



2025:AHC:159190

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 2070 of 2024

Parvez

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Rakesh Dubey
Counsel for Opposite Party(s)	:	G.A., Harish Chandra

Court No. - 91

HON'BLE MADAN PAL SINGH, J.

1. Rejoinder affidavit filed on behalf of the revisionist in the Court today is taken on record.
2. Heard Mr. Rakesh Dubey, learned counsel for the revisionist, Mr. Harish Chandra, learned counsel for opposite party no.2 and the learned A.G.A. for the State.
3. This criminal revision has been filed by the revisionist under Section 397/401 Cr.P.C. questioning the judgment and order dated 12th January, 2024 passed by the Principal Judge, Family Court, Hapur in Case No. 324 of 2021 (Smt. Tabassum Vs. Parvez), under Section 125 Cr.P.C., whereby the trial court while partly allowing the application filed by opposite party no.2 under Section 125 Cr.P.C. has directed the revisionist to pay Rs. 1,000/- per month to opposite party no.2 towards maintenance allowance from the date of filing of application under Section 125 Cr.P.C. and Rs. 5,000/- per month from the date of passing of the impugned judgment i.e. 12th January, 2024.
4. Learned counsel for the revisionist submits that it is no doubt true that opposite party no.2 is legally wedded wife of the revisionist but she is a woman of independent nature like a free bird. Since the marriage the behaviour of opposite party no.2 with the revisionist and his family members was very bad. She used to abuse the revisionist and his family members. On her own free will, opposite party no.2 left her matrimonial house and started living separately from her husband at her parental house without any reason. It is further submitted that the revisionist is a private driver of car of one Hazi Nafeesh and from there, he is getting salary of Rs. 7,000/- per month and in

that circumstance, the amount of monthly maintenance allowance awarded by the trial court under the impugned judgment to the tune of Rs. 5,000/- in favour of opposite party no.2 is much excessive and not incommensurate with the income of the revisionist.

5. On the above premise, learned counsel for the revisionist submits that since the impugned judgment is based on incorrect appreciation of evidence, the same is unsustainable in the eyes of law. As such the same is liable to be set aside.

6. On the other-hand, the learned counsel for opposite party no.2 and the learned A.G.A. for the State has 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. 1,000/- per month in favour of opposite party no.2 from the date of filing of application and Rs. 5,000/- from the date of passing of the impugned judgment towards maintenance allowance so as to warrant any interference by this Court in exercise of revisional jurisdiction.

7. Besides the above, learned counsel for opposite party no.2 submits that the revisionist is a driver of JCB and he earns Rs. 30,000/- per month. As such, he is fully capable to maintain her wife i.e. opposite party no.2. It is further submitted that in the marriage, the parents of opposite party no.2 gave Rs. 1 lakh to the revisionist but after marriage the revisionist and his family members again demanded Rs. 2 lakhs and when such additional demand of dowry was not fulfilled by the parents of opposite party no.2, she was subjected to cruelty and harassment by the revisionist and his family members. In that regard opposite party no.2 has also lodged first information report against the revisionist and his family members, which was registered as Case Crime No. 337 of 2021 under Sections 498-A, 323, 504 and 506 I.P.C. and Section 3/4 D.P. Act at Police Station-Mundali, District-Meerut. Since she was being tortured and beatings continuously by the revisionist and his family members due to non-fulfillment of additional demand of dowry, she had no other option but to left her matrimonial house and at present she is living separately from her husband at her parental house on the negligence on the part of the revisionist and also with sufficient reason.

8. Learned counsel for opposite party no.2 further submits that there is nothing to record from which it can be said that opposite party no.2 is able to maintain herself. Since the revisionist is an able bodied person and a skill driver, he is under legal obligation to maintain his wife i.e. opposite party no.2.

9. He lastly submits that keeping in mind the present inflation, the amount of monthly maintenance allowance awarded by the trial court under the impugned judgment cannot be said to be excessive. He, therefore, 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 no. 2 is legally wedded wife of the revisionist.

11. So far as the separate living of opposite party no.2 from the revisionist is concerned, this Court finds that while passing the impugned judgment the trial court has recorded categorical finding of fact that the opposite party no.2 is living separately from her husband i.e. the revisionist with sufficient cause as she was repeatedly tortured and harassed by the revisionist and his family members. Since this Court sits in a revisional jurisdiction, it cannot embark upon a re-appreciation of evidence as suggested by the learned counsel for the revisionist. The evidence led before the trial court has been dealt with by the trial court while passing the impugned judgment. Therefore, this Court is of the view that this Court cannot substitute its own finding while exercising its powers under Section 397/401 Cr.P.C.

12. Qua the income of the opposite party, from the perusal of the impugned judgment, it transpires that there is nothing on record to establish as to what is the exact income of the revisionist. There is only oral averments made by opposite party no.2 and the revisionist before the trial court. As per the version of opposite party no.2, the revisionist is an skill driver of JCB and he earns Rs. 30,000/- per month, whereas as per the own case of the revisionist he is only a driver of a private car and he earns Rs. 7,000/- per month as salary.

13. It is no doubt true that the opposite party no.2 is legally wedded wife of the revisionist and it is obligatory upon the revisionist to maintain her wife i.e. opposite party no.2. The revisionist is not physically deformed, an able bodied person and also able to earn money. In today's time, every person very well knows that a person having good driving skills will earn at least Rs. 600/- per day, meaning thereby this monthly income would be Rs. 18,000/-. Thus, in that circumstance if it is considered that the revisionist is a skill driver, then he would at least earn Rs. 600/- per day, meaning thereby that his total monthly income would reach at Rs.18,000/- per month.

14. The Hon'ble Supreme Court of India in the cases of **Rajnish Vs. Neha**

reported in (2021) 2 SCC 324 and **Kulbhushan Kumar (Dr) v. Raj Kumari** reported in (1970) 3 SCC 129, has observed that the maintenance allowances can be granted up to the extent of 25% of the net income of the husband. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury, the income of a husband can be fixed.

15. Keeping in view of the income of revisionist as well as guidelines issued by the Hon'ble Apex Court in **Rajnesh v. Neha and Kulbhushan Kumar (Dr) (Supras)**, this court is of the considered opinion that the amount of maintenance allowance fixed by the court below is not commensurate as per the law laid down by the Hon'ble Supreme Court in the aforesaid cases, hence, it is reduced to Rs. 4,500 from Rs. 5,000/- per month to the opposite party no.2 (wife) and the same shall be payable from the date of passing of the impugned judgment.

16. Consequently, judgment and order dated 12th January, 2024 passed by the Principal Judge, Family Court, Hapur in Case No. 324 of 2021 (Smt. Tabassum Vs. Parvez), under Section 125 Cr.P.C., is modified to the extent that now the revisionist shall pay Rs. 4,500/- per month to opposite party no.2 towards maintenance allowance from the date of passing of the impugned judgment.

17. It is also clarified that the arrears of amount towards maintenance allowance as awarded by the court below shall be calculated on the basis of amount of maintenance allowance as fixed by this Court herein above and after that if it is found that any amount has been paid in excess, the same shall be adjusted from the amount to be paid.

18. The present criminal revision is, accordingly, **partly allowed**.

19. There shall be no order as to costs.

September 9, 2025
Sushil/-

(Madan Pal Singh,J.)