

Court No. - 80

Case :- CRIMINAL REVISION No. - 2001 of 2023

Revisionist :- Sazida Khatoon And Another

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

Counsel for Revisionist :- Bipin Kumar, Mohd. Naushad Siddiqui

Counsel for Opposite Party :- G.A.

with

Case :- CRIMINAL REVISION No. - 3147 of 2023

Revisionist :- Ashfaq

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Ramesh Chandra Yadav

Counsel for Opposite Party :- Bipin Kumar, G.A., Mohd. Naushad Siddiqui

Hon'ble Ram Manohar Narayan Mishra, J.

1. All the two Criminal revisions have arisen out of same impugned order, therefore, the same are being decided by this common order.

2. Instant criminal revisions have been preferred against the judgement and order dated 22.3.2023 whereby learned Principle Judge Family Court by impugned order has allowed the application '3A' partly under section 127 Cr.P.C. from the date of order dated 4.12.2020 in Criminal Revision No. 2001 of 2023 and enhanced amount of maintenance awarded to applicant no. 1 from Rs. 1000/- to Rs. 4000/- per month and amount of Rs. 600/- per month awarded to the applicant no. 3 has been enhanced to Rs. 2000/- per month. Thus, the total maintenance payable to the original applicants is now Rs. 6000/- per month. The prayer for enhancement of maintenance awarded to applicant no. 2 Tasleem Faraj has been rejected and he has already attained majority as his date of birth is 5.5.2000.

3. The opposite party no. 2 in Misc. Case No. 443 of 2020 has assailed the enhanced amount in Criminal Revision No. 3147 of 2025 whereas the applicants have shown their dissatisfaction with the enhanced amount of maintenance and assailed the impugned order.

4. In a nutshell, the opposite party prayed before learned trial court for setting aside the enhancement amount of maintenance in Criminal Revision No. 3147 of 2023 whereas the applicants have prayed for enhancement the amount of maintenance awarded by learned trial court under section 127 Cr.P.C. in the impugned order.

5. Heard learned counsel for the revisionists and learned counsel appearing for opposite party in both the criminal revisions. Learned AGA also advanced his submissions on behalf of state respondents in both the revision.

6. The factual matrix of the case in brief are that the applicant Sazida Khatoon wife of Ashfaq Khan and her two minor children, namely, Ekara and Taslim Fraj filed an application under section 127 Cr.P.C. before court of Principal Judge Family Court, Ghazipur with the averment that applicants have filed an application under section 125 Cr.P.C. before Family Court for maintenance under section 125 Cr.P.C. which was decided by Family Court vide order dated 17.1.2007 and applicant no.1 was awarded amount of maintenance Rs. 1000/- and applicant nos. 2 and 3 at the rate of Rs. 600/- per month. A criminal revision No. 51 of 2007 was preferred by Ashfaq Khan against maintenance order before Sessions Court, Ghazipur which was dismissed on 29.9.2010. Applicants filed an application under section 128 I.P.C. as Criminal Case No. 263 of 2012 which was decided on the basis of compromise dated 9.4.2013.

7. The opposite party prayed for enhanced maintenance to the applicants but he offered a compromise before applicants and a compromise reached between the parties. An application under section 127 Cr.P.C. was filed before the First Additional District Judge, Ghazipur and in said compromise it is stated that Ashfaq Khan will maintain his wife/applicant no. 1 who will keep the two children with her and he will also take responsibility of the necessary expenses of the children. The compromise was filed on 9.4.2013 and was verified on the same day and it was accepted by the Court. However, in spite of the compromise opposite party did not keep the applicants along with him and he failed to abide by the conditions of the compromise. He had assured the applicant no. 1 that he would pay the applicants Rs. 8000 per month and till then he will take them along with him. Applicant No. 1 further stated that amount awarded by Family Court was not sufficient to mete out of necessary expenses of the applicants and same may be liable to be enhanced subsequently. She claimed Rs. 30,000/- per month for maintenance of herself and her children who are living with her under her guardianship.

8. Notice was issued to opposite party by Principal Judge Family Court who appeared before the Court and filed his statement 22 B wherein he stated that applicant nos. 2 is running a Beauty parlour at Pakhanpura Chatti from which she derives a good income. The applicant got herself examined as P.W. 1 and opposite party got herself examined as D.W. 1.

