



2025:AHC:165322

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 2433 of 2024

Brijesh

.....Revisionist(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Dharm Singh Parmar
Counsel for Opposite Party(s)	:	Ajatshatru Singh, G.A.

Court No. - 91

HON'BLE MADAN PAL SINGH, J.

1. Heard Mr. Dharam Singh Parmar, learned counsel for the revisionist, Mr. Ajatshatru Singh, learned counsel for opposite party nos.2 and 3 and the learned A.G.A. for the State.

2. This criminal revision has been filed by the revisionist under Section 397/401 Cr.P.C. with a prayer to set aside the judgment and order dated 7th March, 2024 passed by the Principal Judge, Family Court, Hamirpur in Case No. 195 of 2019 (Smt. Raj Kumari & Another Vs. Brijesh) under Section 125 Cr.P.C. Police Station-Majhgawan, District-Hamirpur, whereby the trial court while allowing the application filed by opposite party nos.2 and 3 under Section 125 Cr.P.C. has directed the revisionist to pay Rs. 2,000/- per month to opposite party no.2 (wife) and Rs.500/- per month to opposite party no.3 (son) i.e. total Rs. 2,500/- per month towards maintenance allowance from the date of filing of instant application and Rs. 4,000/- per month to opposite party no.2 and Rs. 1,000/- per month to opposite party no.3 from the date of passing of the impugned judgment.

3. The arguments advanced by the learned counsel for the revisionist are in two folds:

(i) the revisionist left her matrimonial house without any cogent reason and she started living separately from her husband i.e. revisionist along with her minor son at her parental house, therefore, she is not entitled to get any maintenance allowance, and

(ii) since the revisionist is doing the work of labourer at a brick-kiln, which is a temporary job and has no other source of income, the monthly maintenance allowance as awarded by the trial court under the impugned judgment in favour of the opposite party nos. 2 and 3 is too excessive and exorbitant and

not incommensurate with the exact income of the revisionist.

4. The learned counsel for the revisionist submits that it is no doubt true that the marriage of the revisionist was solemnized with opposite party no.2 on 31st May, 2007 and she is legally wedded wife of the revisionist, whereas opposite party no.3 is his real minor son.

5. On the above premise, learned counsel for the revisionist submits that since the trial court while passing the impugned judgment has not considered the evidence adduced before it, the same cannot be legally sustained and is liable to be set aside.

6. On the other-hand, the learned counsel for opposite party nos. 2 and 3 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. 2,000/- per month to opposite party no.2 (wife) and Rs.500/- per month to opposite party no.3 (son) i.e. total Rs. 2,500/- per month towards maintenance allowance from the date of filing of instant application and Rs. 4,000/- per month to opposite party no.2 and Rs. 1,000/- per month to opposite party no.3 from the date of passing of the impugned judgment, so as to warrant any interference by this Court in exercise of revisional jurisdiction.

7. Besides the above, learned counsel for opposite party nos.2 and 3 submits that opposite party no.2 is living separately from her husband i.e. revisionist along with her minor son at her parental house on sufficient cause because since marriage the opposite parties no.2 was being tortured and harassed by the revisionist and her in-laws for demand of a motorcycle as additional dowry. With regard to the aforesaid cruelty opposite party no.2 filed complaint case no. 938 of 2012 under Section 498-A, 323, 504 and 506 I.P.C. and also Section 3/4 D.P. Act in which on the basis of compromise, the revisionist had been acquitted and the opposite party no.2 returned to her matrimonial house. However, such cruelty had again been started with the opposite party no.2 on the part of the revisionist and after that she again filed complaint case no. 461 of 2017 under the same sections in which the revisionist was summoned. Learned counsel for opposite party no.2 next submits that the revisionist has 8 bighas of agricultural land and he is a mason (*Rajmistri*) also from which he earns Rs. 50,000/- per month. In that circumstance, looking to the present scenario and inflation, the amount of maintenance allowance as awarded by the trial court under the impugned judgment cannot be said to be excessive or exorbitant.

