

Court No. - 80

Case :- CRIMINAL REVISION No. - 3882 of 2023

Revisionist :- Smt. Pooja

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

**Counsel for Revisionist :- Amit Rana, Krishna Kant
Dubey, Santosh Kumar Dubey**

Counsel for Opposite Party :- G.A.

AND

Case :- CRIMINAL REVISION No. - 4255 of 2023

Revisionist :- Ankit

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

Counsel for Revisionist :- Amit Rana

**Counsel for Opposite Party :- G.A., Krishna Kant Dubey, Santosh
Kumar Dubey**

Hon'ble Ram Manohar Narayan Mishra, J.

Sri Amit Rana, learned counsel for the revisionist in Criminal Revision No.3882 of 2023 and counsel for the respondent No.2 in Criminal Appeal No.4255 of 2023 is present before this Court.

None appeared on behalf of respondent No.2 in Criminal Revision No.3882 of 2023 and for the revisionist in Criminal Revision No.4255 of 2023.

As both the criminal revisions have arisen out of same impugned judgment and order dated 10.05.2023, both the revisions are being disposed of by this common order.

Heard learned counsel appearing for Smt. Pooja, the original applicant and revisionist in Criminal Revision No.3882 of 2023 and respondent No.2 in Criminal Revision No.455 of 2023, learned A.G.A. for the State-respondent and perused the material available on record.

Learned counsel for the revisionist submitted that ITR has been filed by opposite party No.2 in compliance of this court's order dated 21.11.2024 through supplementary affidavit dated 04.12.2024 which shows his gross annual income is Rs.8,70,000/-

and net income has been computed as Rs.6,18,000/- after deductions, whereas the lower court has awarded only Rs.8,000/- per month as maintenance in the impugned judgment and order to the applicant. This income tax return is of the assessment years 2018-19, 2023-24 and 2024-2025.

Learned counsel for the revisionist submitted that in the guidelines issued by Hon'ble Supreme Court in various judgments, where in the amount of maintenance should be at least 25% of the income of the opposite party/husband as the case may be. But the amount awarded by learned court below is insufficient and same needs to be enhanced. The opposite party has shown his monthly income only Rs.15,000/- in affidavit of assets and liabilities before the court. But from perusal of income tax return of opposite party it is obvious that he is having sufficient income and therefore the amount awarded by court below to the revisionist needs to be enhanced substantially.

Learned counsel for the revisionist Smt. Pooja, also submitted that opposite party has not paid any amount of money even in compliance of impugned order, whereas there is no interim or stay order in present revision. He also submitted that revisionist is not having any source of income of her own, whereas opposite party is a highly qualified person and and obtained doctorate degree.

Learned A.G.A. appearing for the State submitted that the amount awarded in the impugned judgment and order is justified and no illegality, irregularity appears in the impugned order.

By means of Criminal Revision No.4255 of 2023, revisionist Ankit who is opposite party in Maintenance Case No.662 of 2019 Smt. Pooja Vs. Ankit Under Section 125 Cr.P.C. has assailed the amount awarded in the impugned judgment and order dated 10.05.2023 and has prayed for setting-aside the maintenance awarded to the applicant Smt. Pooja. The revisionist has pleaded in said criminal revision that learned family court has awarded maintenance to the applicant Smt. Pooja without considering the facts and circumstances of the case in proper perspective. The impugned order is patently erroneous and finding arrived in the impugned

judgment are not based on material on record and the impugned order is vitiated in the eyes of law because of the impugned order manifest injustice had occurred to the revisionist.

Learned court below has failed to appreciate the evidence on record in proper manner. The marriage of revisionist was solemnized with opposite party No.2 on 31.10.2017 according to hindu rites and rituals, it was dowry less marriage. The revisionist had been performing his marital obligations and he used give due respect with wife and her family members, but she was not happy with him. The allegations of opposite party Smt. Pooja with the revisionist that he used to harass, abused and torture her which is patently false. In fact the opposite party No.2 has levelled blatant false allegations against revisionist and his family members in application under Section 125 Cr.P.C. The revisionist and his family members never threatened to kill her nor his brother Anuj to commit any obscene act with her, nor did he ever physically assault opposite party No.2. On 17.06.2018 her father Rajendra Singh, mother Sudha and uncle Pramod brought opposite party No.2 to their village Ramani Burj, P.S. Kakod, and on 26.06.2018 they got her aborted at Soham Nursing Home Bulandshandra without informing the revisionist and his family and there is no sign of any injury or trauma on her.

