

Court No. - 80

Case :- CRIMINAL REVISION No. - 521 of 2024

Revisionist :- Ayasha Khatoon And 2 Others

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

Counsel for Revisionist :- R S Dubey, Savita Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

1. The instant Criminal Revision has been preferred against judgment and order dated 15.12.2023 passed by learned Principal Judge, Family Court Gorakhpur, in Maintenance Case No.711 of 2019 under Section 125 Cr.P.C. (Smt. Ayasha Khatoon and others Vs. Sri Adnan Abbas).

2. By the impugned exparte judgment and order learned court below has awarded maintenance to the applicants Nos. 1 and 3 to the tune of Rs.3,500/- and Rs.1,500/- per month from the date of filing of application. It is also directed in the impugned order that any amount received by applicants in any other legal proceedings shall liable to be adjustment towards maintenance awarded in the present order.

3. The learned court below has disallowed the claim of maintenance raised on behalf of the applicant No.2 on the ground that opposite party is not biological father of the applicant No.2 and she was born out of wedlock of applicant No.1 with her previous husband namely Shahjad.

4. Notice was issued to respondent No.2, and same has been reportedly served upon him. None appeared on his behalf to contest the present criminal revision.

5. Heard learned counsel or the revisionist and learned A.G.A. for the State-respondent and perused the material available on record.

6. Learned counsel for the revisionists submits that marriage of applicant No.1 was solemnized with respondent No.2 according to muslim rites and rituals on 19.05.2017. The revisionist No.1 was earlier married with one Shahjad and from the said wedlock one female child namely Km. Alisha was born. However, the marriage of revisionist No.1 with previous husband was dissolved according to muslim rites and rituals due to some disputes, and at present she is legally wedded wife

of respondent No.2. He next submitted that at the time of Nikah Ceremony solemnized between revisionist No.1 and respondent No.2 a deed was executed between the parties, which is notarized and the said Nikah Nama was executed on 17.05.2019. The respondent No.2 has accepted responsibility of applicant No.2 Km. Alisha who is his step daughter born out of wedlock of Ayasha Khatoon with her previous husband. The respondent No.2 has also admitted in said agreement entered at the time of marriage that he accepts Km. Alisha as his daughter and he will maintain her according to her economic status. He will also take care of her education and other things, but the learned court below has refused the claim of maintenance raised on behalf of Km.Alisha in maintenance application taking hyper technical approach that acknowledgment of paternity can only be acceptable in respect of a biological child, and this is admitted fact that Km. Alisha is not a biological daughter of opposite party. He next submitted that impugned judgment is ex parte and opposite party had failed to appear before the court below for service of notice upon him and no written objection was filed on his behalf in maintenance proceedings undergone before the court below.

7. He next submitted that even, if adoption is not recognized in Muslim Law, as respondent No.2 has accepted revisionist No.2 as his daughter in said agreement, a copy thereof has been filed on record and has borne the responsibility to maintain her, he cannot shirk his responsibility to maintain revisionist No.2 on the ground that she is not his biological daughter. Respondent No.2 is a man of sufficient economic means. He is able bodied man. He gives supply of beauty products of Beauty Parlour and Saloons and earns Rs.50,000/- per month.

8. He next submitted that revisionist Nos. 1 and respondent No.2 had filed a joint petition before this Court which was registered as Writ C No.31257 of 2017, wherein they sought protection from this Court from respondents and said petition was allowed vide order dated 19.07.2017 passed by this Court. The revisionist No.1 and respondent No.2 had solemnized their muslim marriage on 19.05.2017, and a copy of Nikah Nama has been filed as Annexure to the affidavit. It is submitted that amount of maintenance awarded to Appellant No.1 and 3 is highly insufficient, taking into account the devaluation of money and escalating dearness prevalent at present in market. Therefore, it is prayed that a just and adequate maintenance may kindly be awarded to revisionist No.2 and the quantum of maintenance awarded to revisionist No.1 and 3 in the impugned judgment and order be enhanced reasonably. Respondent no.2 is a person of sufficient economic means and it is consistent case of the revisionist that his monthly earning is around Rs.50,000/-

per month, and the amount awarded in the impugned judgment to the applicants is a small fraction of his monthly income.

