

Court No. - 80

Case :- CRIMINAL REVISION No. - 2110 of 2023

Revisionist :- Smt. Rashmi Kamboj And 2 Others

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

Counsel for Revisionist :- Nipun Singh, Sumit Suri

Counsel for Opposite Party :- G.A., Vipin Kumar

Hon'ble Ram Manohar Narayan Mishra, J.

1. Pleadings have already been exchanged.
2. Instant Criminal Revision has been preferred by the revisionists who are applicants in Maintenance Case No.464 of 2017, in (Smt. Rashmi Kamboj and two others Vs. Rajiv Kamboj) under Section 125 Cr.P.C. by the impugned judgment and order dated 16.01.2023. Learned court below has, granted a sum of Rs.10,000/- as interim maintenance to the applicant No.1 and Rs.5,000/- as monthly interim maintenance to each of the applicant Nos. 2 and 3 who are off-springs of applicant No.1, and opposite party in said maintenance case. The maintenance has been awarded from the date of filing of application to applicant No.1 at the rate of Rs.10,000/- per month and Rs.5,000/- per month to each of the applicant Nos. 2 and 3 from the date of filing of application till the attainment of majority.
3. In instant criminal revision the revisionists have prayed for enhancement of said maintenance awarded to them. It is also directed in impugned order that a sum of Rs.20,000/- awarded as maintenance under Section 24 of Hindu Marriage Act during pendency of divorce petition No.735 of 2015 will be liable to be adjusted towards maintenance awarded in present order.
4. Heard learned counsel for the revisionists, learned counsel for the respondent No.2 and learned A.G.A. for the State-respondent and perused the material available on record.
5. Learned court below has awarded maintenance to the applicants by placing reliance on income tax return of opposite party No.2 for the year 2021-22, which shows his annual income

of Rs.4,33,100/-. Whereas it is settled position of law that maintenance should not be awarded on the basis of income shown in income tax return of opposite party. He next submitted that opposite party has admitted in his written statement that he is a renowned and respectable surgeon who operates a eye clinic in Muzaffar Nagar in the name of Kamboj Eye Care Center. The revisionist has stated that the monthly income of respondent No.2 is around Rs.20 lakh and in fact the opposite party earns this much amount on monthly basis, whereas learned trial court has awarded a meagre sum of Rs.20,000/- to the applicants. Respondent No.2 has huge source of income from medical practice as a well known eye surgeon and other sources.

6. He next submitted that applicant No.2 Kartikeya Kamboj has received higher education in Bhatinda in Punjab and applicant No.3 Shubhangi Kamboj is receiving higher education in Kazakhstan, for which the revisionist incurs huge expenses which she any how manages from taking assistance from her parental side. This is admitted fact that only Rs.20,000/- as maintenance has been provided to the applicants in pursuance of order of Family Court passed under Section 24 of Hindu Marriage Act in divorce petition initiated at the instance of opposite party No.2, which was dismissed by family court. However, its appeal is pending before this Hon'ble Court. He next submitted that revisionist Nos. 2 and 3 are still receiving higher education in their respective State, they need an adequate sum of money towards maintenance to continue their higher studies, but the learned court below has not considered this relevant point.

7. He lastly submitted that revisionist has elaborated the need of enhancement of maintenance in revision memo, particularly in paragraph Nos. R,S and T of revision memo. The revisionists need maintenance at least Rs.1 lakh per month.

8. Learned counsel for the revisionists placed reliance on **Kiran Tomar and others Vs. State of U.P. and another reported in 2022 SCC Online (SC) 1539; Jayvardhan Singh Chapotkat Vs. Ajayveer Chapotkat, 2014 SCC Online Bombay 465; In the Matter of : Urvashi Aggarwal and others Vs. Inderpaul Aggarwal 2021 SCC Online Delhi 4641; Reema Salkan Vs. Sumer Singh Salkan (2019) 12 SCC 303; Jagdish Jugtawat Vs.**

Manju Lata and others (2002) 5 SCC 422 and Abhilasha Vs. Prakash and others (2021) 13 SCC 99 in support of his contention.

