

Neutral Citation No. - 2025:AHC:111602

Reserved on: 03.07.2025

Delivered on: 09.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 1334 of 2023

Revisionist :- Smt. Soni Mishra

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

Counsel for Revisionist :- Pankaj Satsangi

Counsel for Opposite Party :- Amit Saxena,G.A.,Priya Saxena

Hon'ble Rajeev Misra,J.

1. This criminal revision has been filed challenging the order dated 24.01.2023 passed by Principal Judge, Family Court, Budaun in Criminal Case No. 1048 of 2020 (Smt. Soni Mishra and Others Vs. Varun Mishra) under Section 125 Cr.P.C., Police Station-Ughaiti, District-Budaun, whereby the claim of revisionist for payment of monthly maintenance from husband/opposite party-2 has been rejected.

2. I have heard Mr. Pankaj Satsangi, the learned counsel for revisionist, the learned A.G.A. for State-opposite party-1 and Miss Priya Saxena, the learned counsel representing opposite party-2.

3. Perused the record.

4. Record shows that marriage of revisionist was solemnized with opposite party-2 Varun Mishra, twelve years prior to the filing of above-mentioned criminal case. From the aforesaid wedlock, three children namely Poorva Mishra, Disha Mishra and Sanskar Mishra were born. Opposite party-2 is alleged to have neglected the revisionist and her children, therefore, in order to overcome despair and destitution faced by her, she for survival of herself and her minor children filed an application

dated 02.11.2020, under Section 125 Cr.P.C. demanding maintenance @ Rs. 10,000/- per month for herself and @ Rs. 6,000/- per month for each of her children.

5. Claim raised by the revisionist and her minor children was contested by opposite party-2. He filed his objections/written statement to the same. The genesis of the objections filed by opposite party-2 was to the effect that revisionist is staying in her matrimonial home. The family members of opposite party-2 have been ousted. Since the revisionist is not residing separately, therefore, no claim regarding payment of maintenance can be raised. Moreover, the revisionist is in possession over 4-5 Bighas of agricultural land. As such, revisionist has sufficient income to maintain herself.

6. In view of the fact that the claim raised by revisionist became a contentious issue, therefore, the parties went to trial. They, accordingly, filed documentary evidence in proof of their case as well as in support of their defence. Parties also adduced oral evidence to establish their respective case. The same has been noted by Court below in internal page 4 of the impugned judgment.

7. On the basis of pleadings raised by the parties, Court below came to the conclusion that following issue arises for determination;-

(A) Whether the complainant i.e. revisionist herein is residing separately on sufficient grounds?

(B) Whether the revisionist is unable to maintain herself and her children/ Whether opposite party-2 has neglected the complainant and failed to maintain his wife and his children?

(C) To what relief is the revisionist/complainant entitled to?

8. In order to answer the aforementioned issues effectively, Court below examined and evaluated the pleadings raised by the parties and also the evidence on record.

9. Having undertaken the aforesaid exercise, Court below came to the conclusion that as per the admission of the revisionist/complainant herself, she is residing at her matrimonial home along with her brothers, whereas her Mother-in-law and Nanad are residing somewhere else. Court below further found that the revisionist in her deposition before Court below has clearly stated that she is ready to reside with opposite party-2 provided the entire property and land is transferred in her name. However, even if, there is an undertaking given by opposite party-2 in the form of social guarantee and protection before the Court yet she will not accompany opposite party-2. On the above conspectus, the Court below concluded that revisionists/complainant is residing separately on insufficient grounds.

10. With regard to the issue as to whether revisionist has sufficient income to maintain herself, Court below came to the conclusion that revisionist is in possession over 5 Bighas of agricultural land. As such, revisionist has sufficient income to maintain herself.

11. On the aforesaid findings, Court below came to the conclusion that no good ground for awarding maintenance to the revisionist/complainant is made out. Accordingly, Court below, by means of impugned judgment, rejected the claim of revisionist for payment of maintenance but allowed the same in respect of sons/daughters of complainant/revisionist, vide order dated 24.01.2023 passed by the Principal Judge, Family Court, Budaun.

12. Thus feeling aggrieved by the order dated 24.01.2023, revisionist has now approached this Court by means of present criminal revision seeking modification/quashing of the order impugned only to the extent, whereby her claim for monthly maintenance has been negated by Court below.