Learned counsel for the revisionit Ankit in Criminal Revision No.4255 of 2023 submitted that on 24.03.2019 the parents of opposite party no.2 had taken her to see a girl for brother's marriage, since then she was at her parents house out of her own free will, which is confirmed by the statement of opposite party No.2 itself. It is clear from the location of mobile No.7505117705 through location in CDR in Greater Noida from 20.07.2019 to 21.07.2019 at 05:00 pm, details of which are mentioned in Case Crime No.670 of 2019 under Sections 405, 498-A, 323, 354,504, 506 IPC and Section 34 of DP Act, P.S. City Kotwali. The Investigating Officer has also written in CD No.17 by which call data record and location of opposite party No.2 is mentioned. Opposite Party No.2 and her father had concocted a false incident dated 22.07.2019 and filed the case against the revisionist and his family members at P.S. Koltwali Bulandshahar. The revisionist had made every effort to keep opposite party No.2 with him, but she

deserted him without any reasonable cause, being compelled by the act of opposite party No.2 the revisionist filed a case before Principal Judge Family Court for restitution of conjugal rights which is correctly under consideration to the court of Additional Principal Judge, Family Court No.2 Meerut in which opposite party No.2 had appeared in the past.

The revisionist received only Rs.15,000/- as stipend, but qualification of opposite party No.2 reveals that she is a highly educated lady of qualification B.A., M.A. and M.Ed., who is a teacher in Divine Mother, International School, Neemka Jewar , District Gautam Budh Nagar she gets around Rs.30,000/- per month as salary by teaching. The respondent- Ankit is presently neither a teacher in JPIT College, Meerut nor does he has 27 bighas of land, nor her invested money in stock market, nor does he has three plots and two houses. It is entirely false to state that he is earning Rs.1,20,000/- per month, while fixing the amount of maintenance as directed by Principal Judge, Family Court did not consider the earning capacity of the parties and overlooked the fact that opposite party Smt. Pooja has himself deserted the revisionist without sufficient cause. The revisionist is not able to pay the amount of maintenance due to financial constraints.

Revisionist was directed to file relevant documents in support of his contention. He appeared in person on the direction of this Court on 05.12.2024 and filed a supplementary affidavit in which ITR for the assessment year 2024-2025 was filed in which his total income is show as Rs.4,93,160/-. He has paid Rs.33,161/- as income tax; in ITR of assessment year 2023-2024 his total income is shown as Rs.4,94,850/- and paid Rs.37,178/- as income tax and in ITR of assessment year 2018-2019 his gross total income is shown as Rs.3,76, 082/- and total income is Rs. 2,96,220/-

Learned court below has awarded maintenance to the applicant Smt. Pooja at the rate of Rs.8000/- per month from the date of filing of application for maintenance in the year 2019, the maintenance is payable on 17th of each calendar month, and arrears from the date of filing of application to date of judgment dated 10.05.2023 are directed to be paid in four monthly installments. It is also directed in the impugned order that any amount already obtained by the applicant shall be liable to be

adjustment towards maintenance awarded in the judgment. The learned court below has given a finding in the impugned order that applicant Smt. Pooja is legally wedded wife of opposite party Ankit resided separately from her husband for just and sufficient cause. The applicant is unable to maintain herself and only on account of the fact that applicant is highly educated lady, it cannot be presumed that she is earning sufficiently on her own and she needs no maintenance from her husband for herself and her minor son.

Learned court below has given a finding of fact that opposite party is a highly education person who is M.Tech he is possessed of sufficient means, applicant Smt. Pooja deserves maintenance from her husband so that she could be able to live a life commensurate to social, economic and family background of parties, and with these findings learned court below has awarded maintenance at the rate of Rs.8,000/- per month to the applicant for maintenance of herself and her minor son.

The finding of learned court below is based on evidence on record and being a finding of fact based on evidence adduced by the parties during hearing it need no warrant any interference in present criminal revision, except the quantum of maintenance awarded in the impugned order.

Criminal revision preferred by opposite Ankit is devoid of any force as the grounds taken by the revisionist Ankit for setting-aside the maintenance awarded to applicant Smt. Pooja is not supported with evidence on record, whereas applicant Smt. Pooja in her Criminal Revision preferred for enhancement of amount of maintenance is supported with income tax return of the opposite party Ankit filed for various years as stated above on directions of this court.

In the income tax return for the assessment year 2023-2024 net salary of the revisionist is shown as Rs.6,89,800/- and accordingly his monthly income comes around Rs.56,000/-. Therefore, some modification is required so far as the quantum of maintenance is awardable to the applicant is concerned to make the amount of maintenance commensurate to present income of the opposite party Ankit and economic and genuine needs of the revisionist/applicant Pooja.

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. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependant on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Therefore, without disturbing the broad findings of fact given by learned court below, the amount of maintenance awarded to the applicant is being modified as below:-

The original applicant Smt. Pooja will receive maintenance from her husband Ankit from the date of filing of application to date of judgment at the rate of Rs.8000/- per month and thereafter at the rate of Rs.12,000/- per month from the date of judgment dated 10.05.2023 onwards. The impugned judgment and order dated 10.05.2023 stands partly modified, accordingly Criminal Revision No.3882 of 2023 (Smt. Pooja Vs. State of U.P. and another) is partly allowed and the Criminal Revision No.4255 of 2023 (Ankit Vs. State of U.P. and another) is dismissed

Order Date :- 6.1.2025

Ashish/-