9. Per contra, learned counsel for the respondent No.2 submitted that learned court below has elaborately discussed the issue of income of the respondent No.2 in impugned judgment and after considering the income tax return of many financial years has come to a decision that revisionist No.1 is entitled to receive Rs.10,000/- and revisionist Nos.2 and 3 are entitled to receive Rs.5,000/- each from respondent No.2.

10. He next submitted that respondent No.2 has to take care of his old parents who are in their eities and bed-ridden. The revisionists have not filed any affidavit of income of assets and liabilities at any stage neither before the court below nor in present proceedings, which is mandated by Hon'ble Supreme Court in **Rajnish Vs. Neha and others AIR 2021 (3) SC 569**. Whereas respondent No.2 has filed his statement of assets and liabilities in present revision. Therefore, an adverse presumption will be drawn against them on this score and there is no other evidence which may reveal there respondent No.2 is earning a higher income than that is shown in the Income Tax Return. He next submitted that this is admitted fact that respondent Nos. 2 and 3 have attained the age of majority during the pendency of maintenance case and they are not entitled to receive any maintenance after attaining the age of majority. Learned court below has directed in the impugned order that applicant Nos. 2 and 3 will received maintenance till their attainment of majority, inasmuch as there is no pleading contrary to this in revision memo. Therefore, in absence of any specific pleadings, the finding of court below that respondent Nos. 2 and 3 are entitled to receive maintenance till they attained the age of majority remains unchallenged, and at this stage revisionist Nos. 2 and 3 cannot claim post attainment of majority maintenance. The impugned order is well reasoned and based on material on record.

11. The revisionist has admitted in her evidence before the court below that she is residing in the house of respondent No.2 and whatever maintenance was due under Section 24 of Hindu Marriage Act has been paid by respondent No.2. He lastly

submitted that revisionist No.1 has herself concealed her income, whereas she appears to be earning substantially in her own income tax return. Respondent No.2 filed a divorce petition No.735 of 2015 Dr. Rajeev Kamboj Vs. Smt. Rashmi Kamboj before family court which has been dismissed vide order dated 20.08.2022. The respondent No.2 has preferred the First Appeal bearing No.706 of 2020 against dismissal of divorce petition which is still pending before this Hon'ble Court.

12. With above contention, learned counsel for the respondent No.2 prayed that the present revision is liable to be dismissed and revisionists are not entitled to receive an enhanced maintenance.

13. Learned counsel for the respondent No.2 placed reliance on paragraph No.15 of the judgment of Hon'ble Supreme Court in **Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy (2017) 14 SCC 200**.

14. Learned counsel for the revisionist placed reliance on a judgment of Hon'ble Supreme Court in **Kiran Tomar v. State of Uttar Pradesh, 2022 SCC OnLine SC 1539, decided on 31-10-2022**, wherein while deciding a case filed under Section 125 of Code of Criminal Procedure (Cr.P.C.), in which the appeal was arising from order of a Single Judge of High Court of Allahabad, Hon'ble Supreme Court found it appropriate to restore the Criminal Revision to the file of the High Court for fresh consideration, thereby setting aside the impugned order of the High Court. While setting aside the order of the Family Court, the High Court held that "the Family Court had recorded that the husband was earning Rs. 2 lakhs per month, but the Income Tax Return (ITR) filed by the husband showed that he was earning Rs. 4.5 lakhs per annum. Furthermore, this Court failed to appreciate that on what basis the Family Court had recorded the findings when there was nothing on record to demonstrate the same. In the opinion of Hon'ble Supreme Court the judgment of the High Court did not reflect correct appreciation of the reasons considered by the Family Court, which were as follows:

(i) In the proceedings which were instituted by the husband under the Guardians and Wards Act, 1890, he himself stated that he had "good resources".

(ii) When his wife claimed that her husband was unable to maintain the daughters, the husband had filed documentary evidence about his educational qualifications to demonstrate that he could raise the daughters.

(iii) Though the husband was in business with his father, he failed to disclose his income in the property statement, and he admitted that he had a rented house, which rent was paid by his father.

