

Court No. - 80

Case :- CRIMINAL REVISION No. - 6508 of 2023

Revisionist :- Vivek Singh Siddharth

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Shani Dev Singh Yadav, Yogesh Narayan Shukla

Counsel for Opposite Party :- G.A., Hari Narayan Singh

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard Sri Yogesh Narayan Shukla, learned counsel for the revisionist, Sri Hari Narayan Singh, learned counsel for the opposite party No.2 and 3, 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 order dated 4.11.2023, passed by learned Additional Principal Judge, Family Court, Court No.2, Gorakhpur, in Case No.1184 of 2021 (Divya Singh and others Vs. Vivek Singh Siddharth) under Section 125 Cr.P.C., District Gorakhpur.

3. By the impugned order learned court below has awarded maintenance from the date of filing of application awarding Rs.6,000/- per month to opposite party no.2 and Rs.2,000/- per month to opposite party no.3 (total Rs.8,000/- per month) and from the date of judgment has awarded Rs.20,000/- to opposite party no.2 and Rs.10,000/- per month to opposite party no.3 respectively (total Rs.30,000/- per month).

4. Learned counsel for revisionist submits that it is an admitted fact revisionist is bank employee and his salary slip reveals that his gross salary was Rs.1,19,223/- in October, 2023 his date of joining is 27.11.2017. However, total deduction from salary are Rs.66,662.84/- which includes income tax deduction, P.P.F. contribution, house rent recovery, furniture recovery, HSG Loan Principal recovery, Car Loan Pr. recovery and Contributory Pension Fund etc. Thus he is getting net salary only Rs.52,560/-. In these circumstances, it is very difficult for him to survive after paying Rs.30,000/- to the opposite party nos. 2 and 3 as maintenance. The revisionist is posted as Assistant Manager in S.B.I., Bengaluru previously posted at S.B.I., Gorakhpur. The opposite party no.2 who is wife of revisionist had filed so many complaints against revisionist before his employer and lodged FIR

against the revisionist only to harass him. Apart from opposite party no.2 has also filed a complaint under provision of Protection of Women from Domestic Violence Act, 2005. The revisionist has filed divorce petition on account of cruelty against opposite party no.2 but the same has been dismissed by Family Court thus, appeal is pending before this Court. It is next submitted matter was referred for mediation thrice but mediation has failed and now due to high handedness and cruel behavior of opposite party no.2 revisionist does not find it convenient and suitable to reunite with her i.e. opposite party no.2 and he has paid interim maintenance Rs.15,000/- per month pursuant to order of Family Court dated 20.5.2022 till December 2023 and he has also deposit Rs.50,000/- in Sukanya Samriddhi Yojna in the name of her daughter (opposite party no.3). After passing of final judgment dated 04.11.2023 he has not paid the maintenance as said judgment is under challenge. The revisionist has to discharge monetary obligation to pay dues of house tax and car loan otherwise the bank would proceed against him and his financial credit will be jeopardised. The house in Lucknow was purchased by the revisionist in the joint name of himself and opposite party no.2 and the said loan is still being paid. The revisionist requested from opposite party no.2 as many time to sell the house so that disposable income is increased and then revisionist may be able to pay better maintenance to opposite party nos. 2 and 3 but opposite party no.2 refused the said request. It has been held in the judgment of Hon'ble Supreme Court that the right to residence under Section 19 of Domestic Violence Act is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The revisionist has limited financial resources thus, the amount of maintenance is awarded by learned court below should be reduced substantially.

5. Per contra, learned counsel for opposite party nos. 2 and 3 submitted that the revisionist has created a false case of financial constraints. The revisionist has purchased two cars one Ecosport and another a Wagon-R. However, he is denying this fact and states that he has purchased only one car i.e. Ecosport, he has created financial clinches only to avoid payment of maintenance to the opposite party no.2 who is legally wedded wife and opposite party no. 3 who is his daughter. The revisionist is bound to maintain them upto the standard which he is enjoying as Assistant Manager in S.B.I. It is next submitted that the revisionist purposely got himself transferred to Bengalure to live outside the jurisdiction of Court in Gorakhpur and to create hurdle in payment of maintenance to opposite party nos. 2 and 3. He has not paid any

amount of maintenance to the opposite party nos. 2 and 3 since 04.11.2023, despite the fact that there was no stay order from the Court. Lastly it is submitted that learned court below has fixed amount of maintenance which is commensurate with evidence on record and the findings of trial court at this stage. No interference required in the present revision. Learned counsel for opposite party nos. 2 and 3 has placed reliance upon judgment of Supreme Court in **Aditi @ Mithi Vs. Jitesh Sharma 2023 0 Supreme (SC) 1111**.

