

Court No. - 80

Case :- CRIMINAL REVISION No. - 2952 of 2024

Revisionist :- Deepchandra

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Ankur Jaiswal, Anurag Kumar, Rajneesh Shukla, Sangam Singh

Counsel for Opposite Party :- G.A., R S Dubey, Savita Dubey

Hon'ble Ram Manohar Narayan Mishra, J.

1. Instant Criminal Revision has been preferred against the judgment and order dated 01.12.2023 passed by Additional Principal Judge, Family Court No.II, Gorakhpur in Maintenance Case No.42 of 2021, Archana and others Vs. Deepchandra under Section 125 Cr.P.C. By the impugned judgment and order learned court has awarded maintenance to the tune of Rs.10,000/- per month to the applicant No.1 who is wife of opposite party and at the rate of Rs.5,000/- per month to each of her minor children from the date of filing of application to date of judgment and thereafter at the rate of Rs.40,000/- per month to opposite party No.2 and at the rate of Rs.2,500/- to each of her minor children. Thus, a total sum of Rs.20,000/- has been awarded in said maintenance case to the applicants from the date of filing of application to date of judgment and thereafter total sum of Rs.45,000/- has been awarded to the applicants. It is also directed therein that arrear of maintenance shall be payable in 12 equal monthly installments.

2. Heard learned counsel for the revisionist, learned counsel for the respondent No.2 and learned A.G.A. for the State-respondent and perused the material available on record.

3. The factual matrix of the case in brief are that applicant No.1 filed an application for maintenance before the court below under

Section 125 Cr.P.C. on 18.01.2021 with averment that marriage of applicant No.1 was solemnized with opposite party according to hindu rites and rituals on 12.05.2011 at parental place of applicant No.1. Applicant No.1 was sent off to her matrimonial home on 13.05.2021 after marriage. The father of the applicant No.1 had spend around Rs.10 lakh in the marriage, two children namely Jivika and Janhvi born out of her wedlock with opposite party in the year 2013-14. Opposite party and his family members would often raise demand of additional dowry to the tune of Rs.5 Lakh cash and one Maruti Car, and when applicant No.1 expressed her inability to fulfill their demand of dowry she was subjected to maltreatment, beating and torture by opposite party. He works as a Deputy Manager in Toyota Material Handling Company at Gurugram and is earning around Rs.1 lakh monthly. Apart from that he earns Rs.20,000/- per month from his agricultural property. The opposite party used to give beating to applicant No.1 on being instigated by his family members and ultimately he threw out the applicant No.1 from his home. Compromises were effected between the parties on several occasions, even then opposite parties did not mend his ways, and applicant No.1 kept mum in expectation that things will be get-right on one or another day. On 17.07.2020 opposite party had threatened her at his residence situated at Gurugram, Haryana and gave beating to her, she was kept starving and she could only be released from detention on interference of labourers.

4. On 20.07.2020 her brother Munna approached opposite party at his work place and tried to persuade him, but it did not work and she was ultimately expelled from the house of opposite party and she got shifted to her parental place. On 25.07.2020 she visited police station Pipraich, district Gorakhpur and filed a complaint,

but no effective action was taken thereon. She has been residing at her parental place since 20.07.2020 alongwith her minor children. Opposite party had neglected to maintain her and her minor children. She claimed Rs.30,000/- as maintenance for herself and Rs.30,000/- for minor children.

5. Learned court below issued notice to opposite party, he appeared and filed his written statement. Learned court below framed four points of determination on the basis of pleadings of the opposite parties. At the stage of evidence, applicant got herself examined as PW1 and her father Ram Prasad Sharma as PW-2, whereas opposite party filed his affidavit evidence as DW-1, but the learned family court has observed that he did not appear for cross-examination, therefore reliance cannot be placed on his affidavit evidence. Both the parties had filed certain documentary evidence which has been taken into consideration by the court below. Learned court below after considering pleadings and evidence of the parties gave a finding that this is admitted fact that the applicant No.1 is a non-earning woman and is legally wedded wife of opposite party and applicant No.2 born out of their wedlock.

6. Learned court below further gave a finding that this fact is established by evidence on record that applicant No.1 was subjected to matrimonial cruelty and harassment on account of non-fulfillment of additional demand of dowry and ultimately she was thrown out from her matrimonial place alongwith her children after giving beatings. Therefore, it is proved that applicant No.1 has been living separately alongwith her children from her husband with sufficient cause.

7. Learned court below has also given a finding that applicant Archana is entitled to seek maintenance for herself and minor

children. Opposite party has served as Deputy Manager in Toyota Material Honda King India Pvt. Ltd. and his monthly salary was Rs.1,25,000/-. Opposite party has not rebutted the averment of applicant No.1 that monthly salary of the applicant is Rs.1,25,000/-. The opposite party has neglected to maintain his wife and minor children. With above finding, learned court below has awarded maintenance as stated above by impugned judgment and order.

