

Court No. - 80

Case :- CRIMINAL REVISION No. - 3794 of 2023

Revisionist :- Khalid Mustafa

Opposite Party :- Smt. Gulista Bi

Counsel for Revisionist :- Ikram Ahmad, Sourabh Pathak, Vandeep Nath

Counsel for Opposite Party :- Pankaj Satsangi

Hon'ble Ram Manohar Narayan Mishra, J.

1. Rejoinder affidavit filed by the revisionist is taken on record.
2. Instant Criminal Revision has been preferred against judgment and order dated 26.05.2023 passed by Principal Judge, Family Court, Budaun in Maintenance Case No.347 of 2017. By the impugned order learned Principal Judge, Family Court, Budaun as awarded Rs.10,000/- as monthly maintenance to the respondent, which is due in first week of each calendar month from the date of filing of application dated 28.05.2013. It is also directed in the impugned order that any amount received by the applicant by way of maintenance /interim maintenance shall be liable to be adjusted. The pleadings have already been exchanged between the parties.
3. Heard learned counsel for the revisionist, learned counsel for the respondent and perused the material available on record.
4. Learned counsel for the revisionist submitted that this is admitted case that the marriage of the revisionist and respondent was solemnized on 08.07.2011 in accordance with muslim rites and rituals, and at that time respondent was receiving education in Aligarh Muslim, University. The respondent never resided with the revisionist in her matrimonial home despite of several attempts

made by the revisionist and she failed to perform matrimonial obligations. The marriage was contracted between him and respondent, when she was receiving education at Aligarh and resided in hostel. The respondent has taken false stand that he used to take her at hotel, where they consummated their marriage, whereas in the hostel record the name of the husband has not been entered as local guardian and without an entry in favour of revisionist as local guardian of respondent it was not possible for him to take out her from the hostel and cohabit with her at some hotel. Therefore, the pleas in this regard taken by respondent /original applicant are without substance. Their marriage was outcome of love affairs.

5. He next submitted that revisionist had given divorce to respondent on 26.07.2015. However, due to some ill advice he had filed a suit for restitution of conjugal rights before the competent court and same was dismissed in default on 24.04.2018. He further submitted that learned trial court had allowed the maintenance claim of respondent and awarded Rs.10,000/- as maintenance to the applicant without considering the facts and circumstances of the case and without appreciating the evidence on record in proper prospective. The revisionist is a clerk in Home Guard Department and is not in a position to pay the maintenance as awarded in the impugned order, and he had remarried with after giving divorce to respondent and he has to bear burden of his present spouse and three minor children. In fact, marriage of revisionist and respondent was never consummated and in muslim law marriage cannot be deemed to be complete without consummation and the marriage of revisionist and the respondent No.2 is incomplete under law and on that count also applicant is not entitled for any maintenance from the revisionist.

6. Leaned counsel for the revisionist lastly submitted that marriage (nikah of revisionist and respondent) was dissolved by document dated 26.07.2015 in the presence of witnesses. The respondent has initiated false prosecution against the revisionist by levelling charge of dowry harassment. When she never resided with the revisionist, no question of demand of dowry or harassment arises.

7. With above, contention learned counsel for the revisionist prayed for setting aside the impugned order.

8. Learned counsel for the respondent submitted that marriage of revisionist and respondent was duly solemnized in accordance with muslim rites and rituals on 08.07.2011 and it is revisionist who committed default in performance of his matrimonial obligations towards respondent. It is wrong to say that marriage of revisionist and respondent was never consummated, in fact, they have cohabited together. The marriage of the parties was solemnized in a private ceremony, as parents of the revisionist were not agreed to their marriage. The revisionist has himself taken wrong and contradictory stand in the matter, as on one hand he states that he divorced the respondent in the year 2015, but on the other hand he filed a Suit for restitution of conjugal rights, which was dismissed in default of the revisionist on 24.04.2018.

9. The matter was referred thrice for mediation, but due to non cooperation of revisionist, mediation could not succeed. The revisionist made no efforts to take the respondent with him to his parental home. Therefore, respondent should not suffer due to default of the revisionist. The revisionist is under legal obligation to maintain his deserted and separately living wife.

