

**Neutral Citation No. - 2025:AHC:126827**

**Reserved on: 16.07.2025**

**Delivered on: 28.07.2025**

**Court No. - 80**

**Case :- CRIMINAL REVISION No. - 1844 of 2022**

**Revisionist :- Ankur Gupta**

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

**Counsel for Revisionist :- Kartikeya Saran, Suchita Mehrotra**

**Counsel for Opposite Party :- G.A., Hitesh Pachori**

**Hon'ble Rajeev Misra, J.**

1. By means of present criminal revision, revisionist has challenged the order dated 28.03.2022 passed by Additional Principal Judge, Family Court-1, Agra in Maintenance Case No. 612 of 2008 (Smt. Nisha Gupta Vs. Ankur Gupta), under Section 125 Cr.P.C., Police Station-Nai ki Mandi, District-Agra, whereby the claim for payment of monthly maintenance raised by the wife i.e. opposite party-2 has been allowed by Court below.

2. I had heard Mr. Manish Tiwari, the learned Senior counsel assisted by Miss Suchita Mehrotra, the learned counsel for revisionist on the previous occasion. Subsequently, Miss Suchita Mehrotra made submissions on behalf of revisionist, the learned A.G.A. for State-opposite party-1 and Mr. Hitesh Pachori, the learned counsel representing opposite party-2.

3. Perused the record.

4. Record shows that marriage of opposite party-2 was solemnized with

revisionist on 12.11.2005 in accordance with Hindu Rites and Customs. From the aforesaid wedlock, twins (male child) were born on 23.07.2006. Subsequently, the relationship between the parties became strained on account of marital discard. In fact, it further became irreconcilable.

5. Faced with despair and destitution, opposite party-2 i.e. wife of revisionist filed an application dated 18.09.2008, under Section 125 Cr.P.C. claiming monthly maintenance from revisionist. The same came to be registered as Case No. 612 of 2008 (Smt. Nisha Gupta Vs. Ankuar Gupta), under Section 125 Cr.P.C., Police Station-Nai Ki Mandi, District-Agra.

6. Notice was issued to the revisionist. He duly appeared before Court below and filed his objections.

7. Subsequently, revisionist filed a suit of divorce as contemplated under Section 13(1) of the Hindu Marriage Act on the ground of cruelty. Same was registered as Case No. 869 of 2014 (Ankur Gupta Vs. Nisha Gupta).

8. During the pendency of aforementioned divorce suit, opposite party-2 i.e. wife of revisionist filed an application under Section 24 of the Hindu Marriage Act for payment of interim maintenance and litigation expenses. The same was allowed by Court below, vide order dated 03.11.2016. Accordingly, the revisionist was directed to pay a sum of Rs. 8,000/- per month to opposite party-2 towards maintenance and a sum of Rs. 20,000/- towards litigation expenses.

9. Ultimately, aforementioned divorce suit came to be decreed by Court below, vide judgment and decree dated 28.09.2021. The effect of the same was that the marital relationship between the parties came to an end.

10. Feeling aggrieved by the aforementioned judgment and decree dated 28.09.2021, opposite party-2 filed an appeal in terms of Section 28 of the Hindu Marriage Act before this Court. The same was registered as First Appeal No. 860 of 2021 (Smt. Nisha @ Sonia Gupta Vs. Ankur Gupta). In

aforementioned appeal, an interim order dated 08.12.2021 was passed by this Court. For ready reference, the same is reproduced herein under;-

*“Admit.*

*This is wife's appeal seeking for setting aside the decree of divorce which according to the appellant has been granted on irrelevant grounds.*

*Submission of learned counsel for the appellant is that the cruelty as a ground of divorce asserted in the petition under Section 13 of the Hindu Marriage Act could not be proved by the respondent husband.*

*It is then intimated that the appellant wife was held entitled for Rs.8,000/- per month in the proceedings under Section 24 of the Hindu Marriage Act. The monthly maintenance of Rs.2500/- per month awarded under Section 125 of Cr.P.C has been adjusted in the total amount of Rs.8,000/- per month.*

