

Court No. - 80

Case :- CRIMINAL REVISION No. - 6069 of 2023

Revisionist :- Amit Kumar

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

Counsel for Revisionist :- Sudist Kumar

Counsel for Opposite Party :- Daya Shanker Pandey,G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Instant Criminal Revision has been preferred against the judgment and order dated 22.09.2023 passed by learned Principal Judge, Family Court, Gautam Buddh Nagar, in Maintenance Case No.356 of 2019, under Section 125 of Cr.P.C.. By the impugned order learned court below has awarded maintenance to the applicant No.1 Smt. Nishi at the rate of Rs.25,000/- per month and Km. Taushika her minor daughter at the rate of Rs.20,000/- per month, which is payable from the date of filing of application dated 16.07.2019. Thus the court below has awarded total maintenance to the tune of Rs.45,000/- per month to the original applicant, which is payable by the revisionist to the opposite parties before the court below.

2. Heard learned counsel for the revisionist, learned counsel for the respondent No.2 and 3 and learned A.G.A. for the State-respondent and perused the material available on record.

3. Learned counsel for the revisionist submits that this is admitted fact that marriage of revisionist was solemnized with respondent No.2 on 30.04.2015 according to hindu rites and rituals in NOIDA (Gautam Buddh Nagar), she gave birth to a girl child on 05.12.2018, some matrimonial discord took place between the parties and they parted their ways during the course of time. Respondent No.2 filed an application under Section 125 Cr.P.C. before Principal Judge, Family Court, Gautam Buddh Nagar for seeking maintenance for herself and her minor daughter. As her minor daughter to the tune of Rs.1,30,000/- per month, Rs.10,00,000/- as lumpsum of maintenance and Rs.1,00,000/- as cost of litigation. During the pendency of application under Section 125 Cr.P.C. an interim maintenance to the tune of Rs.20,000/- per month was awarded by the court below to the applicants, which the revisionist has been paying till passing of impugned judgment and order dated 22.09.2023, whereby application under Section 125 Cr.P.C. was allowed to the extent

that applicants are awarded total maintenance to the tune of Rs.45,000/- per month from the date of filing of application as stated above.

4. Counsel for the revisionist next submitted that revisionist is not having his own independent source income, and he only extends helping hand in his family business. The court below has awarded such an exorbitant amount of maintenance to the applicants against the revisionist without any cogent reason and justification. The revisionist is only intermediate pass out, whereas respondent No.2 is well qualified lady and she is a registered Advocate who was practicing earlier in court in district Gautam Buddh Nagar. She is qualified as well as an earning member herself, she is not dependent for her maintenance on revisionist. he is ready and willing to maintain his wife and daughter.

5. The court below has placed reliance on bald statements of respondent No.2 regarding his monetary resources, which is not supported with any cogent evidence, inasmuch as in income tax return of the revisionist himself his annual income is shown as Rs.4.5 lakh and in this way his monthly income is less than Rs.40,000/- per month. In this situation, it is virtually impossible for him to pay such an exorbitant amount of maintenance in compliance of the impugned order. He made every effort to keep his wife and daughter with him and made much persuasion to his wife, but she has disappointed her. She is only interested to blackmail him and extort money from him. She has herself abandoned the revisionist without any justifiable reason. The allegations made by the respondent No.2 against the revisionist are false and fabricated.

6. Per contra, learned counsel for the respondent Nos. 2 and 3 submitted that revisionist belongs to a very affluent family, this fact has emerged in evidence that the revisionist and his family possessed two cars and a well established business, he has large house in NRI city, which is in area of 300 sq. yards, which current price is Rs.2 Crore as per admission of the revisionist. He also owns car.

7. He next submitted that although the respondent No.2 is a law graduate and she got herself registered as practicing advocate, yet she left practice after six months and presently she is not earning anything on her own. He also submitted that revisionist has not filed any statement regarding particulars of the amount of interim maintenance/maintenance paid by him to the applicants. As per his knowledge revisionist has even left paying interim maintenance as

has been awarded earlier and at present he is paying nothing to the applicants. The impugned order is based on proper appreciation of evidence on record and revisionist is able to provide maintenance to the applicants/respondent Nos. 2 and 3 as directed in the impugned order. He also works in real estate in the office of his father in Delhi.

