

Court No. - 79

Case :- CRIMINAL REVISION No. - 2973 of 2024

Revisionist :- Smt. Pooja And Another

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Mohd Zubair Khan

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Instant criminal revision has been preferred against the judgment and order dated 5.4.2024 passed by learned Principal Judge, Family Court, Saharanpur in Case No. 2573 of 2023 whereby under section 127 Cr.P.C. judgement and order dated 20.6.2022 passed in maintenance case No. 424 of 2020 has been rejected but application under section 125 Cr.P.C. has been partly modified vide order dated 5.4.2024 to the extent that quantum of maintenance awarded to the applicant no.1 has been reduced from Rs. 4000/- to Rs. 3000/- per month thus the total quantum of maintenance awarded in the original application under section 125 Cr.P.C. has been reduced from Rs. 7000/- per month to Rs. 6000/- per month payable to the applicants who are wife and minor son of the opposite party.

2. The original applicant is aggrieved by the impugned judgement filed in instant criminal revision with prayer to enhance the amount of maintenance and set aside the impugned order.

3. As per report of learned CJM, notice has been served upon opposite party but none appeared on his behalf to represent him.

4. Heard learned counsel for the revisionists, learned AGA for the State and perused the material available on record.

5. Learned counsel for the revisionists submitted that the original applicant Pooja had filed an application for maintenance of herself and her minor son under section 125 Cr.P.C. before family court with averment that the marriage of applicant was solemnized with opposite party on 13.12.2018 according to Hindu rites and rituals. Her father had spent sufficient money in the marriage and gave gifts and cash to opposite party and his family in the marriage upto his capacity, nevertheless, the opposite party did not satisfy with gift and dowry received in the marriage. They started harassing

and torturing the applicant and due to non fulfillment of demand of additional dowry of Rs. 2,00,000/- Cash and car, she ultimately turned out of her matrimonial home after giving her beating on 25.9.2019 by which time she was pregnant and she gave birth to applicant no. 2 on 16.3.2020 at her parental place. Her husband did not visit his wife or newly born son even getting information of birth of child. She lodged an F.I.R .against her husband and his family members under sections 498, 323, 504, 506 I.P.C. and 3/4 D.P. Act. She has also stated therein that two factories one for manufacturing steel furniture and other for printing folding etc. is being operated by the family which is a joint family property of the opposite party. The opposite party and his family earns Rs. 1,25,000/- per month from their family business. Apart from that his family has a plot in city of Saharanpur. Applicant is B.tech but she is unemployed.

6. Learned court below summoned the revisionist to file his written statement 13A before the Court. Learned court below had framed five points of determination on the basis of pleadings of parties and after appreciating evidence on record adduced by parties, gave a finding that on the basis of evidence of parties it is proved that the property which is said to be of opposite party by the applicants, belongs to his family. He must have some right in property being son. He has stated in his statement that he himself works as a labourer and stated his monthly income as Rs. 8000/- per month. He is able to maintain his wife and children. It is legal responsibility to maintain his wife and children.

7. Both the parties, applicant as well as opposite party filed an application under section 125 Cr.P.C. for modification of said judgement. The applicants had prayed for enhancement of quantum of maintenance whereas opposite party had prayed for reduction of amount of maintenance. Undoubtedly, the sum is inconsistent with the actual income of the revisionist which is stated to be Rs. 8000/- per month.

8. Learned court below has dismissed the application under section 127 Cr.P.C. filed by the original applicant Pooja but partly allowed the application under section 127 Cr.P.C. filed by the opposite party Rohit by the impugned order and judgement dated 5.4.2024 whereby the total amount of maintenance awarded in the impugned order has been reduced from Rs.7000/- per month to Rs. 6000/- per month. This modification has been made effective from May 2024, the month succeeding the impugned judgement and order.

9. Learned counsel for the revisionist submitted that the impugned judgement and order is based against the substantial evidence on record. Learned court below has reduced the amount of Rs. 7000/- per month to Rs. 6000/- per month on non existence grounds. The amount of maintenance awarded in earlier order dated 20.6.2022 itself is on lower side keeping in view the high income derived by the opposite party from his family business. He has wrongly shown himself as labourer. This is unbelievable that a person who belongs to a family who is operating factories, will engage in manual labour. Learned court below emphasized this fact that revisionist is qualified upto B.Tech and she was working as a Software Engineer prior to marriage.

10. Learned court below has observed in impugned judgment that opposite party is having B.tech degree, therefore, she can again find a good employment. This does not appear justifiable that she will be dependent on her husband through out her life for maintenance. Learned court below has wrongly reduced Rs. 1000/- from the amount of maintenance awarded to the applicant by placing reliance on bald statement of opposite parties that his monthly earning is Rs. 8000/- per month. The income certificate given by Jagdamba Furniture Bomanji Road Saharanpur in favour of opposite party, is a fake document only to create evidence in favour of opposite party. The goods manufactured in the factory of opposite party are brought to sale in the establishment of Jagdamba Furniture and for that reason they had issued a fake certificate in regard to employment and remuneration of opposite party.

11. Even if the amount of maintenance awarded to the applicant in earlier order under section 125 Cr.P.C. is taken into consideration i.e. Rs. 4000/- per month itself and the salary amount of the revisionist then also it is difficult to meet out necessary expenses of an educated lady like applicant no. 1. The stand of opposite party before learned court below that he works as labourer in the the factory of Jagdamba Furniture is not liable to be taken into consideration. Hon'ble Supreme Court has held in number of cases only due to fact that wife is capable of earning some amount on her own, is not sufficient to free the husband from his liability to maintain her wife as she is entitled to receive the maintenance from her husband according to standard of living which she would accustomed to live when she were residing with the revisionist at her matrimonial home. The impugned order under section 125 Cr.P.C. is not sustainable and deserves to be set aside.

12. The impugned order dated 5.4.2024 under section 125 Cr.P.C.

in case no. 2539 of 2023 is set aside and judgement and order dated 20.6.2022 passed by learned Principal Judge, Family Court in Maintenance Case No. 424 of 2024 under section 125 Cr.P.C. is restored.

13. The revision is allowed accordingly.

Order Date :- 17.3.2025

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