*The result is that the appellant wife was held entitled to Rs.5,500/- per month till conclusion of the divorce proceedings.*

*At the time of grant of divorce decree, no permanent alimony has been awarded to the appellant. The result is that after grant of the divorce decree, the appellant wife has been left without any financial support. Even the monthly maintenance to the tune of Rs.2500/- awarded to the appellant wife is not being paid regularly by the respondent husband.*

*Sri Preet Pal Singh Rathore learned Advocate is appearing on behalf of the respondent/plaintiff.*

*He prays for and is granted three weeks time to file reply to the affidavit filed in support of the stay application.*

*It is, however, provided that the appellant wife is entitled to Rs.5,500/- per month as monthly maintenance under Section 24 of the Hindu Marriage Act.*

*The said amount shall be paid regularly by transmitting the same in the bank account of the appellant wife by 10th of each succeeding month, beginning from November, 2021. The payment for November, 2021 can be transmitted by 15th November, 2021.*

*In case of any default on the part of the respondent husband to pay monthly maintenance regularly as fixed above as also under Section 125 Cr.P.C fixed by the Family Court, this Court may take adverse view of the matter.*

*We further provide that the effect and operation of the divorce decree dated 1.10.2021 prepared pursuant to the judgment and order dated 28.9.2021 passed in matrimonial petition no.869 of 2014 (Ankur Gupta vs Smt. Nisha @ Sonia Gupta) shall be kept in abeyance.*

*Let the record of Civil Misc Writ Petition no.4041 of 2009 (Ankur Gupta vs Smt. Nisha @ Sonia Gupta) pending before this Court shall be placed along with the present appeal on the next date fixed.*

*Let this matter be posted on 01.12.2021 in the additional cause list.”*

11. Ultimately, Court below, by means of an order dated 28.03.2022, allowed the application under Section 125 Cr.P.C. filed by opposite party-2. Perusal of order dated 28.03.2022 will go to show that after the exchange of pleadings of the parties and the evidence oral and documentary adduced by them, Court below framed following points of determination for effectively deciding the dispute between the parties;-

- (i). Whether opposite party-2 is the legally wedded wife of revisionist?
- (ii). Whether opposite party-2 is residing separately on sufficient and valid grounds?
- (iii). Whether opposite party-2 is unable to maintain herself/Whether revisionist is a man of sufficient means and able to maintain his wife?

12. Issue no.-1 was decided by Court below in favour of opposite party-2 on the finding that since revisionist himself instituted a suit for divorce, which has been decreed, therefore, it is admitted to the revisionist that opposite party-2 was his legally wedded wife. However, since a divorced woman is also entitled to claim maintenance, therefore, issue no.-1 was decided accordingly in favour of the wife i.e. opposite party-2.

13. With regard to issue no.-2, Court below upon appraisal and appreciation of evidence on record, came to the conclusion that opposite party-2 is residing separately on sufficient and valid grounds inasmuch as, cruelty was committed upon her.

14. Issue no.-3 was examined at length and in detail. Court below upon

due appreciation of the material on record and also the deposition of revisionist himself as noted at internal page 27 of the impugned order came to the conclusion that revisionist is trying to conceal his real income from the Court. Court below thus concluded that revisionist is a man of sufficient means, whereas there is nothing on record to show that opposite party-2 is having income to even sustain herself. Accordingly, issue no.-2 was answered by Court below in favour of the wife i.e. opposite party-2.

15. Court below further returned a finding that it is an admitted fact to the parties that opposite party-2 is residing separately since 02.08.2008.