6. The factual background of the crux is that opposite party no.2-Divya Singh filed an application for maintenance before Principal Judge, Family Court, Gorakhpur along with her minor daughter Vedika Singh (opposite party no.3) through guardian Divya Singh against her husband Vivek Singh Siddharth under Section 125 Cr.P.C. on 03.12.2021 with averment that her marriage with Vivek Singh Siddharth (revisionist) was solemnized on 01.01.2019 at Gorakhpur according to Hindu rites and rituals. She was sent of to her matrimonial place on the next date of the marriage, her father who is head clerk in irrigation department spent much sum of money in the marriage and paid sufficient cash and valuable items to the revisionist and his parents. However, the revisionist and his family members not satisfied with the dowry and they started demanding Rs.5 lakh cash as additional dowry and subjected her to physical and mental cruelty due to non-fulfillment of demand of dowry. The revisionist usually beaten opposite party no.2 every now and then. In the meanwhile she gave birth to a child in March, 2020. She went to parental home for sometime but she was again called by her husband at his place and she was again subjected to various sort of harassment, torture and cruelty by her husband and in-laws. Ultimately, she turned out from her matrimonial home to parental home on 29.3.2021. The husband of opposite party no.2 posted as Manager Scale-3 in administrative office, S.B.I., Gorakhpur and earn monthly salary of Rs.1 lakh and his father has taken V.R.S. as Engineer in Railway Department, the revisionist has owned agricultural land at his native village in District Siddharth Nagar and through his agricultural property he is earning Rs.1,50,000/- per month from it.

7. The revisionist appeared on being summoned by the court below and filed a written statement in which he admitted the factum of marriage of the parties and birth of his minor daughter Vedika Singh (opposite party no.3) out of their wedlock. He also admitted that he posted as as Manager Scale-3 in S.B.I., Gorakhpur but he denied other facts in application of maintenance filed by opposite party nos. 2 and 3. He stated in his written statement that the

attitude and behaviour of opposite party no. 2 was never dignified with him and his parents. The revisionist and her family members are cruel and merciless, they would ill-treat the newly born child of the revisionist. He used to give costly gifts to opposite party no.2 on various occasions and her relatives. He deposited Rs.50,000/- in account of his minor daughter Vedika Singh (opposite party no.3) under Sukanya Samriddhi Yojna and he still depositing money in the said account for her future and marriage. He perturbed by the behaviour of opposite party no.2 (Divya Singh) and her family members. He has taken various loans from the bank and he has to spent a major share of salary towards the repayment of the aforesaid loans, even his father also deposits the installments of loan from his pension. He is not in a position to pay the maintenance to opposite party nos. 2 and 3.

8. Learned court below framed four point of determination on the basis of pleadings of the parties and after appreciation of evidence adduced by the parties recorded the finding that opposite party no.2-Divya Singh is living separately from her husband on sufficient reasons. She has been subjected to various sort of harassment, torture and cruelty by her husband and his family members. The opposite party no.2 is unable to maintain herself and her minor daughter and she has no source of income. Even opposite party no.2 stated in his evidence that she worked as a teacher prior to marriage but now she is no longer teacher. The revisionist is a Manager in S.B.I. and he is a salaried person and he is able to maintain his wife and minor daughter in proper manner.

9. With above finding learned court below awarded maintenance to the opposite party nos. 2 and 3 Rs.6,000/- per month to opposite party no.2 and Rs.2,000/- per month to opposite party no.3 (total Rs.8,000/- per month) from the date of filing to the date of judgment and from the date of judgment awarded Rs.20,000/- to opposite party no.2 and Rs.10,000/- per month to opposite party no.3 respectively (total Rs.30,000/- per month). It is noteworthy that the opposite party no.2 has also filed an application for interim maintenance, which was allowed vide order dated 20.05.2022 and court below has awarded Rs.10,000/- per month to opposite party no.2 and Rs.5,000/- per month to opposite party no.3. Revisionist filed a copy of LIC housing loan account which reveals that he pays around Rs.11,500/- per monthly towards housing loan. The pay slip of revisionist for the month of January, 2022 reveals that his gross salary was Rs.92,777/- and net salary of the revisionist after various and compulsory deductions including house rent recovery and contributory pension fund is total Rs.31,741/-. It is

contended on behalf of revisionist that he is paying as maintenance Rs.15,000/- per month to opposite party nos. 2 and 3 till passing of impugned judgment and order passed by court below.

10. Considering the rival submissions of learned counsel for the parties, gross and net salary of the revisionist and taking into consideration of this fact although the revisionist is getting monthly salary of Rs.1 lakh but his net salary is much below than his gross salary due to various compulsory deductions and repayment of housing and other loans by the revisionist, therefore, the amount awarded in the impugned judgment and order is liable to be reduced to keep the same commensurate to financial paying capacity of revisionist. Accordingly, it is directed that revisionist shall pay Rs.15,000/- and Rs.5,000/- as maintenance to opposite party nos. 2 and 3 respectively. The revisionist is directed to pay amount of maintenance to opposite party no.3 i.e. Rs.5,000/- per month till her marriage or employment, whichever is earlier from the date of impugned judgment and order dated 4.11.2023 onwards. The revisionist shall pay arrears from the date of filing of application to the date of judgment passed by the court below at the rate of Rs.6,000/- per month to opposite party no.2 and Rs.2,000/- per month (total Rs.8,000/- per month) as awarded in the impugned judgment subject to other conditions regarding payment of arrears of maintenance of the aforesaid impugned judgment.

11. The impugned judgment and order dated 04.11.2023 is modified accordingly.

12. The revision is partly **allowed**.

Order Date :- 2.1.2025

Md Faisal