

Court No. - 80

Case :- CRIMINAL REVISION No. - 3581 of 2023

Revisionist :- Jagdeep Singh

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

Counsel for Revisionist :- Himanshu Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

Instant Criminal Revision has been preferred against the impugned order dated 12.04.2023 passed by Principal Judge, Family Court, Hapur in Criminal Misc. Case No.267 of 2021 (Smt. Asha Vs. Jagdeep Singh), under Section 125 Cr.P.C., Police Station Pilakhuwa, District Hapur. By the impugned judgment and order the court below as granted maintenance to the applicant Smt. Asha to the tune of Rs.9,000/- per month from the date of judgment. It is also directed in the impugned order that if any amount is paid to the applicant as maintenance in any other case, the same will be liable to be adjustment.

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.

Learned counsel for the revisionist submits that revisionist is posted as Constable in PAC (Uttar Pradesh). He has stated in his evidence before the court as DW-1 that he is posted in Aligarh in New Police Line, his present salary is Rs.33,000/- per month. The respondent No.2 left her matrimonial home on her own free will and choice, after engaging in altercation with revisionist and his family members, therefore the claim is barred by Section 25(4) Cr.P.C. as she left her matrimonial home without sufficient cause.

He next submitted that the quantum of maintenance awarded against the revisionist is excessive, he has to take care of his own parents and sister. However, he has also been saddled with liability to pay Rs.5,000/- per month as maintenance under Section 24 of Hindu Marriage Act and in divorce proceedings. The respondent No.2 was suffering from some old disease prior to her marriage and this fact was concealed by her parents at the time of marriage and got her visited to many skilled doctors and paid her medical expenses, but she has not become medically fit up-till now, as her

illness is old and serious. He next submitted that revisionist has taken a specific plea before the court below that on 10.08.2021 at around 12:00 hours in noon he was no duty. Respondent No.2 had demanded Rs.2 lakh from his family members and became abusive and violent towards them, she even engaged in scuffle with them; she called her brother on telephone, who came at the place of the revisionist abused and misbehaved by them. She took away her golden and silver jewellery and Rs.30,000/- cash kept in the house of the revisionist.

He further submitted that revisionist has tried to improve her proceedings in complaint filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005. She has taken a plea that her father-in-law tried to molest her, but no such averment has been made in present application under Section 125 Cr.P.C. The parties could not blessed with any issue. The divorce proceedings initiated at the instance of the revisionist are pending before the court below.

Learned court below has failed to appreciate the evidence on record in proper perspective and granted maintenance to the applicant without taking into consideration the financial capacity and family liability of the revisionist.

Per contra, leaned counsel for the respondent No.2 submitted that impugned order passed by learned court below is in-consonance with the salaried income to the revisionist. Learned court below has observed during discussion of issue No.2 that on the basis of admissions made by the parties and documents produced before the court it appears that opposite party is drawing more than Rs.37,000/- per month after deductions. Per contra, no documents or evidence could be produced by him in support of the plea that applicant is not able to maintain the applicant, who is wife. The court below has also observed in the impugned judgment and order that on the basis of evidence on record and admissions of the parties this fact is clearly proved that applicant Smt. Asha is not able to maintain herself, whereas opposite party is able to maintain the applicant, who is legally wedded wife.

Learned counsel for the respondent No.2 also submitted that a sum of Rs.5,000/- was awarded as interim maintenance to the applicant vide order dated 23.06.2022, which was directed to be paid since 21.05.2022 from the date of filing of application for interim maintenance, but the revisionist has not paid even interim maintenance on regular basis and substantial amount is due to be paid.

On perusal of impugned judgment and order it appears that applicant Smt. Asha filed application under Section 125 Cr.P.C. Principal Judge, Family Court, Hapur with averments that marriage of the applicant was performed with opposite party on 11.12.2020 according to hindu rites and rituals and her father spent around Rs.15 lakh in the marriage and he gave sufficient gifts and dowry in the marriage according to his financial ability. Her husband is posted as constable in PAC who was posted in Meerut at the time of filing of application, her husband and in-laws were not satisfied with the cash and valuables given by father of the applicant in the marriage and they used to taunt and tease her for not bringing sufficient dowry, they started demanding Rs.15 lakh cash and a Swift Car as additional dowry, she was subjected to matrimonial cruelty by her husband and in-laws for non-fulfillment of demand of additional dowry. Her husband committed unnatural sex with her in the form of sodomy and oral sex against her wishes, he is also a habitual drinker, she was thrown out from her matrimonial home on 09.08.2021 after grabbing her stridhan by her in-laws. On 12.08.2021 the opposite party and family members visited the parental place of the applicant and engaged in marpeet with her, the applicant is living separately from her husband at her parental place since 09.08.2021 and she became a burden on her parents, she is not having any independent source of income, her husband is able to maintain her, his salaried income is around Rs.40,000/- per month. Opposite party appeared and filed his written statement 15-A before the court in which he admitted factum of marriage with the applicant, he denied the allegations regarding the demand of dowry and matrimonial cruelty against the applicant, he stated that on 10.08.2021 at 12:00 hours in his absence applicant engaged in marpeet with his family members misbehaved and abused her. She called her brother Tarun and went to her parental place with her brother and taking ornaments and cash Rs.30,000/- kept in the house of the opposite party and she is earning around Rs.20,000/- per month from agricultural and private tuition.

Learned court below failed three points on determination/issue on the basis of the pleadings of the parties and after appreciating the evidence on record gave a finding that the applicant is living separately from his husband at her parental place for sufficient and reasonable cause. Opposite party is able to maintain his wife, who is posted as constable in PAC and his gross income is Rs.48,000/- per month. He has neglected to maintain his wife, the applicant is not able to maintain her as no separate income of the applicant is proved on record.

With above finding learned court below has awarded Rs.9,000/- as maintenance to the applicant from the date of judgment. So far as the plea of counsel for the revisionist with regard to applicability of Section 125(2) Cr.P.C. the learned court below has addressed this issue at length while deciding issue No.1 and after considering the pleading and evidence of the parties has given a finding of fact that applicant is living separately from her husband for sufficient and reasonable cause and this finding of fact cannot be said to be perverse or supported by evidence on record and it need not be interfered in the present revision.

So far as the quantum of maintenance is concerned, the learned court below has given a finding that opposite party is getting Rs.37,000/- per moth after compulsory deductions and this amount is around 25% of monthly income of the revisionist. The Hon'ble Supreme Court in **Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy** AIR (2017) SC 2383 placing reliance on a earlier judgment in [Dr. Kulbhushan Kumar vs. Raj Kumari and Anr.](#) (1970) 3 SCC 129 in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife.

Therefore, on the face of record, the quantum of maintenance awarded to the applicant is inconsonance with the law laid down by Hon'ble Supreme Court and is commensurate with the monthly income of the revisionist. I find no illegality, irregularity or perversity in the impugned order passed by learned trial court.

The revision is devoid of merit and deserves to be **dismissed**.

Order Date :- 14.2.2025

Ashish/-