

Court No. - 80

Case :- CRIMINAL REVISION No. - 5532 of 2023

Revisionist :- Sanjay Kumar

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

Counsel for Revisionist :- Sushil Kumar Pandey

Counsel for Opposite Party :- G.A.,Prashant Krishan

Hon'ble Ram Manohar Narayan Mishra,J.

1. The instant Criminal Revision has been filed against the impugned judgment and order dated 8.8.2023 passed by the learned Principal Judge, Family Court, Muzaffarnagar in Criminal Case No.17 of 2019 (Smt. Neetu Devi Vs. Sanjay Kumar), under Section 125 Cr.P.C, whereby original applicant- Smt. Neetu Devi has been awarded maintenance of Rs.4,000/- per month from the date of filing of the application dated 8.1.2019.

2. At the very outset, learned counsel appearing for the revisionist has submitted that the maintenance awarded to minor children of the revisionist and Opposite Party No.2 namely, Varuni Chaudhary (daughter) and Sharad (son) in Criminal Misc. Case No.16 of 2019 has not been assailed by him.

3. Heard learned counsel appearing for the revisionist and learned A.G.A. for the State.

4. None appeared on behalf of Opposite Party No.2.

5. Learned counsel for the revisionist has submitted that the marriage of the revisionist was solemnized with Opposite Party No.2- Smt. Neetu Singh on 02.02.2006 according to Hindu rites and rituals and out of the said wedlock, two children namely, Varuni Chaudhary (daughter) and Sharad

Chauchary (son) were born, who have also separately filed their maintenance case. Thereafter, Opposite Party No.2 lived with the revisionist in District Bareilly for the period from 2009 to 2012 where daughter Km. Varuni was born. Thereafter, revisionist was transferred to Suratgarh (State of Rajasthan) where the revisionist lived there with Opposite Party No.2 upto 2014, where son Sharad was born. Thereafter, he was transferred to Nagaland but the revisionist being posted in nexal area did not keep his family with him in Nagaland for security reason. He was retired on 30.9.2018 from the Indian Army.

6. The main reason for the dispute between spouse and revisionist was that the father of Opposite Party No.2 borrowed Rs.87,000/- from the revisionist and when he impressed on his wife to bring the amount from his father, she became furious and call her brother and went to her parental place along with children. When he visited the in-laws house to bring the wife and children, she misbehaved with him and threatened him to implicate in litigation. Opposite Party No.2 has not assigned any reason in the application for maintenance, as to why, she preferred to live separately from her husband. The revisionist has taken every effort to reconcile the differences with his wife and persuaded her every now and then to come to his place and reside and reunite with him. The revisionist is still ready to keep his wife and children with him and provide major share of pension, which is prescribed Rs.19,095/- in the impugned judgment. However, Opposite Party No.2 has categorically denied to live with the revisionist on whatsoever the case may be. The revisionist has not assailed the maintenance

awarded to the minor children in the impugned judgment, but so far as Opposite Party No.2 is concerned he submits that her claim for maintenance is barred under Section 125 Cr.P.C. as she has abandoned her husband and is residing separately without sufficient cause.

7. Per contra, learned A.G.A. has submitted that the impugned judgment and order and material placed on record shows that the impugned award is not on higher side and only Rs.4,000/- has been awarded as maintenance to Opposite Party No.2, which needs no interference.

8. A perusal of the application for maintenance filed by Opposite Party No.2 under Section 125 Cr.P.C. reveals that the revisionist has deserted her five years earlier to the filing of the application dated 8.01.2019. She made every effort to live with her husband but no change was noticed in the attitude of revisionist. He was posted in Indian Army. Despite much effort made by the applicant, the revisionist did not get ready to keep the applicant with him and he has now retired and is receiving Rs.30,000/- as monthly pension and he has also agricultural land. The applicant requires Rs.30,000/- as maintenance for herself and her children, but revisionist has refused to pay. He has received Rs.25/- lacs as retiral dues, therefore, she may be provided Rs.20/- lacs as lump sum towards maintenance.

9. The revisionist has stated in his statement dated 29.03.2019 filed before the Court below that he has not deserted the applicant, but the applicant herself deserted and chose to live separately along with her two children. He tried to make compromise with his wife, but due to non

cooperation of the revisionist he could not succeed. Even he tried to live in a rented house at Meerut where elder sister of revisionist resides, but the applicant was not prepared even to live in Meerut and she insisted to live Muzaffarnagar at her parental house.

10. The Opposite Party No.2 in his affidavit dated 20.08.2019 has not assigned any reason as to why she is living separately.

11. In cross examination also Opposite Party No.2 has stated that her father is ill, he has 15 bighas agricultural land and agricultural activities are being carried out by her brother who is also working and she alongwith two children are residing in a rented house at Meerut. She has to pay Rs.4,000/- towards house rent and Rs.500/- as electricity dues and she earns nothing. Her husband in October, 2018 paid Rs.22,000/- to her last time. Even if her husband keeps her alongwith children at in-laws place, she would not live with him. Even if Sanjay, her husband, insist her to live alongwith children in Meerut and gave the entire pension and income to her, then also she would not live with him. She is residing separately from her husband for the last ten years and they were not co-inhabited.

12. Sub-section (4) of Section 125 Cr.P.C. provides as under:-

"4.No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent."

13. From perusal of the pleadings and evidence of the original application, it is evident that Opposite Party No.2, herself does not disclose any reason to live separately from her husband-revisionist. Therefore, the claim of the applicant to seek maintenance from her husband is barred under Section 125 (4) of Cr.P.C. as she has refused to live with her husband without any sufficient reason.

14. From perusal of judgment of the Court below, it is also evident that Opposite Party No.2 has refused to live with her husband without sufficient reason, therefore, the learned Court below has committed legal error in granting maintenance to Opposite Party No.2 (wife of the revisionist), as her claim for maintenance has been barred. The impugned judgment and order so far as granting of maintenance to Opposite Party No.2- Smt. Neetu Devi is concerned, the same is vitiated by legal infirmity and the same is liable to be **set aside**.

15. The revision is, accordingly, **allowed** in respect of Maintenance Case No.17 of 2019. The maintenance awarded to minor children of the revisionist is patently low and insufficient. It is desirable on the part of the Court concerned to revise the same keeping in mind the pensionary income of revisionist, if Opposite Party No.2 files an application under Section 127 Cr.P.C. before the Court below at the instant of the minor children.

Order Date :- 7.2.2025/SFH