

Court No. - 80

Case :- CRIMINAL REVISION No. - 2951 of 2024

Revisionist :- Smt. Madhuri Dwivedi

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Sudhir Kumar Srivastava

Counsel for Opposite Party :- Abhishek Tripathi,G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Instant Criminal Revision has been preferred against the order dated 18.09.2023 passed by learned Session Judge, District Kanpur Nagar in Criminal Appeal No.92 of 2019, Deepak Dwivedi Vs. Government of U.P. and another, Criminal Appeal No.95 of 2019 Smt. Madhuri Dwivedi Vs. State of U.P. and others and Criminal Appeal No.15 of 2021 Deepak Dwivedi Vs. Government of U.P. and others as well as order dated 30.05.2019 passed by the learned Additional Chief Metropolitan Magistrate, Court No.2, District Kanpur Nagar in Complaint Case No.3326 of 2011, Smt. Madhuri Dwivedi Vs. Shri Deepak Dwivedi and others, under Section 12 of the Protection of Women From Domestic Violence Act, quash the orders dated 18.09.2023 and 30.05.2019 and enhance the maintenance and also quash the order dated 18.09.2023 on the ground of abuse of law and legal process.

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. Learned counsel for the revisionist submitted that revisionist who is complainant before the trial court has filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, (hereinafter referred to as "the Act"), wherein residence order and maintenance order were sought. This application was allowed by learned Magistrate vide judgment and

order dated 30.05.2019, whereby opposite party No.1 was directed to pay Rs.5,000/- as maintenance to the complainant for maintenance of herself, and Rs.3,000/- as maintenance for her minor daughter Riya, thus total sum of Rs.8,000/- per month has been awarded to the applicant; and Rs.1 lakh has been awarded to the complainant as damages. It is also directed in the said order dated 30.05.2019 that any amount obtained by the complainant as maintenance by orders of any other court shall be liable to be adjustment.

4. One Criminal Appeal No. 92 of 2019 (Deepak Dwivedi Vs. Government of U.P. and another) was filed by the opposite party Deepak Dwivedi and Criminal Appeal No.95 of 2019 Smt. Madhuri Dwivedi Vs. State of U.P. and others was filed by original applicant under Section 29 of the Act before the Court of Session in Criminal Appeal bearing registration No.15 of 2021 Deepak Dwivedi Vs. State of U.P. was filed by opposite party Deepak Dwivedi against recovery warrant issued against the revisionist by the court in Misc. Case No.392 of 2021 Smt. Madhuri Dwivedi Vs. Deepak Dwivedi and others, an interim order was passed by appellate court in said Criminal Appeal No.15 of 2021 on 08.02.2021. Whereby implementation of order dated 05.02.2021 passed in said Misc. Recovery Case was stayed, if the opposite party deposits 50% of outstanding amount.

5. The impugned judgment and order passed by learned Magistrate dated 30.05.2019 was set-aside by appellate court and case was remanded to court of first instance to decide afresh in the light of observations made in appellate judgment.

6. Learned counsel for the revisionist submits that this Court at the stage of admission of this case, had passed an interim order dated 10.05.2024, wherein it was directed that the learned ACJM, Court No.2, Kanpur Nagar will ensure timely execution of impugned order of maintenance dated 30.05.2019 strictly in accordance with the guidelines issued in **Rajnesh Vs. Neha and another (2021) 2 SCC 324 and Rajesh Baboo Saxena Vs. State of U.P. and another** passed by this Court vide order dated 13.02.2024.

7. He further submitted that respondent No.2 is possessed of sufficient means to maintain the revisionist and her daughter who has now become major at present, but he has shirked his responsibility to maintain them. The revisionist is aggrieved by remand order passed by learned Session Court, as after passing of remand order the revisionist has been deprived of the maintenance awarded in the judgment of the court of first instance. Inasmuch as

learned appellate court has not fixed any interim maintenance during the pendency of maintenance case which was restored by appellate court in Criminal Appeals preferred against said judgment and order.

8. Accordingly he concluded that the impugned order passed by learned appellate court is not in accordance with law of maintenance and same is liable to be set-aside and judgment of learned court below deserves to be restored.

9. Per contra, learned counsel for the respondent No.2 submitted that learned Magistrate has awarded maintenance and damages to the complainant against opposite party No.1 Deepak Dwivedi who is husband of the revisionist. There is no illegality, irregularity and perversity in the impugned order passed by learned Appellate Court. The respondent No.2 has already been paying Rs.4,000/- as maintenance pursuant to order passed by competent court in proceedings under Section 125 Cr.P.C. He has paid interim maintenance to the tune of Rs.2000/- from 13.01.2012 to 23.01.2019 and at the rate of Rs.2,500/- from 23.01.2019 to 30.05.2019. Therefore, he has not been negligent to pay maintenance to his wife and daughter.

10. He next submits that revisionist has started legal practice since 2020 after completing his LLB. He is a struggling lawyer and he is not able to pay the maintenance awarded to the revisionist in the judgment and order passed by learned Magistrate. Km. Riya who is daughter of the parties has now become major and she is not entitled to seek maintenance from the date of attainment her majority.

11. Learned appellate court in the impugned judgment and order has allowed Criminal Appeal No.92 of 2019 Deepak Dwivedi Vs. State of U.P. and another and Criminal Appeal No.95 of 2019 Smt. Madhuri Dwivedi Vs. State of U.P. and two others and set-aside the impugned judgment and order 30.05.2019 passed by trial court in Complaint Case No.3326 of 2011 Smt. Madhuri Dwivedi Vs. Deepak Dwivedi and remanded the case for decision afresh in the light of observations made in appellate order.

12. The appellate court has also directed in paragraph No.53 of the impugned judgment that Criminal Appeal No.15 of 2021 filed against recovery warrant is allowed, if the appellant has complied with the interim order passed in said Criminal Appeal and deposited or paid 50% of outstanding amount, then there remains no need to proceed with recovery proceedings, and pursuant to this

order any amount of paid towards maintenance or economic relief if any, shall in maintenance Case No.3326 of 2011 shall be liable to be adjustment.

13. From perusal of appellant judgment it appears that appellate court has set-aside the judgment and order dated 30.05.2019 passed in Maintenance Case No.3326 of 2011 under Section 12 of the Act and remitted the matter to the court of first instance for decision afresh in the light of observations made in appellate order. The revisionist is aggrieved by the appellate order. Learned Appellate court has allowed Criminal Appeal preferred by both sides against the impugned judgment and order passed by learned Magistrate and remanded the matter to trial court for decision afresh by assigning and disclosing cogent reasons and after giving due consideration to stand taken by both the sides after meticulous examination of judgment under appeal. I find no substantial, legal or factual error in the impugned judgment and order. However, learned appellate court has not made a provision for interim maintenance to the revisionist, who is the original complainant during the pendency Complaint Case No.3326 of 2011 and taking a fresh decision by learned Magistrate therein pursuant to directions of appellant Court.

14. Therefore, it is directed that during the pendency of said complaint case under Section 12 of the Act, which stand restored pursuant to appellant judgment and order. The respondent No.2 shall pay and keep on paying Rs.4,000/- per month as interim maintenance to the complainant and Rs.3,000/- per month to her minor daughter. Thus, total Rs.7,000/- will be payable by the respondent No.2 to the applicants accordingly, during the pendency and upto decision of said complaint case by the Magistrate.

15. With above, modification, the impugned judgment and order is affirmed.

16. The revision stands **disposed of** accordingly.

Order Date :- 12.3.2025

Ashish/-