

Court No. - 80

Case :- CRIMINAL REVISION No. - 3460 of 2023

Revisionist :- Tarun Saxena

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

Counsel for Revisionist :- Shakti Shanker Tiwari, Subhash Chandra Tiwari

Counsel for Opposite Party :- G.A., Sushil Shukla

with

Case :- CRIMINAL REVISION No. - 2882 of 2023

Revisionist :- Smt. Rupal Saxena

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

Counsel for Revisionist :- Aditya Prakash Singh, Sushil Shukla

Counsel for Opposite Party :- G.A., Shakti Shanker Tiwari, Subhash Chandra Tiwari

Hon'ble Ram Manohar Narayan Mishra, J.

1. Learned counsel for the revisionist has filed second supplementary affidavit in Criminal Revision No. 3460 of 2023 in compliance of the order dated 29.11.2024 passed by this Court and the same is taken on record.

2. Since criminal revision nos. 2882 of 2023 and 3460 of 2023 have been arisen out of same judgment and order dated 29.3.2023 passed by the learned Additional Principal Judge, Family Court No. II, Kanpur Nagar in Case No. 919 of 2012, under section 125 Cr.P.C., therefore, both the revisions are being disposed of by this common judgement and order.

3. Instant criminal revision has been preferred against the judgement and order dated 29.5.2023 passed by learned Additional Principal Judge, Family Court No. -II, Kanpur Nagar in Case No. 919 of 2012, under section 125 Cr.P.C. whereby Rs. 8000/- per month as maintenance to the applicant has been awarded by the learned trial court from the date of final judgement dated 29.3.2023.

4. Heard learned counsel for the contesting parties, learned AGA for the State and perused the material available on record.

5. Learned counsel for the revisionist in Criminal Revision No. 3460 of 2023 and respondent no. 2 in criminal Revision No. 2882 of 2023 submitted that this is admitted fact that the marriage of Tarun Saxena who is opposite party before learned court below was solemnized with Smt. Rupal Saxena, the original applicant on 8.2.1998 according to Hindu rites and rituals. A son, namely, Aryan Saxena and a daughter, namely, Nitya Saxena born out of wedlock of the spouse Tarun Saxena and Rupal Saxena. Their son Aryan Saxena has now become major. The father of opposite party was posted in a higher position. Tarun Saxena was running his business in the name of Reliance Consumer Goods (P) Limited, Kanpur.

6. It is next submitted that learned court below has passed impugned judgement and order whereby Rs. 8000/- per month has been awarded as maintenance to the applicant from the date of judgement which is outcome of non application of his judicial mind. Learned court below lost sight of fact that since the year 2019 revisionist was not employed in any company where he was working earlier and has become in fact, unemployed since the year 2019 and he is dependent totally on pensionary income of the father who is not only taking care of revisionist and other family members but also paying the loan taken by the family.

7. Even the applicant Smt Rupal Saxena herself worked in one of company as Managing Director who misappropriated almost all the money of the company and company came in to loss. Applicant earns a handsome amount from her business as Astrologer and expert in architecture. There is no need of any maintenance as her financial resources are more than her husband. She left the house of the revisionist on her own sweet will along with her son. Complaint filed by the opposite party under section 340 Cr.P.C. against the applicant in pending proceeding under section 125 Cr.P.C. has not been decided till date while the said proceeding under section 125 Cr.P.C. has been decided finally on 29.3.2023.

8. It is further submitted that D.W. 2 Aryan Saxena who is son of the parties has filed an affidavit in support of version of his father Tarun Saxena before learned court below and his evidence remains pending for want of cross examination. He has stated in his affidavit that all the expenses of the dependent i.e. his and his sister one Nitya are borne by his grandfather because all the business of his father had remained closed at the time of filing of his affidavit. He next submitted that this is admitted fact that applicant Smt Rupal Saxena resides in a duplex house owned by her father-in-law. Both the children of applicant, namely, Aryan

and Nitya had received their education in christian school and their expenses were borne by their grandfather.

