

Neutral Citation No. - 2025:AHC:115445

Reserved on: 07.07.2025

Delivered on: 16.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 2487 of 2023

Revisionist :- Monika Gupta

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

Counsel for Revisionist :- Pulak Ganguly, Sanjeev Kumar

Counsel for Opposite Party :- G.A., Sunil Choudhary

Hon'ble Rajeev Misra, J.

1. Challenge in this criminal revision is to the order dated 28.03.2023 passed by Additional Principal Judge, Family Court, Fatehpur, in Case No. 307 of 2018 (Monika Gupta Vs. Ambar Goel) under Section 125 Cr.P.C., Police Station-Kotwali, District-Fatehpur, whereby the claim of revisionist for payment of monthly maintenance by opposite party-2 has been negated by Court below.

2. I have heard Mr. Pulak Ganguly, the learned counsel for revisionist, the learned A.G.A. for State-opposite party-1 and Mr. Sunil Choudhary, the learned counsel representing opposite party-2.

3. Perused the record.

4. It transpires from record that marriage of revisionist was solemnized with opposite party-2 on 05.02.2017. However, subsequently, the relationship between the parties became strained. Physical and mental cruelty is alleged to have been committed upon revisionist by opposite

party-2 and her family members. In June, 2017, the betrothal ceremony of the younger sister of revisionist came to be solemnized at her parental home on 25.06.2017. Opposite party-2 i.e. the husband of revisionist came to the house of his in-laws but in stead of peacefully taking his wife, he entered into verbal altercation with his in-laws on account of which, a brawl occurred. Since then, the revisionist is residing at her parental home. Even though, revisionist is the legally wedded wife of opposite party-2 and on account of above, opposite party-2 is legally and morally bound to maintain her yet he has neglected the revisionist. Since revisionist has no sufficient means to maintain herself, therefore, in order to overcome despair and destitution faced by her, she initiated proceedings under Section 125 Cr.P.C. by filing an application dated 19.09.2018.

5. Claim raised by revisionist was opposed by opposite party-2. He duly appeared and filed his objections/written statement to the same. According to opposite party-2 i.e. the husband of revisionist, the claim of revisionist regarding claim of monthly maintenance from opposite party-2 is wholly misconceived in law and fact. As such, the same is liable to be rejected. The allegations made in the complaint against opposite party-2 were denied outrightly. It was specifically pleaded that the wife i.e. the revisionist is residing separately without any sufficient cause, as such, the revisionist is not entitled to claim monthly maintenance from opposite party-2. The aforesaid plea was substantiated by facts, which were also duly pleaded in the objection/written statement filed by opposite party-2. According to opposite party-2, revisionist had left her marital home on 05.06.2017 out of her own will. On 25.06.2017, at the request of the father of revisionist, opposite party-2 along with his relatives had gone to the house of his in-laws to bring back the revisionist. However, in spite of above, the revisionist did not return along with opposite party-2 to her matrimonial home. It was also pleaded that revisionist has failed to discharge her obligation as wife of opposite party-2. The claim raised by

revisionist was also opposed by opposite party-2 on the ground that revisionist is working as Lecturer in a college. As such, revisionist has sufficient income to maintain herself. In view of above and also the family liability of opposite party-2, he is not liable to be directed to pay monthly maintenance to revisionist.

6. Since the claim raised by revisionist was contested by opposite party-2, therefore, the parties went to trial. They filed documentary evidence in proof of their respective case and further adduced oral evidence in support of their respective case, which has been noted by Court below in paragraphs-4, 5, 6 and 7 of the impugned judgment. In view of above, Court below in order to effectively decide the dispute between the parties, framed the following points of determination;-

- (A). Whether the complainant i.e. revisionist is the legally wedded wife of opposite party-2?
- (B). Whether the revisionist is having sufficient and valid ground to live separately from opposite party-2?
- (C). Whether complainant/revisionist is able to maintain herself?
- (D). Whether opposite party-2 is a man of sufficient means so as to maintain himself according to his status?
- (E) Whether opposite party-2 has ignored the complainant/revisionist and further failed to maintain her or whether complainant/revisionist is entitled to maintenance, if yes, then to what extent?

7. Court below dealt with each of the points of determination so framed in the light of pleadings of the parties as well as the oral and documentary evidence adduced by the parties. Having undertaken the aforesaid exercise, Court below came to the conclusion that as per the admission made by opposite party-2 himself, complainant/revisionist is the legally wedded wife of opposite party-2.

8. Court below further found that complainant/revisionist is residing

separately from opposite party-2 on insufficient and invalid grounds. Aforesaid finding has been recorded by Court below on two concluded facts. Firstly, the revisionist had gone to her parental home to attend the betrothal ceremony of her younger sister. PW-2 i.e. the father of revisionist has himself admitted that opposite party-2 along with his family members had come to the house of revisionist to take her back. However, as the betrothal ceremony of the younger sister of revisionist was scheduled to be held on 26.06.2017, the family members of revisionist requested that revisionist be allowed to stay and may be taken to her matrimonial home, thereafter. On 27.09.2017, opposite party-2 again went to the house of revisionist to bring her back but there was a brawl and the revisionist did not accompany opposite party-2. Secondly, the allegations made by the revisionist that physical and mental cruelty was committed upon her on account of non fulfilment of additional demand of dowry by opposite party-2 and his family members could not be established by the revisionist herself.

