counsel for the revisionist mainly submits that since opposite party no.2 is living in adultery, therefore, the opposite party no.2 is not entitled to any maintenance allowance. However, the trial court has neither framed any issue on the said issue nor any finding has been recorded by the trial court on that issue while deciding the application under Section 125 Cr.P.C. under the impugned judgment. Therefore, the impugned judgment is per se illegal. To buttress the above submission, learned counsel for the revisionist has brought on record certain photographs of the opposite party no.2 at page no. 18 onwards of the rejoinder affidavit.

4. Learned counsel for the revisionist further submits that opposite party no.2 is doing private job in M/S Super India Ayurvedic Company and she earns Rs. 16,000/- per month. In support of his submission, learned counsel for the

revisionist has referred to the bank statement of accounts of opposite party no.2 which have been enclosed as Annexure-R.A.-4 to the rejoinder affidavit. He, therefore, submits that since opposite party no.2 is an earning lady, she is not entitled to any maintenance allowance.

5. Learned counsel for the revisionist next submits that no cruelty or any violence has been committed by the revisionist upon opposite party no.2 and such allegations made on her behalf are baseless. She is living separate from her husband i.e. revisionist along with her son due to her relation with one Rohit. In connection with the same, learned counsel for the revisionist has drawn the attention of the Court to the photo copy of a compromise which is at page-52 of the rejoinder affidavit wherein it was decided that the third person (Rohit Singh) due to whom there was a dispute between the both the parties will not meet to any party.

6. Lastly, learned counsel for the revisionist submits that at present revisionist has no source of income to maintain her wife and son. Earlier he was working in a private institution at Delhi but after filing of the instant application under Section 125 Cr.P.C., he has lost his said job in the year 2002 and since then, he is unemployed. He, therefore, submits that the amount of monthly maintenance allowance as awarded by the trial court under the impugned judgment in favour of opposite party nos. 2 and 3 is too excessive and not in commensurate with the income of the revisionist. As such the judgment impugned cannot be legally sustained and is liable to be set aside.

7. On the other-hand, the learned counsel for opposite party no.2 and the learned A.G.A. for the State have opposed the submissions made by the learned counsel for the revisionist by submitting that the trial court has not committed any illegality or infirmity in passing the impugned judgment and awarding Rs. 5,000/- per month to opposite party no.2 and Rs. 3,000/- per month to opposite party no.3 i.e total Rs. 8,000/- per month towards maintenance allowance from the date of filing of the application, which may warrant any interference by this Court in exercise of revisional jurisdiction.

8. Besides the above, learned counsel for opposite party no.2 submits that it is admitted position that opposite party nos. 2 and 3 are legally wedded wife and real son of the revisionist respectively, therefore, it is legally obligatory upon the revisionist, who is an able bodied person having a degree of M.B.A. to maintain his wife and son.

9. Learned counsel for opposite party no.2 next submits that since opposite party no.2 was being tortured and harassed by the revisionist and she had been beaten by him also due to not giving a Maruti Swift Car as additional

demand of dowry. Because of the aforesaid reason, opposite party no.2 has left her matrimonial house and is living separately along with her minor son. While passing the impugned judgment the trial court has recorded categorical finding of fact that the opposite party no.2 is living separately from her husband i.e. the revisionist with sufficient cause as she was repeatedly tortured and harassed by the revisionist and his family members. Since this Court sits in a revisional jurisdiction, it cannot embark upon a re-appreciation of evidence as suggested by the learned counsel for the revisionist. The evidence led before the trial court has been dealt with by the trial court while passing the impugned judgment. Therefore, this Court is of the view that this Court cannot substitute its own finding while exercising its powers under Section 397/401 Cr.P.C.

10. Learned counsel for opposite party no.2 then submits that it is no doubt true that opposite party no.2 was doing private job earlier but the same was not permanent and now her such job was left. Nowadays she has no source of income to maintain herself and her son.

11. Learned counsel for opposite party no.2 again submits that, in reply filed by the revisionist before the trial court, no allegation has been made by the revisionist against opposite party no.2 with regard to adultery. For the first time, the revisionist has raised this issue before this Revisional Court, where the same cannot be examined at this stage. Learned counsel for opposite party no.2 lastly submits that keeping in mind the present inflation, the amount of monthly maintenance allowance awarded by the trial court under the impugned judgment cannot be said to be excessive, which is already on lower side. He, therefore, submits that since there is no illegality in the judgment impugned, the present criminal revision is liable to be dismissed.

12. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties as well as perusal of record including the impugned judgment, this Court finds that it is an admitted case that the opposite party nos. 2 and 3 are legally wedded wife and real son of the revisionist respectively.

13. So far as the separate living of opposite party no.2 from her husband i.e. revisionist is concerned, this Court finds that the trial court while deciding the issue no.2 has recorded cogent reason qua the separate living of opposite party no.2. From the record it also transpires that qua opposite party no.2 being tortured, harassed and beaten by the revisionist, a first information report was lodged by her on 15th October, 2019 against the revisionist and after that, the instant application under Section 125 Cr.P.C. has been filed before the trial court.

