

Court No. - 80

Case :- CRIMINAL REVISION No. - 2920 of 2024

Revisionist :- Ashish Kumar Sharma

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

Counsel for Revisionist :- Shesh Nath Singh Yadav, Tej Bahadur Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

Instant Criminal Revision has been filed against judgment and order dated 29.03.2024 passed by learned Principal Judge Family Court Mau, District Mau in Maintenance Case No.414 of 2019. By the impugned judgment and order learned court below has awarded maintenance to the applicant No.1 Kiran Devi at the rate of Rs.5,000/- per month and to applicant No.2 at the rate of Rs.2,500/- per month from the date of filing of application, thus a total sum of Rs.7500/- per month has been awarded to the applicants in toto. It is also directed in the impugned order that arrear will be payable in 8 equal bimonthly installments and first installment will be payable on 10th April, 2024.

Notice has been issued to respondent No.2 which has been reportedly served upon her, but none has appeared on her behalf.

Heard learned counsel for the revisionist and learned A.G.A. for the State-respondent and perused the material available on record.

Learned counsel for the revisionist submitted that revisionist had pursued course of Multi Media and Animation in 2014 and after completing a course he started working in Gurukripa Printer, Okhla Phase-1, Delhi, but he left the job after six months, then he again went to Delhi in search of job and found a job of Web Developer in Tech Vaidic Technology, at Laxmi Nagar Delhi, whereupon he earned Rs.9,000/- per month. But now he has lost the job on outbreak of COVID-19 Pandemic. Presently he resides at his native place, he possesses a vehicle which he himself operates on rent, but he is not having regular source of income. It

is not possible for him to pay Rs.7,500/- per month as maintenance to the wife and minor son. The arrear is payable since 10.04.2019 which incurs a huge financial burden, which the revisionist cannot discharge. Therefore, at least the amount awarded in the impugned judgment is liable to be reduced.

Learned court below has not determined the monthly income of the revisionist, and the maintenance is awarded to the applicants on the basis of conjecture and presumption. There is no clear proof of income of the revisionist on record. The respondent No.2 has admitted in her evidence that a grocery shop is run in her parental house, she is qualified lady and earns on her own. She has admitted that she was never beaten up by the revisionist, she left the revisionist and his place out of her own free will and choice, all the allegations regarding demand of dowry and maltreatment are false and fabricated. He has no regular source of income except deriving some income in casual manner by driving the vehicle on rent. He earns only Rs.5,000/- per month any how, and the maintenance awarded to the applicant is much higher than his monthly income.

Per contra, learned A.G.A. submitted that this is admitted fact that marriage of the revisionist was solemnized with applicant Kiran Devi on 04.12.2013 according to hindu rites and rituals, the applicant has stated in her pleadings and evidence that after some time of marriage revisionist and family members used to taunt the applicant for bringing less dowry, they would demand four wheeler as additional dowry. After one year of marriage a child namely Savinay was born out of the wedlock of revisionist and his wife. She has also stated that opposite party was having illicit relationship with some other girl, which is also resulted in matrimonial discord between the parties. The opposite party threatened the applicant to solemnize remarriage with some other girl. She was living a life of poverty with her child, she is not a skilled woman, whereas opposite party is a contractor, he deals in sale and purchase of land, he is also having 7 Bigha land, he operates Bolero Jeep on rent and his monthly income is Rs.2 lakh from all sources.

Learned A.G.A. further submitted that respondent No.2 has stated in her evidence as PW-1 that on being victimized by the

revisionist, the revisionist having been subjected to matrimonial cruelty and she had to take shelter at parental home, his son studied in primary school in Class I, and expenses of the applicants was borne by the father of the applicant. She was earlier suffering from tuberculosis and her husband did not take care of her illness, she has given treatment at the place of her father and now she is free from disease. The opposite party used to threaten her. Her husband and in-laws demand dowry from her. She is not able to maintain herself and child because she is not possessed of any independent source of income.

Learned A.G.A. lastly submitted that the maintenance quantified in the impugned judgment is wrong just and fair and needs no interference in the present revision.

On perusal of record it appears that learned court below has framed three points on determination and on perusal of pleadings of the parties and appreciation of evidence adduced by them, finding has been given in the impugned judgment that applicant No.1 is legally wedded wife and applicant No.2 is minor son of the opposite party. Applicants are living separately from opposite party on sufficient reasons. Applicants are unable to maintain themselves, whereas opposite party is an able and resourceful person.

Learned court below has observed in paragraph No.19 that applicant No.1 has stated that on the basis of evidence adduced by the parties that applicant No.1 is victim of matrimonial cruelty practiced against her by the opposite party and his family members. He has solemnized second marriage with girl namely Anita and lives with said Anita in separate accommodation. He earns sufficiently from contractual work, agricultural and operating vehicle.

Learned court below has also observed that opposite party has made every effort to conceal his actual income. He has admitted in his admission that he possessed one for his own and other for commercial use, he drives other vehicle for commercial purposes. He is a educated able-bodied person of sound, mental disposition and is perfectly able to maintain wife and child. He failed to prove any independent earning of applicant No.1 Kiran Devi.

Learned court below also placed reliance on some judgment of Allahabad High Court and M.P. High Court and cited the judgment of Hon'ble Supreme Court in **Shail Kumari Devi and another Vs. Krishan Bhagwan Pathak @ Kishun B Pathak 2009 (67) Page 560 Supreme Court** in which it is laid down that this is moral obligation of husband to maintain his wife.

Considering the rival submissions made by learned counsel for the parties and giving a thoughtful consideration of the material and evidence available on record, I find no substantial factual or legal error in the impugned judgment passed by learned court below. Learned court below has also given leverage for payment of arrears to the revisionist as arrears are directed to be paid in eight equal bimonthly installments.

However, taking into consideration the fact that exact income of the revisionist is not proved, but from the facts and circumstances stated on record, it is obvious that he is a man of sound earning. It is directed that the revisionist will pay Rs.4,000/- per month to the applicant and Rs.25,00/- per month to the applicant No.2 from the date of filing of application to date of judgment, and thereafter at the rate of Rs.5,000/- per month to the applicant No.1 and at the rate of Rs.2,500/- per month to the applicant No.2 as directed in the impugned order subject to other conditions laid down therein.

The impugned judgment and order is slightly modified accordingly. The arrear from the date of date of application to date of judgment dated 29.03.2024 will be payable from March, 2025 onwards in the manner directed in the impugned judgment and order.

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

Order Date :- 11.2.2025

Ashish/-