8. The parties have filed their statements of assets and liabilities through affidavit before the court below in compliance of guidelines issued by Hon'ble Supreme Court in Rajnesh Vs. Neha.

9. This fact could not be rebutted by the revisionist that respondent No.2 has left her legal practice as an Advocate long before filing of application for maintenance. She has claimed that she undertook legal practice only for six month and she is not earning anything from any source to maintain herself. The revisionist has stated in his affidavit of disclosure of assets and liabilities, and he is intermediate pass out, he is not having any independent source of income. He works in business of his father and whatever his father pays to him he earns his livelihood from that money. He is not having any agricultural land, he is unemployed. However, he has admitted that he has a 300 Sq. yard's house in NRI city, worth Rs.2 Crore. He files his income tax return, he showed his annual income as Rs.4 to 5 lakh, in last income tax return. He is engaged in real estate business alongwith his father.

10. The respondent No.2 has stated in her evidence that she is unable to maintain herself as well as her minor daughter Taushika born out of wedlock of opposite party Amit Kumar. She has obtained LLB degree, but she is not in practice. Revisionist has admitted in his evidence that he has two four wheeler cars i.e. i-10 car and the other is Honda City. He has been filing income tax return since the year 2015. She has stated in her evidence as PW-1 that her marriage with Amit Kumar was solemnized on 20.01.2015, sufficient dowry and gifts were provided to opposite party from her side in the marriage, even then she was insulted and taunted for bringing lessor dowry by her in-laws, his husband became violent and engaged in marpeet with her, once he has pointed out pistol towards her and threatened her with life. She was abused by her husband and in-laws every now and then, she was placed under restraint by her husband and in-laws in the house, even she was scandalized by casting uncalled for aspersions on her character. On being fed up with continuous harassment, torture and insult she was left with no other option but to shift to her parental place alongwith her milk fed little child.

11. Considering the rival submissions of the learned counsel for the parties and on meticulous perusal of material and evidence on record, this Court is of considered opinion that keeping in view his own admission regarding his financial status he appears to be a man of sufficient economic resources and is able to maintain his wife whom he has neglected to maintain. The evidence on record reflects that due to ill-treatment of the revisionist, respondent No.2 was compelled to live separately from her alongwith her minor child. However, there is no documentary evidence to fix his monthly income with exactitude. Learned court below has awarded maintenance to the applicant No.1 at the rate of Rs.25,000/- per month and to applicant No.2 her minor child who was seven months old at the time of filing of application at the rate of Rs.20,000/- per month from the date of filing of application dated 16.07.2019. Thus, the total maintenance has been awarded to the applicants is Rs.45,000/- per month.

12. From evidence appearing on record it can easily be conceived that revisionist is a man of earning, but maintenance at the rate of Rs.45,000/- requires a proof that earning of the revisionist is more than Rs.1,50,000/- per month.

13. Hon'ble Supreme Court in **Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy AIR (2017) SC 2383** held that an amount of maintenance awarded to the wife can be 25% of the husband's net salary. There is no such proof on record. Therefore, the quantum of maintenance awarded to the respondent Nos. 2 and 3 in higher side and same is not fully corroborated with martial and evidence. Therefore, quantum of maintenance is liable to be reduced to some extent in larger interest of justice and also to strike a balance between competing interest of the contesting parties.

14. With foregoing discussion and finding, it is directed that the quantum of maintenance awarded to the respondent No.2 Smt. Nidhi is reduced from Rs.25,000/- to Rs.20,000/ per month and maintenance awarded to respondent No.3 Taushika aged about six months at present, is reduced from Rs.20,000/- to Rs.10,000/- per month. Therefore, the total maintenance awarded to respondent Nos. 2 and 3 in impugned judgment and order is reduced from Rs.45,000/- per month to Rs.30,000/- per month accordingly.

15. The impugned order stands modified accordingly, and revision is **partly allowed**.

Order Date :- 7.1.2025/Ashish/-