



2025:AHC:159191

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 2068 of 2024

Aseem Ahmad Khan

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Aklank Kumar Jain
Counsel for Opposite Party(s)	:	Bhartendu Pathak, G.A.

Court No. - 91

HON'BLE MADAN PAL SINGH, J.

1. Heard Mr. Aklank Kumar Jain, learned counsel for the revisionist, Mr. Bhartendu Pathak, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

2. The instant criminal revision under Section 397/401 Cr.P.C. has been preferred by the revisionist with a prayer to quash/set aside the judgment and order passed by the Additional Principal Judge, Family Court, Court No.2, Kanpur Nagar dated 19th January, 2024 in Case No. 747 of 2018 (Smt. Amna Khatoon Vs. Aseem Ahmad Khan) under Section 125 Cr.P.C. Police Station-Colonelganj, District Kanpur Nagar, whereby the revisionist has been directed to pay Rs. 10,000/- per month to opposite party no.2 towards maintenance allowance on 10th day of each calendar month from the date of passing of the impugned judgment.

3. The contention of the learned counsel for the revisionist is that admittedly, the opposite party no.2 is legally wedded wife of the revisionist. It is next contended that it is no doubt true that the revisionist has possessed degree of M.B.B.S. from Nepal, but for practicing in India, as per the statutory norms and guidelines framed by the Medical Council of India, every person, who possessed the degree of M.B.B.S. from abroad, has to pass the screening test conducted by the Medical Council of India and thereafter he will be eligible³ for practicing as M.B.B.S. doctor in India. Since the revisionist has not passed the said screening test conducted by the Medical Council of India, he is not doing any practice as M.B.B. S. doctor and that is why he earns no money and he has no other source of income. Learned counsel for the revisionist further submits that the aforesaid aspect of the matter has not been considered by the trial court while allowing the application of opposite party no.2 under Section 125 Cr.P.C. under the impugned judgment.

4. Learned counsel for the revisionist next submits that the trial court "while deciding issue no.3 under the impugned judgment to determine as to whether the opposite party no.2 is able to maintain herself or not?", in paragraph no. 16, which is at page-7 of the impugned judgment, has recorded that " it is admitted between the parties that opposite party no.2 is a B.D.S doctor and her registration as B.D.S. doctor has also been made in Medical Council of India and also she is capable to maintain herself but also as per own admission of opposite party no.2, she is unemployed and is residing at her parental home. " Further more, in paragraph no. 17 of its judgment, the trial court has opined that from the above it is established that the opposite party no.2 is capable of supporting herself but she is presently unemployed. On the basis of such contradictory finding and opinion, the trial court has awarded the monthly maintenance allowance in favour of opposite party no.2 under the impugned judgment, which is per se illegal. Referring to Section 125 (4) Cr.P.C., learned counsel for the revisionist submits that as per the aforesaid provision, if a wife is unable to maintainable herself, then in that circumstance, she will be entitled to get maintenance allowance from her husband. The trial court has also ignored the aforesaid provision while passing the impugned judgment. On one hand, the trial court has recorded that opposite party no.2 is able to maintain herself but on other hand, the trial court has opined that since opposite party no.2 is unemployed, she is liable for maintenance allowance. Such finding and opinion recorded by the trial court under the impugned judgment is totally illegal and arbitrary.

5. Further the learned counsel for the revisionist submits that as per own admission of opposite party no.2 before the trial court, she is a dental surgeon and was doing practice in her brother's nursing home at Kanpur. As such, opposite party no.2 being a wholly capable lady is not entitled to get any maintenance allowance.

6. On the above premise, learned counsel for the revisionist submits that the judgment and order passed by the trial court awarding maintenance allowance in favour of opposite party no.2 cannot be legally sustained and is liable to be set aside.

7. On the other-hand, the learned counsel for opposite party no.2 and the learned A.G.A. for the State have opposed the submissions made by the learned counsel for the revisionist by submitting that the trial court has not committed any illegality or infirmity in passing the impugned judgment and awarding Rs. 10,000/- per month to opposite party no.2 towards maintenance allowance from the date of passing of the impugned judgment so as to warrant any interference by this Court in exercise of revisional jurisdiction.