8. On the above premise, learned counsel for opposite party nos.2 and 3

submits that since the trial court while passing the impugned judgment has not committed any error in the eyes of law, therefore, present criminal revision is liable to be dismissed.

9. 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, whereas opposite party no.3 is his real son and as per the settled law, the revisionist cannot shirk from his pious liabilities for maintaining his legally wedded wife. There is nothing on record to show that the opposite party no.2 has any source of income so that she may maintain her son and also herself.

10. While deciding issue qua the separate living of opposite party no.2 from her husband along with her minor son at her parental house, in paragraph nos. 12 and 13, the trial court has recorded categorical finding of fact to come to the conclusion that the opposite party no.2 is living separately from her husband i.e. revisionist along with his son with sufficient cause. Such categorical findings recorded by the trial court cannot be turned down by this Court unless this Court finds that the same is totally perverse in the eyes of law.

11. 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. Now this Court comes to the next submission advanced by the learned counsel for the revisionist that the total amount of monthly maintenance allowance as awarded by the trial court under the impugned judgment in favour of opposite party nos. 2 and 3 is excessive and not incommensurate with the exact monthly income of the revisionist.

13. For deciding the said issue, this Court may record that no documentary evidence has been filed before the trial court on behalf of opposite party no.2 for supporting her statements that the revisionist has 8 bighas land and being mason he earns Rs. 50,000/- per month. There is also no evidence on record to show that the revisionist has any permanent source of income. As per the statement of the revisionist himself before the trial court that he is a labourer on a brick-kiln and earns Rs. 100/- per day.

14. The Hon'ble Supreme Court of India in the case of **Rajnesh Vs. Neha**

reported in (2021) 2 SCC 324 has opined that since it is the sacrosanct duty of the husband to provide financial support to the wife, the husband is required to earn money even by physical labour, if he is able-bodied, and cannot not avoid his obligation.

15. In that circumstance, at the present time, in the opinion of the Court, the revisionist, who is an able bodied person and a labourer would have earned Rs. 500/- per day, meaning thereby his monthly income would be Rs. 15,000/- per month.

16. The Hon'ble Supreme Court of India in the cases of **Rajnish Vs. Neha** (Supra) 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.

17. Keeping in view of the income of revisionist as well as guidelines issued by the Hon'ble Apex Court in **Rajnish 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 incommensurate as per the law laid down by the Hon'ble Supreme Court in the aforesaid cases and 25% of Rs. 15,000/- per month would be total Rs. 3,750/- per month and in round figure Rs.4,000/-. In such circumstances, the total amount of monthly maintenance allowance i.e. Rs. 5,000/- per month in favour of opposite party nos. 2 and 3 i.e. Rs. 4,000/-+Rs. 1,000/- respectively, as awarded by the trial court under the impugned judgment is excessive and is liable to be reduced. Normally this Court would have remanded the instant matter under Section 125 Cr.P.C. to the trial court for deciding afresh, but looking to the huge pendency before the trial court and also for saving the precious time of the trial court, this Court is proceeding to modify the impugned judgment.

18. Consequently, the judgment and order dated 7th March, 2024 passed by the Principal Judge, Family Court, Hamirpur in Case No. 195 of 2019 (Smt. Raj Kumari & Another Vs. Brijesh) under Section 125 Cr.P.C. Police Station- Majhgawan, District-Hamirpur is modified to the extent that now the revisionist shall pay Rs. 3,000/- per month to opposite party no.2 (wife) in place of Rs.4,000/- per month and Rs. 1,000/- per month to opposite party no.3, as was directed by the trial court in his favour, towards maintenance allowance from the date of filing of application. Since at present the revisionist has no regular source of income, it would be too harsh for him to pay arrears of maintenance allowance as directed above in one stroke. This Court therefore,

provides that the same shall be paid by the revisionist in 12 monthly equal installments. The first installment shall commence from 5th October, 2025.

19. 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.

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

21. There shall be no order as to costs.

September 16, 2025

Sushil/-

(Madan Pal Singh,J.)