9. Apart from oral evidence parties had filed some documentary evidence in support of their respective apprise and after hearing submissions advanced by both sides and pursuing the evidence on record, learned trial court gave a finding that opposite party receives a pension of Rs. 20400/- per month and mode of income of applicant no. 1 is placed on record. The opposite party is liable to pay maintenance to the applicants as applicant no. 2, is son of applicant no. 1 and opposite party, has become major, therefore, the prayer for maintenance is liable to be dismissed in respect of him. So far as applicant no. 3 is concerned as per birth certificate appearing on record, the date of birth mentioned as 27.2.2005, therefore, at present she appears to be aged about 18 years and she has now become major but a copy of judgment dated 17.1.2007 reveals that she will be entitled to receive maintenance till her marriage and that judgement is still effective.

10. The compromise entered between the parties has now become effective. There is no evidence on record which would suggest the applicant no. 3 has married, therefore, applicant no. 3 is entitled to receive maintenance in light of judgement dated 17.1.2007 passed in original application under section 125 Cr.P.C. by the Court as 15 days period has been lapse since passing of judgement dated 17.1.2007, therefore, the amount of maintenance is liable to be enhanced. The amount of maintenance awarded to the applicant no. 1 enhanced from Rs. 1000/- to Rs 4000/- per month and amount of maintenance awarded to applicant no. 3 is enhanced Rs. 600/- to Rs. 2000/- per month. The amount of enhanced maintenance will be payable by opposite party to applicant no. 1 and 3 from the date of order dated 22.3.2023.

11. Learned counsel for the revisionist Ashfaq submitted that amount awarded in the impugned judgement and order dated 22.3.2023 is itself beyond the financial viability of the revisionist Ashfaq Ahmad . It is next submitted that while enhancing the amount of maintenance, learned trial court has failed to consider material evidence on record.

12. He next submitted that there is no need of further enhancement of the amount awarded by impugned judgement and order as that

would be pre-judicial in the interest of the revisionist and he is not in a position to pay for any more further enhancement after passing impugned judgement and order while the revisionist is already paying Rs. 7000/- per month to the applicant at the rate of Rs. 4000/- and Rs. 2000/- per month and he has also been paying Rs. 1000/- per month pursuant to order passed by learned Magistrate under Domestic Violence Act. The revisionist is a pensioner and he is aged around more than 62 years. He has to spent a substantial sum of money towards his sister's treatment.

13. Learned counsel for the revisionist Ashfaq further submitted that revisionist is ready to keep his children but the opposite party Saazida Khatoon has denied to hand over the children to him. He is also ready to bear all the necessary expenses of the children and expenses of marriage of applicant no. 3 if the custody of children provided to him. The revisionist had expended his huge sum of money towards medical expenses which was incurred in Jeevan Jyoti Hospital. The revisionist is not having his own house in the village and and is not in a position to engage informing in three Bigha Agricultural land laying in the village in his name. He has no agricultural income. He has to depend merely on pension for his expenses. The marriage of revisionist and opposite party was solemnized on 16.6.1996 he has given necessary particulars of his assets and liabilities through affidavit of compliance in format prescribed by Hon'ble Supreme Court in Rajnish vs Neha, AIR 2021 SC 569. He next submitted that revisionist has to bear expenses of litigation also as opposite party has filed two criminal cases against him in the District Court Ghazipur and he has to travel from Prayagraj to Ghazipur to take care of those cases filed by opposite party against him.

14. Per contra, learned counsel for the respondent no. 2 Sazida Khatoon submitted that there is no documentary proof that revisionist has bear medical expenses of her sister on his own hand when she was being treated in Jeevan Jyoti Hospital, Prayagraj. The revisionist has concealed actual income to avoid his obligations to maintain his wife and children. Learned court below has rightly given finding that revisionist is competent to pay maintenance to the applicants however learned court below has fixed the amount of maintenance below than that is required to bear necessary expenses of the applicant and amount awarded in the impugned judgement and order is required to be enhanced...

15. The prayer for enhancement for maintenance to the applicants as directed in impugned judgement and order is based on contention that opposite party Ashfaq Khan is a retired employee

of railway. He gets handsome amount as pension. The application under section 127 Cr.P.C. was filed after 12 years of passing of initial order of maintenance under changed circumstances, looking into economical burden of revisionist for their survival and increase in salary of opposite party during course of time. The applicants had filed an information received under right to information act from public information officer of the department of opposite party which shows that he took voluntary retirement on 1.11.2019 and his original pension was Rs. 34,000/- along with other allowances as admissible under law. His pension is around Rs. 50,000/- per month. He also received gratuity and commutation of pension to the extent of Rs. 28 lakhs but even that he has refused to maintain his wife daughter and son. Applicant no. 2 Ekara is studying in B.A. Ist year and her expenses of study comes around Rs. 5,000/- per month. The applicants have also filed fee receipt and admit card of said girl. The major son of the spouse is studying in B.A. II year in Mahendra Singh Memorial Educational Institute Ballia which is affiliated with Jan Nayak Chandrashekhar University Ballia. He needs hostel facility for proper study but still his application was rejected only on ground that he attained the age of majority.