10. Learned trial court has allowed the application for maintenance

after taking into consideration the entire facts and circumstances of the case, as well as the evidence appearing on record, in proper perspective.

11. This is admitted fact that marriage of the revisionist and respondent No.2 was solemnized according to muslim rites and rituals, of course in a private ceremony on 08.07.2011. The respondent No.2 has stated that her date of birth is 28.08.1991, she did her High School in the year 2006, and Intermediate in the year 2008. She took admission in Hindu Devi Mahila Maha Vidyalaya, Budaun in B.A. Ist year in the year 2008, but subsequently she was selected for her graduation studies at AMU, Aligarh and therefore she took admission in AMU, B.A. Ist year in the year 2011 and in the year 2010-11 she was in B.A. IInd year. She was studying in Aligarh while residing in a Hostel. She was residing in Abdulla Hall (CPW Hostel). In IIIrd year she resided in NJ Hostel, her admission was done by her father and he bore all her expenses. In the hostel her father and local guardian Salman Jafar Ansari were permitted to meet her. Salman Khalid Ansari is cousin of her husband Khalid Mustafa, name of Salman Jafar Ansari was entered as guardian in hostel records during her second year studies with the consent of her father. She did her BA. IIIrd year in the year 2012. At the time of her marriage in 08.07.2011 with Khalid Mustafa, who was studying in AMU.

12. Master Asrar Ahmad and Munna were witnesses in Nikaha, and Rs.786 was fixed as Mehar, and Marriage was solemnized on Friday, at the residence of her parental place, and feat was organized at UPT Guest House. Parents and siblings of Khalid Mustafa had participated in the marriage, her paternal and maternal relatives had also participated in the marriage. She had

not filed photo graphs of her marriage as they are personal. Nikah was solemnized at the time of Namaz of Magrib. She filed this this maintenance application on 28.05.2013. After Nikah ceremony she was sent off to her matrimonial home. She resided at the place of her husband after marriage. It is true that her husband used to visit her at Aligarh when she was residing in Hostel. She resided at her matrimonial home in Budaun, she was dislodged from her matrimonial home in May, 2012 after making demand of Rs.50,000/- cash and one Bolero vehicle by her in-laws. She left hostel in the year 2012, her relatives tried to make a compromise with her husband. She lodged an FIR against her husband, wherein she stated that he used to assure her that he would take her to his place, and he will take care of demand of dowry made by her parents. She had access to her husband Khalid Mustafa on many occasions during this period. The deponent and Khalid Mustafa belonged to different biradari (caste).

13. The Mediation process ran five years at High Court and at local level, she did not insist for money, but for combined living with her husband. Her husband always offered money to get rid of her. Revisionist had filed a Suit for restitution of conjugal rights against his wife, Gulista Bi, wherein he has pleaded that he was married with defendant on 18.07.2011 according to Muslim rites and rituals. The parents of defendant had assured him that they would send her off to his place after completion of her B.Com studies. Defendant was never sent off to the place of plaintiff after marriage and she failed to perform her matrimonial obligations. She stayed at her parental place even after marriage due to issue of studies. Due to non co-operating attitude of parents of the defendant, matrimonial relationship could not be established between the parties and instead they were exerting pressure on

plaintiff (Khalid Mustafa) to permit her to live at her parental place and snatched all relationship with his parents and shift to their parents place, which was not feasible for the plaintiff. They would always insist that the plaintiff start living at the place of his in-laws.

14. On 14.01.2013 defendant finally refused to come to the place of plaintiff, which create cause of action for the same. This matrimonial suit was filed on 15.01.2013. In written statement the defendant (Smt. Gulista Bi) categorically denied the allegations that she failed to perform her matrimonial obligations with plaintiff. In fact, he took her to Bareilly after marriage on 10.07.2011 and thereafter she went to Aligarh to carry out studies at AMU. He stayed with her at hotel in Aligarh and they established physical relationship there.