14. Qua the submission made by the learned counsel for the revisionist that since opposite party no.2 is living in adultery therefore, she is not entitled to any maintenance allowance, this Court finds that while the revisionist had ample opportunity to raise such issue of adultery during the course of trial either by oral or documentary evidence. From the perusal of the Written Statements filed by the revisionist before the trial court in the instant proceedings under Section 125 Cr.P.C. which is at page-67 onwards of the paper book, this Court finds that no such allegation of adultery has been made by the revisionist against the opposite party no.2 through the said written statements. This Court is of the opinion that the veracity of such issues which had not been raised during the course of trial cannot be looked into at the revisional stage. Thus, this Court finds no substance in the aforesaid submission. Further more, from the photographs annexed along with the rejoinder affidavit, which have heavily relied upon by the learned counsel for the revisionist, it transpires that in most of the photographs, opposite party no.2 is alone and in two photographs, she was with a person but from the same it is not discernable that she was in objectionable or indecent condition with the said person.

15. So far as the income of opposite party no.2 is concerned, this Court finds that though earlier opposite party no.2 was working in a private company and was getting Rs. 16,000/- per month as per the bank statement of accounts of opposite party no.2, which is of the year 2022, which have been enclosed along with rejoinder affidavit, but as per the submission of learned counsel for opposite party no. 2, which could not be disputed by the learned counsel for the revisionist that at present she left her job and has no source of income and with the help of her father she is hardly able to maintain herself and her son. On the other-hand, the revisionist is an able bodied person having a degree of M.B.A. and earlier he was working in a private firm at Delhi also. Since he is not physical deformed and is able to earn money. In that circumstance also, this Court is of the view that the revisionist being an able bodied person cannot shirk from his pious liabilities of maintaining his legally wedded wife and real son i.e. opposite party nos. 2 and 3 respectively. In today's time, every educated person very well knows that a person having M.B.A. degree will earn at least Rs. 25,000/- to Rs. 30,000/- per month.

16. Under such circumstances, the monthly income of the revisionist having degree of M.B.A. may be fixed at Rs. 25,000/- per month.

17. The Hon'ble Supreme Court of India in the cases of **Rajnish Vs. Neha** reported in (2021) 2 SCC 324 and **Kulbhushan Kumar (Dr) v. Raj Kumari** reported in (1970) 3 SCC 129, has observed that the maintenance allowances can be granted up to the extent of 25% of the net income of the husband. The

maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury, the income of a husband can be fixed.

18. Keeping in view of the income of revisionist as well as guidelines issued by the Hon'ble Apex Court in **Rajnesh v. Neha and Kulbhushan Kumar (Dr) (Supras)**, this court is of the considered opinion that 25% of the net income of the revisionist i.e. Rs. 25,000/- would be Rs. 6,250/-. Thus, the amount of maintenance allowance fixed by the court below is not commensurate as per the law laid down by the Hon'ble Supreme Court in the aforesaid cases, hence, the total month maintenance allowance i.e total Rs. 8,000/- per month (Rs. 5,000/-+Rs.3,000/- per month) as awarded in favour of the opposite party nos. 2 and 3 respectively by the trial court under the impugned judgment is reduced to Rs. 6,250/- per month from Rs. 8,000/- per month to the opposite party no.2 (wife) and opposite party no.3 (son) and the same shall be payable from the date of filing of the application under Section 125 Cr.P.C.

19. Consequently, judgment and order dated 13th December, 2023 passed by the Principal Judge, Family Court, Chandauli, in Maintenance Petition (Case) No. 393 of 2019 (Jyoti Pandey & Another Vs. Satyendra Pandey), under Section 125 Cr.P.C. Police Station-Chandauli, District-Chandauli, is modified to the extent that now the revisionist shall pay Rs. 4,000/- per month to opposite party no.2 and Rs. 2,250/- to opposite party no.3 towards maintenance allowance from the date of filing of application. Looking into the fact that the revisionist has left his job now, therefore, it would be too harsh for him to pay entire arrears of the maintenance allowance from the date of filing of application to the opposite party nos. 2 and 3 in one stroke. Therefore, this Court directs the revisionist to pay the entire arrears of monthly maintenance allowance to opposite party nos. 2 and 3 in 15 equal monthly installments and the first shall commence from 15 day of September, 2025.

20. It is also clarified that the arrears of amount towards maintenance allowance as awarded by the court below shall be calculated on the basis of amount of maintenance allowance as fixed by this Court herein above and after that if it is found that any amount has been paid in excess, the same shall be adjusted from the amount to be paid.

21. The present criminal revision is, accordingly, partly **allowed**.

September 8, 2025
Sushil/-

(Madan Pal Singh,J.)