9. With regard to issue no.-3, Court below concluded that the complainant/revisionist has concealed material facts from the Court and has not approached the Court with clean hands inasmuch as, the affidavit as is required to be filed in compliance of the judgment of Supreme Court in **Rajnesh Vs. Neha and Another (2021) 2 SCC 324** was filed after the evidence was closed i.e. 02.11.2022. Complainant/revisionist is hiding her income from Court. Court below by drawing an adverse inference concluded that complainant/revisionist is having sufficient income and therefore, capable of maintaining herself.

10. Issue No.-4 was decided by Court below in the affirmative. It was concluded by Court below that if the version of opposite party-2 is itself accepted then he has sufficient means to maintain his wife.

11. Issue no.- 5 was not decided by Court below one way or the other. Court below has only mentioned the amount of interim maintenance paid

by opposite party-2 to the revisionist, pursuant to the order of Trial Court. However, Court below has also observed that only partial payment of interim maintenance was made by opposite party-2 to the revisionist, vide order of Court. However, no maintenance was paid to revisionist by opposite party-2 before the order of interim maintenance was passed by Court.

12. In respect of issue no.-6 i.e. the right of revisionist to claim maintenance from opposite party-2, Court below concluded that in view of the findings returned in respect of issues 2 to 5, the complainant/revisionist is not entitled to claim any maintenance from opposite party-2.

13. On the above findings, Court below rejected the claim for maintenance made by revisionist by means of the order impugned dated 28.03.2023 passed by Additional Principal Judge, Family Court, Fatehpur.

14. Thus feeling aggrieved by the above order dated 28.03.2023, complainant/revisionist has now approached this Court by means of present criminal revision.

15. Mr. Pulak Ganguly, the learned counsel for revisionist submits that the order impugned in present criminal revision is manifestly illegal and in excess of jurisdiction. As such, the same is liable to be set aside by this Court. In furtherance of aforesaid submission, it was contended by the learned counsel for revisionist that the provisions contained in Section 125 Cr.P.C. are a beneficial piece of legislation, therefore, technicalities should not be allowed to come in the way of Court, while dealing with an application under Section 125 Cr.P.C. However, in ignorance of above, Court below has proceeded to reject the claim of the revisionist. Court below has been swayed away by the fact that the affidavit regarding income and status as is now required to be filed as per the law laid down by the Apex Court in **Rajnish Vs. Neha (Supra)**, was filed by the revisionist after the evidence was recorded. As such, the revisionist has

not approached the Court with clean hands. Furthermore, the revisionist is hiding her income, which she is earning as a Lecturer in a college. Court below should have refrained itself from recording such findings inasmuch as, the requisite affidavit was admittedly filed by revisionist before Court below. He, therefore, submits that the order impugned has been passed by Court below on account of bias and therefore, liable to be quashed by this Court. Apart from above, Court below has not recorded any finding as to whether the income of the revisionist, if any, can lead to the conclusion that the same is sufficient for complainant/revisionist to maintain herself as per the status of opposite party-2. It was further contended by the learned counsel for revisionist that maintenance is a relative term. The magnitude of maintenance shall differ from case to case. A person, who claims maintenance has a right to live and not a right to exist. It is on account of above that Courts have repeatedly held that the amount of maintenance awarded by Court must commensurate with the status of the parties. He has relied upon the judgment of the Supreme Court in **Anju Garg and Another Vs. Deepak Kumar Garg, 2022 LiveLaw (SC) 805**, wherein the Apex Court allowed the claim for maintenance raised by the wife even when the same was rejected by the Trial Court as well as the High Court.

16. Counsel for the revisionist also submitted that there is nothing on record to show that there was mala-fide on the part of revisionist in pursuing the criminal trial. The crux of the matter is that affidavit as is required to be filed by the parties in a case under Section 125 Cr.P.C. was filed, though, after the evidence was closed. However, this by itself cannot be a ground to draw an adverse inference against revisionist. As such, the order impugned is liable to be set aside by this Court.

17. Per contra, the learned A.G.A. for State/opposite party-1 and Mr. Sunil Choudhary, the learned counsel representing opposite party-2 have vehemently opposed the present criminal revision. They submit that Court

below upon due appraisal and appreciation of the evidence on record has returned a clear and cogent finding in support of the IIInd point of determination that revisionist is not residing with opposite party-2 on sufficient grounds. According to the learned counsel representing opposite party-2 separate living by wife on sufficient grounds is a sine-qua-non for claim of maintenance by the wife from husband. He then took the Court to the impugned judgment and order and referred extensively to the discussion made by Court below in respect of point of determination no.-2. He thus contended that revisionist herself could not establish before Court below that she is living separately on sufficient ground. It was thus contended by the learned counsel representing opposite party-2 that since the complainant/revisionist herself could not establish her separate living on sufficient ground, no illegality can be said to have been committed by Court below in passing the order impugned. As such, the present revision is liable to be dismissed on this ground alone.

18. Since much reliance was placed by the learned counsel representing opposite party-2 on the provisions contained in Section 125 Cr.P.C., therefore, the same are reproduced herein below;

“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 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.

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 remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of 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.

(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 allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be 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.

(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 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.”

19. Having heard the learned counsel for revisionist, the learned A.G.A. for State-opposite party-1, the learned counsel representing husband/opposite party-2 and upon perusal of record, this Court finds that findings returned by Court below that revisionist is residing separately on insufficient grounds is a pure finding of fact. The said finding could not be dislodged by the learned counsel for revisionist as being illegal, perverse or erroneous. Once the said finding has not been dislodged, therefore, the conclusion cannot be altered. Moreover, upon perusal of record, this Court finds that no jurisdictional error has been committed by Court below in returning the said finding. In view of above, no interference is warranted by this Court in present criminal revision.

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

21. It is, accordingly, **dismissed**.

Order Date :- 16.07.2025

Vinay