15. Plaintiff works in Home Guard Office, whereas father of the defendant works in Private as Electrician. Plaintiff separated from defendant in May, 2012 on consented manner, and even after requests of defendant he never came to her place to take her back. This matrimonial suit was dismissed for non-prosecution and in absence of the plaintiff on 24.04.2018. Whereas he has stated that he had pronounced Talak to his wife respondent No.2.

16. On 15.01.2013 he had filed a suit for restitution of conjugal rights before the competent court, due to some ill advice. Therefore, a contradictory stand has been taken by the revisionist on this score. On one hand he states that he had divorced his wife on 26.07.2015 and on another hand he filed a suit for restitution of conjugal rights against her in the year 2013. So far as the stand taken by the revisionist that marriage of the revisionist with respondent No.2 was never consummated, on account of the fact that she was never sent off to the place of revisionist after marriage

due to stubborn attitude of her parents, is concerned this is categorically refuted by respondent No.2. She has stated that she was sent off to her matrimonial home after marriage and after residing for some time with her husband she went back to Aligarh to resume her studies, which is quite natural.

17. The revisionist has stated in his evidence before the Family Court that he has filed a petition for cancellation of agreement to marriage (Nikah) in July, 2015, thus it is not clear that any divorce has been effected between the parties or not. The respondent No.2 has stated in her evidence that she came to know this fact of divorce only in the court. The respondent No.2 has stated in her evidence that she is still ready to comply the agreement of marriage as entered between them at the time of marriage. This is wrong to say that matrimonial relationship has not been established between the parties.

18. As the factum of marriage between the parties is agreed to both of them, presumption of consummation of marriage arises, as there is nothing on record which could make their physical access impossible or improbable, the stand taken by respondent No.2 does not look improbable that when she had gone to Aligarh after marriage to resume her studies, her husband used to meet her in Aligarh and there they established physical relationship in hotel. In any manner, this Court is not ready to subscribe the the stand taken by the revisionist that the marriage between the parties was never solemnized. The factum of consummation of marriage is accepted by one party and denied by other party, but circumstances support the version of wife Gulista Bi.

19. Learned court below has given a finding after appreciating the evidence on record, and citing various judgments of Hon'ble Supreme Court that a husband who is physically-able is under

obligation to maintain his wife. The applicant has established this fact on the basis of evidence that she is living separately from her husband due to sufficient reasons. She is entitled to receive maintenance, so that she could live up to the standard of husband. The opposite party is possessed of means to maintain his wife, the applicant. This is admitted fact that opposite party Mohd. Khalid works as a Clerk in Home Guard Department of Government, according to Paper No.13 Kha, has monthly salary was Rs.34,875/- on 04.12.2018 and take home salary was Rs.31,450/-. According to salary slip of dated 07.05.2021 his net salary after deduction was Rs.35,382/-. He has stated during cross-examination that he is not able to maintain the applicant, as his parents remain ill and they are dependent on him, but he has admitted this fact that his father is a pensioner. If the father of the revisionist is a pensioner, then it cannot be held that he is dependent on his son.

20. With foregoing discussion, I find no substantial, legal or factual error in the impugned order passed by learned court below. Whereby Rs.10,000/- has been awarded as maintenance to the applicant from the date of filing of application dated 28.05.2013. However, this fact cannot be lost sight that during the period of 10 years between the filing of application and date of judgment, the salary and income of the applicant would not have been consistent. Therefore, the amount awarded as maintenance at the rate of Rs.10,000/- from the date of filing of application is some what on higher side and that requires some reduction to enable the revisionist to pay the arrear of maintenance as well as to make regular payment of maintenance.

21. Therefore, it is directed that the revisionist shall pay Rs.7,000/- per month as maintenance from the date of filing of application to date of judgment dated 26.05.2023, and thereafter, at the rate of

Rs.9,000/- per month as future maintenance. The other terms and conditions mentioned in the impugned judgment and order are not interfered with.

22. The parties will be at liberty to seek alteration of this modified amount of maintenance by moving an application under Section 127 Cr.P.C. on the ground of change in circumstances.

23. The revision stands **partly allowed** in the manner.

Order Date :- 3.1.2025

Ashish/-