13. Mr. Pankaj Satsangi, the learned counsel for revisionist in challenge to the order impugned submits that the order impugned insofar as it rejects the claim for maintenance to revisionists is manifestly illegal and in

excess of jurisdiction. There is no denial of the fact that revisionist is the legally wedded wife of opposite party-2. As such, opposite party-2 is legally and morally bound to maintain the revisionist. However, opposite party-2 has miserably failed to discharge aforesaid legal/social obligation. It is then contended that the provisions contained in Section 125 Cr.P.C. are a beneficial piece of legislation. The same have been incorporated in the statute books to prevent despair and destitution faced by a married woman. No such evidence was adduced on behalf of opposite party-2 before Court below, which could have even prima-facie established that opposite party-2 is maintaining his legally wedded wife i.e. the revisionist. Court below simply on the basis of a fact that revisionist is residing in her matrimonial home along with her brothers, while family members of husband i.e. opposite party-2 are living elsewhere and the revisionist is in possession over 5 Bighas of land came to the conclusion that revisionist has sufficient income to maintain herself. No attempt was made by Court below to ascertain the amount of income that could be generated from the land alleged to be in possession of the revisionist nor a finding has been returned as to whether on the basis of said income, the revisionist can maintain herself and her minor children as per the status and standard of opposite party-2. According to the learned counsel for revisionist, maintenance is a relative term. It is on account of above that Courts have repeatedly held that maintenance awarded to a party must commensurate with the status of the other party. The said fact becomes glaring in the light of the order passed by Court below itself, whereby Court has negated the claim of revisionist on the one hand but awarded maintenance in favour of her sons/daughters. It is thus urged that Court below has failed to exercise the jurisdiction vested in it diligently. The order impugned has been passed in a casual and cavalier fashion. On the above conspectus, it was thus vehemently contended by the learned counsel for revisionist that the order impugned cannot be sustained and is therefore, liable to be quashed by this Court.

14. Per contra, the learned A.G.A. representing State/opposite party-1 and Miss Priya Saxena, the learned counsel representing first informant-opposite party-2 have vehemently opposed the present criminal revision. They submit that order impugned in present criminal revision is perfectly just and legal and therefore, the same is not liable to be interfered with by this Court. Court below upon due appraisal and appreciation of the material on record has dealt with the issues framed for effectively deciding the dispute between the parties. It is on the basis of above, Court below has answered both the issues against revisionist. Thus the findings returned by Court below on the two issues of fact, are findings of fact. The findings so returned by Court below could not be dislodged as being illegal, perverse or erroneous. It was thus contended that once the findings recorded by Court below could not be dislodged, the conclusion cannot be altered. Moreover, Court below has considered the case of children of the revisionist and has therefore, rightly awarded maintenance in their favour @ Rs. 1,000/- each per month. On the above premise, they, therefore, submit that Court below while passing the order impugned has not committed any jurisdictional error so as to vitiate the order impugned. No illegality can be attached to the order impugned either. As such, the present criminal revision is liable to be dismissed.

15. Having heard the learned counsel for revisionist, the learned A.G.A. for State-opposite party-1, the learned counsel representing opposite party-2 and upon perusal of record, this Court finds that the findings returned by Court below on the point of determination nos.- 1 and 2 are pure findings of fact. The findings so recorded by Court below could not be dislodged by the learned counsel for revisionist as being illegal, perverse or erroneous. As such, once the findings recorded by Court below could not be dislodged, the conclusion drawn by Court below also cannot be altered by this court. On the issue regarding separate living of revisionist from opposite party-2, this Court finds that the complainant/revisionist in her deposition before Court below has herself

stated that she will reside with her husband i.e. opposite party-2 only when the entire property is transferred in her name. Once this finding is sustained, then no other finding is required to be returned. The claim for grant of maintenance can be negated on the aforesaid finding alone.

16. In view of the discussion made above, this Court does not find any error on the face of record, much less a jurisdictional error committed by Court below in passing the order impugned.

17. As a result, the present criminal revision fails and is liable to be dismissed.

18. It is, accordingly, **dismissed**.

Order Date :- 09.07.2025

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