16. In spite of insufficient claim of enhancement in maintenance granted to the applicants in initial order, the learned court below has enhanced the same in insufficient manner which is totally inadequate to cater to monthly needs of applicants. The court below has not consider the future expenses of applicants like rent house, college fees of daughter and son as well as house hold expenses in present economic condition, therefore, a sufficient increase in impugned judgement and order under section 127 Cr.P.C. has been prayed for.

17. Per contra, the opposite party Ashfaq Khan has stated in criminal revision no. 3147 of 2023 that original applicant no. 2 Tasleem Faraj has attained the age of majority, therefore, he is not entitled to seek maintenance from his father any more and on that reason the court below has rightly rejected his claim for enhancement of maintenance even applicant no. 3 Ekara has also attained majority as her date of birth is 27.2.2005. He is retired employee of railways and gets pension of Rs. 20,400/- in hand. He is aged about 62 years and he is suffering from age related ailments. He is still ready to keep his wife and children but they are not ready to reside with him. His wife Sazida Khatoon is living separately from him along with his children without any valid and sufficient reason. She has filed suit under section 12 of Domestic

Violence Act apart from the case under section 125 Cr.P.C. The revisionist is not in a position to pay enhanced maintenance as directed in the impugned order.

18. Considering the rival submissions of learned counsel for the parties and on perusal of impugned and various judgments placed on record, this court is of considered opinion that there is no substance on merit in Criminal Revision No. 3147 of 2023 filed by original opposite party Ashfaq Khan who is husband of Sazida Khatoon, original applicant no. 1 and father of applicant nos. 2 and 3.

19. The amount of interim maintenance Rs.1000/- and 600/- awarded as maintenance to applicant no.1 and applicant nos. 2 and 3 respectively has lost significance in course of time as same was awarded in the year 2007 to the applicant, therefore, it was quite natural and proper for the applicants to claim enhancement in quantum of maintenance by filing an application 127 Cr.P.C. before learned court below after 12 years of passing of earlier order of maintenance. Therefore, the Criminal Revision No. 3147 of 2023 is devoid of merit and is liable to be dismissed.

20. Criminal revision no. 3147 of 2023 is dismissed for reasons shown herein above.

21. So far as Criminal Revision No. 2001 of 2023 is concerned, the learned court below has rightly refused maintenance to the major son of the revisionist no. 1, namely, Tasleem Faraj. Learned court below has held in impugned judgment that maintenance awarded to applicant no. 1 and applicant no. 3 is liable to be enhanced in changed circumstances and during passes of time lapsed since 17.1.2007 even if it is expected that according to version of Ashfaq Khan, respondent no. 2 in this revision is taking pension only Rs. 20,400/-, this fact cannot be last significance that he must have received a handsome amount of post retiral dues like gratuity, leave encashment and commutation of pension, therefore, slight enhancement in maintenance to the tune of Rs. 4000/- per month to the applicant no. 1 and Rs. 2000 per month to the applicant no. 3 is required.

22. The learned court below has not taken into consideration the economic needs of the applicants and also paying capacity of the respondent no. 2 who is retired government servant receiving pension on regular basis and is presumed to have a handsome sum of money as post retiral dues, therefore, the prayer of revisionist no. 1 Sazida Khatoon and revisionist no. 3 Ekara for enhancement

of maintenance in present revision is acceptable. The enhance maintenance as directed in the impugned order is found insufficient and to that extent the impugned order cannot be sustained and is liable to be modified being not supported with evidence on record and logical reasons.

23. It is quite natural that in some maintenance cases where party who have to pay maintenance to the wife and children, as the case may be, always tries to conceal his income and economic resources. Consequently, it is directed that amount of maintenance awarded to the revisionist no. 1 Sazida Khatoon is enhanced from Rs. 4000/- per month to Rs. 7000/- per month and amount of maintenance of Rs. 2000/- awarded to the applicant no. 3 as maintenance in the impugned order is enhanced from Rs. 2000 to Rs. 5000 per month . The claim of enhanced maintenance preferred on behalf of respondent no. 2 is unfounded and rejected.

24. The criminal revision no. 2001 of 2023 is partly allowed accordingly.

25. The respondent no. 2 is directed to pay maintenance to the applicants as modified in present order subject to other conditions imposed in the impugned judgment and order dated 22.3.2023.

Order Date :- 6.1.2025

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