9. It is further submitted that applicant has filed an application for enhancement of amount of maintenance whereas opposite party is not in a position to pay maintenance awarded in the impugned order itself, therefore, no case of enhancement of amount of maintenance is made out as learned court below has not fixed the income of the opposite party in the impugned judgment. It is settled law that the income of the husband at the time of judgment will be considered while awarding the maintenance to the wife or children. The income which has already been closed cannot be a reliable factor while deciding the maintenance petition. The revisionist Tarun Saxen who remains unemployed since the year 2019, is neither in a position to pay amount awarded in the impugned order nor any enhancement in said amount is called for, therefore, the revision filed by the Tarun Saxena be allowed and the impugned order may kindly be set aside.

10. It is also submitted that the revisionist has worked in a partnership firm namely Reliance Traders which worked only till 2002- 2003 and thereafter Reliance Traders stopped to work and all work of selling and purchasing was started to be done through Reliance Consumer Goods (P) Ltd. only. The work of company was to purchase the goods from different companies and to sell the same to petty dealers on behalf of the companies. As company suffered huge loss, respondent no. 2 Rupal Saxena resigned from the company who was also working as Managing Director of the company. Company could not recover the loss and failed to deposit the money in C.C. Limit of Rs. 40 lacs which could not be repaid and still the interest of the loan is being deposited from the pension of the father of the Tarun Saxena. The firm Reliance Consumer Goods Private Limited has stopped its functioning in toto. The tenanted room in which office of the company was functioning, has been locked since the year 2019 and even electric connection has been disconnected and meter has been displaced. The respondent no. 2 Smt Rupal Saxena has admitted in her evidence that her husband is now performing some work of supply in hotel. Revisionist has filed ITR of respondent no. 2 for the year 2019-2020 in which total income is shown as Rs. 2,24,650 per annum and Rs 18721/- per month.

11. Per contra, learned counsel appearing for respondent no. 2 in criminal revision No. 3460 of 2023 and counsel for the revisionist in criminal revision No. 2882 of 2023 submitted that opposite party in maintenance case is man of multiplier commercial

resources. He is Managing Direction in the company and is a man of higher class. He lives a luxury life. His father himself worked in a higher position. He next submitted that Aryan Saxena son of the parties has retracted his affidavit filed on behalf of his father and stated therein that his expenses of living and education are borne by his grandfather and mother. A suit for dissolution of marriage and maintenance are pending between his parents and It is wrong to say that he earns money from online trading. He is aged about 22 years. A copy of his declaration in this behalf has been filed as annexure no. 7 in Criminal Revision No. 2882 of 2023.

12. He next submitted that even in affidavit of disclosure of assets and liability filed by the opposite party Tarun Saxena in learned court below in maintenance case, he has cancelled his actual income. He has only shown his liabilities and in affidavit dated 13.1.2023 cleverly concealed his assets and economic resources. Hon'ble Supreme Court held in ***Rajnish vs. Neha, 2021 SC 569*** that if a person concealed his income in his affidavit of disclosure of assets and liabilities, an adverse presumption will be taken against him. It is further submitted that Tarun Saxena has sold his immovable property during pendency of this maintenance case and has sold and purchased valuable immovable property which itself shows his economic viability.

13. Considering rival submissions of learned counsel for the parties, family back ground, earlier important position held by Tarun Saxena, the statement of opposite party in maintenance case recorded during course of hearing of the case and the sale transaction entered by him, I find that no substantial factual or legal error in the impugned judgement and order passed by the learned trial court so far as quantum of maintenance is concerned it is undoubtedly towards lower side and it deserved to be enhanced to some extent to strike a balance in equity and also keeping in view prevalent market condition. This court is also of considered view that learned court below has committed legal error by awarding maintenance to the applicant from the date of judgement which should have been awarded from the date of filing application as directed in *Rajnish vs. Neha (Supra)*, therefore, it is hereby directed that the Tarun Saxena, the opposite party before learned court below will pay Rs. 8,000/- per month to his wife from the date of filing application to date of judgement dated 29.3.2023 and thereafter Rs. 10,000/- per month as future maintenance to the applicant accordingly.

14. The criminal revision no. 3460 of 2023 (Tarun Saxena vs. State of U.P. and another) is dismissed and criminal revision no. 2882 of

2023 (Rupal Saxena vs. State of U.P. and another) is partly allowed.

Order Date :- 5.3.2025

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