16. Mr. Manish Tiwari, the learned Senior counsel assisted by Miss Suchita Mehrotra, the learned counsel for revisionist has assailed the order impugned. He submits that the order impugned in present criminal revision is manifestly illegal and therefore, liable to be set aside by this Court. According to the learned Senior counsel, once the decree of divorce has been passed, there is no marital relationship in between the parties. As such, opposite party-2 could not press her claim for maintenance under Section 125 Cr.P.C. It was next contended that admittedly interim maintenance was awarded by Court concerned in favour of opposite party-2 in exercise of jurisdiction under Section 24 of the Hindu Marriage Act. The same was maintained by this Court in the appeal preferred by the wife-opposite party-2 against the divorce decree passed by the trial Court. As such, opposite party-2 is claiming two sets of maintenance from the same person, which otherwise cannot be justified in any manner. In the submission of the learned Senior counsel, Court below has erred in law in awarding maintenance from the date of application and not from the date of order inasmuch as, interim maintenance was already being paid to opposite party-2 pursuant to the order dated 03.11.2016 passed by the Court dealing with the divorce suit filed by the revisionist. Court below, while passing the order impugned has completely ignored the aforesaid aspect of the matter, which has vitiated the order impugned.

17. It was lastly contended by the learned Senior counsel for revisionist that the findings returned by Court below on issue no.-3 are perverse inasmuch as, Court below has not drawn an adverse inference against the revisionist and has not adverted to the evidence already on record regarding the income of revisionist. On the edifice of above submissions, it was thus urged by the learned Senior counsel that the order impugned cannot be sustained and is therefore, liable to be set aside by this Court.

18. Per contra, the learned A.G.A. representing State-opposite party-1 and Mr. Hitesh Pachori, the learned counsel representing opposite party-2 i.e. the wife have vehemently opposed the present criminal revision. They submit that order impugned in present criminal revision is perfectly just and legal and therefore, not liable to be interfered with by this Court. According to the learned counsel representing opposite party-2, Court below has returned a clear and categorical finding at internal page 17 of the impugned order that opposite party-2 i.e. the wife is residing separately at her parental home since 02.08.2008. However, there is nothing on record to show that even though, opposite party-2 was the legally wedded wife of revisionist yet he maintained her. Since opposite party-2 was the legally wedded wife of opposite party-2, revisionist was legally and morally bound to maintain her. However, revisionist has miserably failed to discharge aforesaid obligation. Interim maintenance in terms of Section 24 of the Hindu Marriage Act was awarded by Family Court in favour of opposite party-2 only vide order dated 03.11.2016. As such, no maintenance has been paid to the revisionist from the year, 2008 up to the date of the order i.e. 03.11.2016. As such, no illegality or infirmity can be attached to the order impugned on that ground. Referring to the judgment of Supreme Court in **Rajnish Vs. Neha and Another (2021) 2 SCC 324**, it was thus contended by the learned A.G.A. that it is by now well settled that maintenance has to be awarded not from the date of order but from the date of application. As such, no illegality can be attached to the order impugned on that count also. Since opposite party-2

i.e. the wife is residing separately on account of physical and mental cruelty committed upon her, as such, the separate living of opposite party-2 was on sufficient ground, therefore, opposite party-2 is clearly entitled to maintenance under Section 125 Cr.P.C. In view of above, Court below has not erred in law or fact in awarding maintenance to opposite party-2.

19. According to the learned counsel representing opposite party-2, revisionist did not appear before Court below with clean hands inasmuch as, he himself deliberately failed to produce best evidence, which could prove his income. The said fact is apparent from the recital occurring at internal page 27 of the order impugned. It is well settled that the party, which is in possession of the best evidence but conceals the same from Court then the said party has to bear the consequences of the same. In view of above, no infirmity or illegality can be attached to the adverse inference drawn by Court below against revisionist. In the submission of the learned counsel for opposite party-2, the findings returned by Court below on issue nos. 2 and 3 are pure findings of fact. The said findings of fact could not be dislodged as being illegal, perverse or erroneous. As per the submissions urged by the learned Senior counsel, no such dent is created in the findings returned by Court below on points of determination nos. 2 and 3. He, therefore, concluded by contending that once the findings returned by Court below on point of determination nos. 2 and 3 could not be dislodged, therefore, the conclusion drawn by Court below also cannot be altered. As such, no interference is warranted by this Court in present criminal revision.

