



2025:AHC:161216

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 2004 of 2024

Smt Akanksha And Another

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Ram Swaroop (Singh), Saurabh Pandey,
Shivakant Singh

Counsel for Opposite Party(s) : Chandra Prakash Garg, G.A.

Court No. - 91

HON'BLE MADAN PAL SINGH, J.

1. Rejoinder affidavit filed on behalf of the revisionists is taken on record.

1-A. Heard Shri Shivakant Singh, learned counsel for the revisionist, Shri Chandra Prakash Garg, learned counsel for the opposite party no.2 as well as learned A.G.A. for the State-opposite party no.1 and perused the record.

2. The instant criminal revision is directed against the judgment and order dated 05.02.2024 passed by the Principal Judge, Family Court, Chitrakoot in Case No. 133 of 2022 (Smt. Akanksha and another Vs. Dharmendra Singh), under Section 125 of the Code of Criminal Procedure, Police Station Karwi, District Chitrakoot, whereby the opposite party no.2 was directed to pay Rs.3,500/- per month as to the revisionist no.1 and Rs.1500/- per month to the revisionist no.2 as maintenance from the date of the application.

3. Learned counsel for the revisionists mainly argued that the trial court has not recorded its finding regarding income of the opposite party no.2 while opposite party no.2 has admitted his income from the salary till 28.02.2023, working as Area Manager in ICICI Bank, this fact was not considered by the trial court and awarded a meagre amount of maintenance to the revisionists no.1 and 2, which is not sufficient to carry out their livelihood.

4. Learned counsel for the revisionists further states that the opposite party no.2 is the owner of two cars, agricultural field, residential accommodation and further he was working as Area Manager at the time of passing of the impugned order but all these facts have been ignored and an arbitrary order has been passed without assessing the income of the opposite party no.2, hence the impugned order deserves to be set aside and quashed and the amount of maintenance deserves to be enhanced.

5. Learned counsel for the revisionists further submits that today he has filed rejoinder affidavit, annexing therewith some latest documents showing the credit of salary of the opposite party no.2, which reflects that on 02.02.2024 opening balance is Rs.0/- and on 01.02.2024 closing balance is Rs.1.0/-.

6. On the other hand, learned counsel for the opposite party no.2 and learned AGA stated that it is admitted fact that till 28.02.2023 the opposite party no.2 was working as Area Manager in ICICI Bank but he resigned later, regarding this fact he has filed paper no.34-Kha/1, which is an order of relieving from the job, wherein it has been mentioned that the opposite party no.2 had worked from 20.08.2018 to 31.03.2020. One another document has been filed by the opposite party no.2, which has been marked as paper no.74-Kha, which is an order of relieving, which shows that the opposite party had worked from 23.09.2022 to 18.03.2023. These facts have not been considered by the trial court while passing the order impugned. The trial court in its judgment has mentioned that after 18.03.2023 the opposite party no.2 is not working anywhere and further he resigned from service and now preparing for PCS exams to make his career bright and he is continuously paying the amount to the revisionists which has been directed by the trial court.

7. The counsel for the opposite party no.2 further argued that the opposite party no.2 has resigned from his service and under the change circumstances, the revisionists have remedy to file application under Section 127 of the Code of Criminal Procedure before the trial court for enhancement of the amount of the maintenance awarded in their favour.

8. On considering the facts and circumstances of the case, submissions made by learned counsel for the parties as well as learned A.G.A., perusal of record, it appears that in the impugned order it was admitted that till 2023 the opposite party no.2 was working as Area Manager in ICICI Bank and was getting salary of Rs.58,705/- but it was also proven fact, which have been recorded by the trial court at paper no.74-Kha, filed by the opposite party no.2, in which, it has been mentioned that opposite party no.2 had resigned from his job and further the relieving letter shows that the opposite party no.2 had worked from 23.09.2022 to 18.03.2023, meaning thereby at the time of passing of the order impugned he was not in job. However, keeping in view all these facts, the trial court has awarded maintenance of Rs.5000/- per month to the revisionists, out of which Rs.3500/- per month to the revisionist no.1 and Rs.1500/- per month to the revisionist no.2.

9. So far as the documents with regard to the income of the opposite party no.2 which has been filed by the learned counsel for the revisionists through

the rejoinder affidavit is concerned, it transpires from the salary slip annexed with the rejoinder affidavit, on 28.11.2023 an amount of Rs.1,31,158/- was credited in the account of the opposite party no.2 but the trial court without considering and assessing the income of the opposite party no.2 passed the impugned order and awarded Rs.5,000/- per month as maintenance to the revisionists, which is completely against the guidelines of the Apex Court **Rajnesh Versus Neha and Another (2021) 2 Supreme Court Cases 324; Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy AIR 2017 Supreme Court 2383 and Kulbhushan Kumar Vs. Raj Kumari (1970) 3 SCC 129.**

10. This Court being the Revisional, at this stage cannot re-appreciate the evidence and substitute its own finding in place of findings of fact recorded by the trial court unless the finding is otherwise but in the present case the trial court without assessing the monthly income of the opposite party no.2 awarded the maintenance of Rs.5,000/- per month to the revisionists (out of which Rs.3500/- per month to the revisionist no. 1 and Rs.1500/- per month to the revisionist no.2), which is perverse and against the fact and law, both.

11. In para no.38 of the judgment, the trial court has mentioned that the opposite party no. 2 is having two four wheeler vehicles and further he is having sufficient source of income to maintain the revisionists no.1 and 2 but despite this fact the trial court has awarded a meagre amount, keeping in view the inflation in the dearness, the amount of Rs.5,000/- awarded by the trial court is insufficient to maintain livelihood of two persons i.e. revisionist nos. 1 and 2. Further the trial court has not considered the fact that if a person has no source of income to maintain his livelihood, then how it could be possible for him to maintain two four wheeler vehicles.

12. Considering the facts and circumstances of the case and the fact that the trial court has passed the order impugned without assessing the monthly income of the opposite party no.2 further ignoring the fact that earlier the revisionist was working as Area Manager in ICICI bank as also he is having two four wheeler vehicles, hence the order impugned deserves to be set aside.

13. Accordingly, the instant criminal revision is **partly allowed**. The trial court is directed to decide the case for grant of maintenance after assessing the monthly income of the opposite party no.2, after providing opportunity of hearing to the parties to adduce their evidence in their favour, expeditiously, preferably within six months from the date of production of a certified copy of this order.

14. The opposite party no.2 shall continue to pay Rs.5,000/- per month as maintenance allowance, out of which, Rs.3500/- to the revisionist no.1 and Rs.1500/- to the revisionist no.2 from the date of application till the disposal of the case by the court concerned.

15. It is made clear that the trial court would be at liberty to decide the matter afresh without being influenced by any of the observations made herinabove.

September 11, 2025

Prajapati RK

(Madan Pal Singh,J.)