15. Hon'ble Supreme Court, reiterated the well settled principle that, "Income tax returns do not necessarily furnish an accurate guide of the real income. Particularly, when parties are engaged in a matrimonial conflict, there is a tendency to underestimate income." Hence, it was for the Family Court to determine what would be the real income of the husband to enable the wife and daughters to live in a condition commensurate with the status to which they were accustomed during the time when they were staying together and thus, the High Court was not justified in setting aside the order of the Family Court.

16. In the present case the revisionists who are wife, son and daughter of respondent No.2 have prayed for enhancement of amount of maintenance. Income tax return of the revisionist for the assessment year 2021-2022 his annual income is shown as Rs.4,33,100/- accordingly his monthly income comes around Rs.36,000/- per month. This is admitted position that respondent No.2 who is a doctor and eye specialist who runs a clinic named as Kamboj Eye Care Centre in House No.22/5 Circular Road, Muzaffar Nagar. Much emphasis was laid on behalf of respondent No.2 that he has been paying maintenance to the applicants at the rate of Rs.20,000/- per month during the pendency of Matrimonial Case No.735 of 2015 under Section 13 of the Hindu Marriage Act and he had paid around Rs.16,40,000/- during the period from September 2015 to July, 2022. Admittedly this matrimonial case filed by the respondent No.2 has been dismissed by family court and an appeal of respondent No.2 is pending before this Court. Thus pende-lite maintenance under Section 24 of the Hindu Marriage Act came to an end on disposal of said matrimonial case in the year August, 2022.

17. The revisionist No.1 has stated in her evidence that she was resided with her children in the house of respondent No.2, and its

electric charges were paid by him, and were paying maintenance at the rate of Rs.20,000/- per month from the year 2019 to July, 2022 on order passed on an application under Section 24 of Hindu Marriage Act, in said Matrimonial Case No.735 of 2015 vide order dated 29.10.2018 passed by the said court. Her parents-in-law are old and sick. She has obtained maintenance around Rs. 16 Lakh in compliance of order passed under Section 24 of Hindu Marriage Act.

18. This also admitted position that revisionist Nos. 2 and 3 who are children of contesting parties Smt. Rashmi Kamboj and Rajiv Kamboj have now attained majority. Nevertheless, they are entitled to receive maintenance as awarded in the impugned order from date of filing of application to date of their attainment of majority, which will be looked into by learned court below and payment of maintenance to them will discontinued on date of attainment of their majority and a proof of their date of birth will be filed by the parties before the court below in this regard. Therefore, there is no need to enhance the maintenance provided to revisionist Nos. 2 and 3 in the impugned judgment and order. So far as the enhancement of amount of future maintenance to revisionist No.1 is concerned, taking into consideration the State of things that respondent No.2 is a qualified eye doctor and he runs a eye care centre in the city of Muzaffar Nagar. It is difficult to believe that his monthly earnings are only Rs.36,000/- as shown in income tax return.

19. The Hon'ble Supreme Court has held in **Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy (supra)** while placing reliance on earlier judgment in **Dr. Kulbhushan Kumar Vs. Raj Kumar and another 1970 (3) SCC 29** that 25% of the husbands net salary to be just and proper to be awarded as maintenance to the respondent's wife.

20. In the present case, respondent No.2 has already been paying interim maintenance under Section 24 of the Hindu Marriage Act during the period from the year 2019 to 2022 to revisionist No.1 at the rate of Rs.20,000/- per month which continued after dismissal of matrimonial suit filed by respondent No.2 for dissolution of marriage. Therefore, the maintenance awarded to revisionist No.1 is liable to be enhanced in following manner.

21. The amount of maintenance awarded to revisionist No.1, is enhanced from Rs.10,000/- to Rs.25,000/- per month from the date of judgment dated 16.01.2023, the amount awarded to revisionist No. 1, 2 and 3 from the date of filing of judgment to date of judgment till attainment of majority by revisionist Nos.2 and 3 is not being interfered with. Other terms and conditions imposed in the impugned judgment and order are also not interfered with.

22. The revision is **partly allowed** accordingly, in respect of revisionists prayer for enhancement of maintenance made on behalf of revisionist No.1 Smt. Rashmi Kamboj.

Order Date :- 2.1.2025

Ashish/-