8. Learned counsel for the revisionist submitted that applicant was working as Deputy Manager in Toyota Company, but due to frequent complaints made by revisionist No.1 his wife, his services got terminated by his employer, vide letter dated 25.01.2022 and at present he is working in another Company namely Haryana Bawal. He next submitted that revisionist had lent a sum of Rs. 6 lakh to father of the revisionist on insistence of his wife applicant No.1 and a Bank statement has been filed as Annexure No.5 in supplementary affidavit. He also submitted that revisionist had purchased a property in the name of his wife on 05.06.2018 and a copy of sale-deed has been filed as Annexure No.1 to the affidavit, wherein a sale consideration of Rs.30 lakh was paid, this land situates in the vicinity of the land of the revisionist and this also indicates that the landed property was purchased by revisionist in the name of his wife. As respondent No.2 admitted that she is not having independent source of income. He next submitted that respondent No.2 had left the revisionist and shifted to her parental place alongwith her minor children without sufficient cause and this is the main contention raised on behalf of the revisionist before the court below as well as in present revision. He next submitted that the amount of maintenance awarded in the impugned judgment and order is exorbitant and beyond financial capacity of the revisionist. He has to spend a substantial portion of

his salary in maintenance and treatment of his old and ailing parents. He has filed a number of medical papers of his parents.

9. He further submitted that after lapse of period of 13 years since marriage, the present dispute arose between the parties only on account of external influence made from the parental side of respondent No.2. The respondent No.2 is herself an earning member, she is an educated lady and she gives tuition to students and earns around Rs.50,000/- per month. It is wrong to say that revisionist has not paid any amount to respondent No.2 and her children, he has been paying money to respondent No.2 to 4 for their livelihood through RTGS.

10. Learned counsel for the respondent No.2 submitted that the landed property purchased by respondent No.2 for Rs.30 lakh is her personal property and sale consideration was paid by her father. Only Rs.6 Lakh was paid by revisionist towards sale consideration and this fact is also established due to the fact that the date of sale deed dated 05.06.2018 and payment of Rs.6 lakh on 04.06.2018 correspond to each other. Revisionist has not paid any amount towards maintenance to the original applicant pursuant to impugned judgment and order dated 01.12.2023, in spite of the fact that no interim or stay order was passed by this Court in present revision.

11. He next submitted that respondent No.2 was subjected to cruelty, maltreatment and harassment continuously by the revisionist which compelled to leave the place of the revisionist and to take shelter at her parental place. It is wrong to say that respondent No.2 has left the companionship of the revisionist and he is residing separately from her husband without sufficient cause. He next submitted that revisionist is still working in a private company named as Haryana Bawal and earns a handsome

amount as salary on monthly basis, and is quite able to pay the amount of maintenance awarded in the impugned judgment and order. Inasmuch as learned court below has given a leverage to revisionist to pay arrear of maintenance in twelve equal monthly installments. The impugned order is based on evidence and material on record and it requires no interference in the matter. Revisionist failed to file affidavit of disclosure of Income, assets and liabilities in compliance of judgment of Supreme Court in Rajnesh Vs. Neha and others.

12. Respondent No.2 Archana had admitted in cross-examination that services of her husband Deep Chand in Toyota Company as Deputy Manager were terminated after dispatch of legal notice by her. He was getting Rs.1,30,000/- as monthly salary therefrom. However, he has secured employment in another Company namely Haryana Bawal. However, he has not disclosed that on which post he is serving in that company. The revisionist has also concealed his income in present revision as well as in his affidavit of evidence filed before the court below. He has stated in his affidavit of evidence that he is unemployed at the time of argument, his counsel admitted before this court that he works in the company namely Haryana Bawal. Despite the fact that PW-1 Archana the original complainant as admitted this fact that services of husband were terminated from Toyota company, the learned court below has fixed the amount of maintenance on assumption of his income as claimed by the applicant around Rs.1,25,000/- per month.

13. The revisionist has filed documentary evidence in support of his fact that his services from Toyota Company as Deputy Manager were terminated vide letter dated 25.01.2022. Thus, once this fact has been admitted by the applicant herself in her evidence that opposite party was not serving at Toyota Company at the time

of her evidence, the learned court below has taken an erroneous approach in this regard while treating him as Deputy Manager in Toyota Company on the basis of affidavit of disclosure of income, assets and liabilities filed by the applicant in compliance of the judgment of Hon'ble Supreme Court in Rajnesh Vs. Neha 2021(2) SCC 324.

14. However, other findings of the court below are well reasoned and based on evidence on record. Therefore, in my considered opinion there is no substantial error or flaw in the impugned order passed by learned court below. So far as the grant of future maintenance to the applicants who are wife and minor child of the revisionist is concerned, the amount is exorbitant and the learned court below has fixed this amount on premise that he was working as Deputy Manager, in Toyota Company, whereas in fact his services were terminated therefrom as early as on 25.01.2022. The impugned order is erroneous on this score that the future maintenance of children is reduced from Rs.5,000/- to Rs.2500/- without assigning any reason.

14. Thus, the learned court below could not fix the current actual income of the revisionist at the time of judgment in light of the facts and circumstances of the case. Therefore, the amount of future maintenance from the date of judgment is liable to be reduced in the light of foregoing discussion.

15. The impugned judgment and order dated 01.12.2023 is affirmed for the amount of maintenance awarded to the applicant from the date of filing of application to date of judgment and future maintenance is notified in the manner that in the manner that applicant No.1 Smt. Archana shall receive Rs.15,000/- and applicant Nos. 2 and 3 will receive Rs.5,000/- each as maintenance from the of judgment onwards. Other terms and conditions

imposed in the impugned order are not interfered with.

16. The revisions is partly allowed, accordingly.

Order Date :- 24.2.2025

Ashish/-