9. Learned A.G.A. also concurred with contention raised by learned counsel for the revisionist and submitted that as respondent No.2 has admitted in agreement entered between that parties at the time of marriage that he will bear responsibilities of Km. Alisha also who is step daughter born out of wedlock of his wife Ayasha Khatoon with her previous husband. It is in the interest of justice that maintenance also be awarded to revisionist No.2. Learned A.G.A. also contended that it would be in fitness of things that revisionist No.1 would get maintenance for revisionist No.2 born from her previous husband, as even after divorce and remarriage of wife with some other person, the father cannot be absolved from his responsibility to maintain his children.

10. So far as question of grant of maintenance to revisionist No.2 is concerned, she is applicant No.2 in maintenance case under Section 125 Cr.P.C. before the court below. The said case has been decided exparte vide impugned judgment and order dated 15.12.2023. However, exparte judgment has not been challenged by opposite party, the husband of applicant No.1, but the applicants themselves are aggrieved by the quantum of maintenance awarded to the applicant Nos. 1 and 3 who are wife and biological son of opposite party and refusal of maintenance to applicant No.2, who admittedly born out of wedlock of applicant No.1 with her previous husband one Shahjad. The provisions of Section 125 Cr.P.C. may be reproduce as under:-

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

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

(a)his wife, unable to maintain herself, or

(b)his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(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.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.] [Inserted by Act 50 of 2001, Section 2 (w.e.f. 24-9-2001).]

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,

(b)"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

(2)*[Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.] [Substituted by Act 50 of 2001, Section 2 (w.e.f. 24-9-2001).]*

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

11. A bare perusal of statutory provision reveals that monthly allowance for the maintenance may be awarded to legitimate or illegitimate minor child, whether married or not, unable to maintain himself by orders of Magistrate, if any person having sufficient means neglects or refuses to maintain them. Although

in this provision it is not specified that the term "minor child" implies biological child of a person, but it is implicit therein and the word minor child cannot be expanded to the extend to include step son or daughter of a person born out of wedlock of his wife with her previous husband.

12. Learned trial court has rightly observed that in Muslim law a person cannot acknowledge a child as his own has admittedly born out of wedlock of his wife with some other person. The concept of adoption is not recognized in Muslim law. Thus the legal position is clear that step children do not have a legal basis to claim maintenance under Section 125 Cr.P.C. The term "legitimate or illegitimate minor child" is restricted to "biological offspring". However, this fact cannot be lost sight that in present case, the revisionist No.1 and respondent No.2 contracted marriage driven by love affairs as reveals from order dated 19.07.2017 passed in Writ C No.31257 of 2017, wherein a Division Bench of this Court permitted the petitioners to live together without marital alliance and with observation that no person shall be permitted to interfere in their peaceful living, and they also contracted Muslim marriage and Nikahnama was executed on 19.05.2017 and the parties have entered into an agreement in presence of witnesses, wherein it is stated that Smt. Ayasha Khatoon was earlier married with Shahjad son of Naeem R/o Malik Nagar, District Siddhartha Nagar and a girl child Km. Alisha was born out of their wedlock. The first party Adnan Abbas acknowledged said Km. Alisha as his daughter and had undertaken to maintain her according to his ability and also take care of her education etc.

13. It is well settled that a person is bound to fulfill a valid agreement to which he is a party. The respondent No.2 contracted second marriage with a woman who was earlier married with some other person and carrying a girl child born

out of her wedlock with her previous husband. The respondent No.2 has agreed in said agreement to maintain said girl child Km. Alisha as per his ability, now he cannot be permitted to deny his responsibility on technical grounds. Therefore, the respondent No.2 is under obligation to maintain revisionist No.2 also as she is dependent on him alongwith her mother for maintenance and he has borne responsibility to maintain her in said agreement. Therefore, I find some force in instant criminal revision and it is directed that revisionist No.1 Ayasha Khatoon will get maintenance at the rate of Rs.4,000/- per month, revisionist No.2 Km. Alisha will receive Rs.3,000/- as maintenance from respondent No.2 as his step daughter and amount of maintenance awarded to revisionist No.3 who is legitimate son of respondent No.2 is enhanced from Rs.1500/- to Rs.3,000/- per month.

14. Other terms and conditions applied in the impugned judgment and order are not interfered with.

15. The revision stands partly allowed, with above modification.

Order Date :- 24.2.2025

Ashish/-