20. Having heard the learned Senior counsel for revisionist, the learned A.G.A. for State-opposite party-1, Mr. Hitesh Pachori, the learned counsel representing opposite party-2 and upon perusal of record, this Court finds that there is no issue between the parties that opposite party-2 was the legally wedded wife of revisionist. However, revisionist has subsequently divorced opposite party-2, which fact has been recognized in law, vide

judgment dated 28.09.2021 passed in Divorce Petition No. 869 of 2014. It is also not an issue that maintenance has to be awarded from the date of application and not from the date of order as per the law laid down by Apex Court in the case of **Rajnesh Vs. Neha (Supra)**. As such, no illegality has been committed by Court below in awarding maintenance in favour of opposite party-2 from the date of application.

21. The finding returned by Court below on point of determination nos. 2 and 3, on which, the parties were at the issue before this Court, are pure findings of fact. Court below has concluded that opposite party-2 is residing separately on account of physical and mental cruelty committed upon her. Opposite party-2 has been residing at her parental home since 02.08.2008. However, there is nothing on record to show that even though, opposite party-2 was the legally wedded wife of revisionist yet the revisionist has not maintained her. As such, revisionist has failed to discharge his legal and moral obligation. In view of above, the right of opposite party-2 to claim maintenance cannot be said to be a non existent right inasmuch as, opposite party-2 was forced to live separately on valid grounds. Insofar as the finding returned by Court below regarding income of opposite party-2 and the status and means of revisionist, this Court finds that Court below has delved into this question at length in detail. Court below has drawn adverse inference against revisionist that in spite of the fact that he was in possession of best evidence yet he concealed the same. It has been held repeatedly that it is common for the parties to hide their income in proceedings under Section 125 Cr.P.C. to save themselves from the harshness of maintenance. In such a circumstance, the adverse inference drawn by Court below is clearly sustainable in view of the proposition of law that the party, which is in possession of best evidence has the burden to place it before Court and upon failure to do so, it is this party, which will loose. As such, the adverse inference drawn by Court below against revisionist cannot be said to be illegal or perverse. In view of above, the findings returned by Court below on points of determination

nos. 2 and 3 are neither illegal, perverse or erroneous. Since the findings returned by Court below on the points of determination nos. 2 and 3 could not be dislodged, the conclusion cannot be altered.

22. However, it is well settled that no person is entitled to claim dual maintenance. It is an admitted fact that opposite party-2 has been awarded maintenance of Rs. 8,000/- per month from the date of order i.e. 03.11.2016 passed in Case No. 869 of 2014 (Ankur Gupta Vs. Nisha Gupta). Court below, while awarding maintenance to opposite party-2 from the date of application has not directed for deducting the amount paid, vide the order dated 03.11.2016 or vide the order dated 08.12.2021 passed by this Court.

22. In view of the discussion made above, the present criminal revision succeeds and is liable to be allowed in part.

23. It is, accordingly, partly **allowed**.

24. The order impugned dated 28.03.2022 passed by Additional Principal Judge, Family Court-1, Agra in Maintenance Case No. 612 of 2008 (Smt. Nisha Gupta Vs. Ankur Gupta), under Section 125 Cr.P.C., Police Station-Nai ki Mandi, District-Agra shall stand modified to the extent that the amount of maintenance paid by revisionist to opposite party-2 from the date of order dated 03.11.2016 up to the date of payment and further vide order dated 08.12.2021 shall stand adjusted and the revisionist shall be entitled to pay balance of amount i.e. Rs. 12,000/-. The necessary exercise regarding calculation of arrears, if any, shall be made by Court below and the balance of arrears determined by Court below shall be filed by revisionist to opposite party-2 within a period of two months from the date of determination made by Court below.

25. In the facts and circumstances of the case, the cost is made easy.

**Order Date :- 28.07.2025**

Vinay