

Court No. - 80

Case :- CRIMINAL REVISION No. - 5792 of 2023

Revisionist :- Durgesh Kumar

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

Counsel for Revisionist :- Rakesh Dubey

Counsel for Opposite Party :- Devendra Tiwari Deva,G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Heard learned counsel for the revisionist, learned counsel for the opposite party No.2, learned A.G.A. for the State-respondent and perused the material available on record.

2. The instant criminal revision has been preferred by the revisionist against the impugned judgment and order dated 24.8.2023, passed by learned Additional Principal Judge, Family Court, Court No.-4, Kanpur Nagar, in Case No.1897 of 2021 (Smt. Jyoti Dixit and others Vs. Durgesh Kumar), under Section 125 Cr.P.C., whereby the application of maintenance preferred by the opposite party No.2 is allowed and learned court below granted interim maintenance of Rs.6,000/- in favour of the opposite party No.2 per month from the date of filing of application for interim maintenance.

3. Learned counsel for the revisionist submitted that the opposite party No.2 Jyoti Dixit had filed an application under Section 125 Cr.P.C. before the family court, Kanpur Nagar on 16.10.2021 with averment that she is legally wedded wife of opposite party Durgesh Kumar and their marriage was solemnized in March, 2013 in accordance with Hindu rites and rituals in a temple. Her father has given adequate dowry and gifts in the marriage but her husband and opposite party and his family members were not satisfied with the dowry and due to which they tease her. The opposite party even insulted her father and family members. Her family members made her understand that things will be settled in course of time. The couple was blessed with a child namely Lado @ Pihu out of their wedlock. She has also

stated that the opposite party is posted in Police Department as Constable and he earns upto Rs.60,000/- per month, however, he established extramarital relations with another woman namely, Shalini and when she raised objection to this, opposite party desired to seek divorce from the applicant. She is presently living at her parental place for around one year. She is not having any sufficient source of income. She has claimed maintenance at the rate of Rs.25,000/- per month from the opposite party.

4. Learned counsel for the revisionist further submitted that in written report, the revisionist has categorically stated that neither the applicant is his legally wedded wife nor the girl child namely, Pihu was born out of their wedlock. A preliminary objection was raised by the revisionist before the court below at the time of hearing of application for interim maintenance that parties are not married couple but no finding has been given thereon in impugned order and consideration has been taken on said preliminary ground whereas in this case prima facie established that the revisionist and respondent No.2 are not married thus, no question of any regular or interim maintenance arises. He conceded that strict proof of marriage is not required in maintenance proceedings but the maintenance court is atleast required to give a finding on its prima facie satisfaction with regard to solemnization of marriage between the parties. The revisionist solemnized marriage with one Shalini in year 2015 and he was never married to respondent No.2. He also submitted that on complaint dated 15.06.2021 of respondent No.2, a departmental enquiry was instituted against the revisionist, in which he was found guilty of establishing extra marital relationship with some other woman and on that count, his services were terminated. The revisionist has filed an appeal before the appropriate forum against said order of dismissal. He lastly submitted that the respondent No.2 had admitted in departmental proceeding that she was married to one Alok Tiwari and she was never married with Durgesh Kumar, the delinquent. She has even stated that the photographs filed on record of departmental proceeding is not of their marriage as Durgesh Kumar used to visit her place in usual manner, he was acquainted with her family members. She has also admitted in departmental

proceeding that her marriage with Alok Tiwari was never dissolved by orders of competent forum. Even in departmental proceedings revisionist and respondent No.2 are held to be in long living in relationship.

5. Per contra, learned counsel for the opposite party Nos.2 to 4 submitted that the revisionist was posted as a police constable and due to undue pressure exerted on respondent No.2, she has given above statement in departmental proceeding but just after recording of statement, she has filed an application before the Circle Officer G.R.P. Agra on 23.8.2021 that opposite party/revisionist is threatening and exerting pressure on her to depose in his favour. He had also threatened her that if due to her, he is deprived of his job, he would kill her alongwith her family members. Therefore, no reliance can be placed on said statement of respondent No.2 in departmental proceeding. In petition under Section 125 Cr.P.C., the respondent No.2 has categorically pleaded that she is legally wedded wife of revisionist and a girl child was born out of their wedlock. Even in record of nursing home, where the girl child was born on 12.11.2019, the name of her parents was recorded as Durgesh Kumar and Jyoti and learned court below has rightly placed reliance on that documents. The impugned order is based on material on record and no interference is warranted therein.