8. Besides the above, learned counsel for opposite party no.2 submits that it is admitted position that opposite party no. 2 is legally wedded wife of the revisionist therefore, it is legally obligatory upon the revisionist to maintain his wife. It is further submitted that the revisionist has degree of M.B.B.S. from Nepal and he earns handsome amount from practicing as a M.B.B.S. doctor. As such the amount of maintenance allowance to the tune of Rs. 10,000/- per month awarded in favour of opposite party no.2 cannot be said to be excessive or exorbitant.

9. On the premise, learned counsel for opposite party no.2 submits that since there is no illegality in the judgment impugned, the present criminal revision is liable to be dismissed.

10. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties as well as perusal of record including the impugned judgment, this Court finds that it is an admitted case that the opposite party nos. 2 is legally wedded wife of the revisionist. It is also admitted by opposite party no.2 before the trial court that she, having degree of B.D.S., is a dental surgeon and before her marriage, she was doing practice as dental surgeon in the hospital of her brother at Kanpur. Opposite party no.2 has also been get registered in Medical Council of India as dental doctor. It is impossible to believe that a lady, who has degree of B.D.S. and is a dental surgeon, is sitting idle and she has nothing to do anything. So far as the earning of the revisionist at present time is concerned, this Court finds that it has specifically been mentioned in paragraph no.7 of the impugned judgment that after completing his M.B.B.S. course and obtaining the degree, the revisionist is preparing for passing the screening test conducted by the Medical Council of India, which is statutorily required for practicing in India as M.B.B.S. doctor. As such, at present, the revisionist is unemployed.

11. This Court may also record that in the cross-examining during the course of trial, the opposite party no.2 has specifically stated that she does not know whether the revisionist has cleared his screening test or not or whether there is any statutory provision for clearing the screening test conducted by the Medical Council of India to any candidate who possess the degree of M.B.B.S. from abroad for practicing in India.

12. It is impossible to believe that a wife who is a highly educated woman will not have any information about her husband whether he is still preparing for clearing the screening test or not or he has cleared the said test.

13. This may sorry to record that the trial court in its judgment itself while deciding issue no.3 i.e. "as to whether opposite party no.2 is able to maintain

herself or not?", has taken a contradictory stand while awarding maintenance allowance in favour of opposite party no.2. "At one place, the trial court has recorded that opposite party no.2 having a degree of B.D.S., is a dental surgeon and earlier also she was practicing in the hospital of her brother as dental doctor, she is capable to maintain herself", but "on the other hand, the trial court that now she is unemployed, therefore, she is entitled to get maintenance allowance from her husband i.e. revisionist". On the basis of such contradictory stand/opinion, the trial court has passed the impugned judgment.

14. For deciding the said issue, it is also necessary for this Court to refer to Section 125 Cr.P.C., which reads as follows:

"125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b)

(c).....

(d).....

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

...."

15. From perusal of Section 125 (1) (a) Cr.P.C., it is crystal clear that maintenance allowance in favour of a wife can be awarded only if the Court finds that she is unable to maintain herself.

16. However, the trial court at one place has recorded its finding that opposite party no.2 is able to maintain herself, it has awarded the monthly maintenance allowance to the tune of Rs. 10,000/- per month in favour of opposite party no.2 while passing the impugned judgment. This Court is of the considered opinion that such contradictory findings of fact as returned by the trial court under the impugned judgment is wholly perverse and illegal and is liable to be set aside.

17. Consequently, the impugned judgment and order passed by the Additional

Principal Judge, Family Court, Court No.2, Kanpur Nagar dated 19th January, 2024 in Case No. 747 of 2018 (Smt. Amna Khatoon Vs. Aseem Ahmad Khan) Tabassum Vs. Parvez) under Section 125 Cr.P.C. Police Station-Colonelganj, District Kanpur Nagar is set aside.

18. The matter is remanded to the trial court to decided the Case No. 747 of 2018 (Smt. Amna Khatoon Vs. Aseem Ahmad Khan) under Section 125 Cr.P.C. Police Station-Colonelganj, District Kanpur Nagar afresh in accordance with law, by means of a reasoned speaking order, preferably within two months from the date of production of a certified copy of this order after affording opportunity of hearing to both the parties without granting any unnecessary adjournment to either of the parties, if there is no other legal impediment.

19. The present criminal revision is **allowed**.

There shall be no order as to costs.

September 9, 2025
Sushil/-

(Madan Pal Singh,J.)