6. From perusal of record it appears that respondent No.2 Jyoti Dixit daughter of Ashwani Kumar Dixit filed an application on 15.06.2021 before the Superior Officer, wherein she stated that her marriage with revisionist was solemnized in the year 2013 at Vaishno Devi Mandir, Barra. That during subsistence of her marriage revisionist performed second marriage with a woman namely Shalini, and he neglected to maintain her. A preliminary inquiry was entrusted to Deputy Superintendent of Police, Railway Agra who submitted its inquiry report on 15.10.2021, wherein the Inquiry Officer stated that police constable Durgesh Kumar Sonkar was posted in in the year 2021 in GRP AGra. He was found guilty of solemnizing second marriage with woman namely Shalini Sonkar in the year 2015. Therefore, he was found guilty under U.P. Subordinate Police Officers Rank (Punishment and

Appeal) Rules, 1991 and departmental action was directed against him. The Disciplinary Authority in final order dated 20.10.2022, placing reliance on inquiry report submitted by Circle Officer held that in departmental inquiry Constable Durgesh Kumar Sonkar was found guilty of misconduct of having relationship with other woman during subsistence of his marriage. On the basis of evidence appearing on record, it is found that he was in relationship with Jyoti Dixit for 10 years and a daughter namely Pihu was born out of their relationship, and this fact is mentioned in birth certificate issued from J.K. Hospital dated 12.11.2019, in which name of mother is shown as Jyoti Dixit and in the place of father's name delinquent constable name is mentioned. He had filed an affidavit in departmental proceedings that he will take care of opposite party Jyoti Dixit and his daughter Km. Pihu, thus he has acknowledged Pihu as his daughter.

7. In final order it is also stated that delinquent constable had solemnized remarriage with Shalini Sonkar, and complainant Jyoti Dixit was not aware of this fact at that time. He was posted in GRP after transfer and started living with Shalini Sonkar and his family members.

8. Learned counsel for the revisionist has drawn attention of the court towards an affidavit dated 07.08.2021, during departmental proceedings against the revisionist, wherein she stated that she was married with Alok Tiwari, who is serving in SBI, Lucknow. Some dispute arose between the parties after one year of marriage, and she came back to her parental place at that time, thereafter neither her husband Alok Tiwari come to her to take her back, nor she went to her matrimonial home, their marriage has not been dissolved up till now. She met constable Durgesh Sonkar in the marriage of her friend and they used to talk on telephone since then. The marriage of Durgesh was performed with Shalini in December 2015, thereafter he reduced telephonic conversation with her. She filed a complaint against Durgesh due to the fact that he discontinued communication with her. She did not want any action against him on her application. In this context, respondent No.2 filed an application dated 21.08.2021 before Circle Officer,

GRP Agra, wherein she stated that she had filed a sworn statement dated 07.08.2021, behest of Constable Durgesh with whom she solemnized marriage in the year 2013 and was living with him since then. They were in matrimonial relationship after marriage but her husband contracted remarriage by a woman namely Shalini after 4-5 years, she had given birth to a girl child out of wedlock with her husband Durgesh Kumar, but he stopped payment of her expenses and he would engage in abusing and threatening her. He had threatened her that if she would not give her statement in his favour in departmental proceedings and if he lost his service, then he will kill all her family. The statement which has been recorded in the office is out come of threatening hurled by the constable Durgesh Kumar, the revisionist.

9. Learned counsels for the revisionists has filed Certificate of Registration of Marriage with Shalini Sonkar bearing date 27.10.2021 as Annexure No.6, wherein date of marriage is shown as 03.12.2015.

10. In view of retraction of earlier statement given by her before the Police Officials in departmental proceedings on 07.08.2021 by subsequent application filed by respondent No.2 before C.O. GRP on 23.07.2021, but no finding can be given at this stage that she was ever married with some Alok Tiwari and she was only on friendly terms with the revisionist before education of evidence by the parties on this issue. The instant criminal revision has been preferred against grant of interim maintenance by learned court below to respondent No.2. Revisionist is under obligation to pay maintenance to the respondent No.2 and 3.

11. Learned court below has observed in the impugned order that although revisionist is not serving in police department at present due to his dismissal from service on complaint filed by the applicant, yet he has not shown his monthly income in affidavit of disclosure of income filed in compliance of judgment of Hon'ble Supreme Court. He has shown in this affidavit on Form No.27 that he has been repaying installments of loan taken from Bank. He has not shown his source of income by which he has been paying

installments of loan. In this backdrop learned court below has awarded Rs.6,000/- as interim maintenance to the applicant from the date of filing of application on 02.05.2022. Arrear is directed to be paid in three equal installments. It is also directed in the impugned order that any amount obtained by the applicant as maintenance in any other case, shall be liable to be adjusted.

12. On perusal of material on record it appears that revisionist and respondent No.2 were living as husband and wife, they were also presenting themselves as husband and wife and this also reflects from hospital record where in birth record of daughter of respondent No.2 Pihu, the parties name is shown as her parents. Therefore, I find no substantial error in the finding recorded by learned court below, whereby revisionist has been directed to pay interim maintenance to the applicant.

13. However, keeping in view the fact that revisionist has lost his service from police department and his present income has not been established on record, the amount of interim maintenance is liable to be slightly reduced to enable the revisionist to pay interim maintenance to the respondent No.2.

14. It is therefore, directed that the amount of interim maintenance is reduced from Rs.6,000/- to Rs.5,000/- per month. Other terms and conditions imposed in the impugned order are not being interfered with.

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

Order Date :- 3.1.2025

Kamarjahan/Ashish/-