

Court No. - 79

Case :- CRIMINAL REVISION No. - 3678 of 2024

Revisionist :- Rahul Koli

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

Counsel for Revisionist :- Aditya Vardhan Singh, Nikil Pathak, Sunil Kumar Mishra

Counsel for Opposite Party :- G.A., Kuldeep Kumar

Hon'ble Subhash Chandra Sharma, J.

Heard learned counsel for both the parties as well as learned A.G.A. and perused the material on record.

This criminal revision has been filed by the revisionist with prayer to set aside the impugned judgment and order dated 23.04.2024 passed by the learned Additional Principal Judge, Family Court, Court No. 3, Bulandshahar in Case No. 176 of 2019 (Smt. Sangeeta Vs. Rahul Koli), under Section 125 Cr.P.C., Police Station Sikandrabad, District Bulandshahar.

It is submitted by learned counsel for the revisionist that in this case, the opposite party no. 2 is wife of the revisionist and opposite party no. 3 is minor son. The opposite party no. 2 started living separate from the revisionist from the year 2019 without any reasonable excuse and filed an application u/s 125 Cr.P.C. for maintenance. Further submitted that marriage was performed in the year 2014 and thereafter son was born to the wedlock and no any physical or mental harassment was done by the revisionist. The opposite party no. 2 herself changed her behavior and went to her father's house to live without any reasonable excuse. She also filed a case under Protection of Women from Domestic Violence Act and also a criminal case against the revisionist and members of family. It is also submitted that he is ready to keep the wife and minor son with him but she herself is not ready to live with him. He is an unemployed person and works in a private company and gets Rs. 12000/- per month as salary. There is family business being operated by the father and two brothers but he has already been ousted by father from the house and he has nothing in the family business, therefore, no any income is made by the revisionist from the family business. Learned trial court has decided the application under Section 125 Cr.P.C. vide order dated 23.4.2024 and fixed the amount of maintenance Rs. 10,000/- per

month to the wife and Rs. 5000/- to the minor son from the date of application without considering the financial condition of the revisionist but learned court has taken into consideration the pleadings filed in a petition for divorce before the court in which details of family business was mentioned but now he has been ousted by his father, therefore, he has no any income from the family business but learned court did not consider it and awarded the said amount that is too much and beyond the paying capacity of the revisionist, therefore, reduce the amount and set aside the order passed by learned trial court and also to divide the amount of arrears of maintenance in easy installments.

Learned counsel for opposite party as well as learned A.G.A. opposed the prayer as aforesaid and contended that in this case, the opposite party nos. 2 and 3 are wife and minor son of the revisionist. The revisionist misbehaved with wife and ousted her from her sasural on 20.1.2019 since then she has been living in her Maika and thereafter, he sent notice for Talak. She is always ready to live with him but the revisionist himself is not ready to keep her with him. He clearly stated before the learned court. He has filed a case for divorce in Delhi and he never tried to call his wife back to his home. He further clearly stated that he is not ready to keep his wife and child with him which shows total neglect on his part. In a petition for divorce the revisionist himself has mentioned that he works with the father and two brothers in family business of making diaphragm of speaker and there is monthly income of Rs. 1,50,000/- and also works in a private company. On the other hand, he filed an affidavit in present case before the learned court that he gets Rs. 12,000/- per month as salary by working in private company i.e. D.G. Kriyon making toys though the fact of family business has not been disclosed by the revisionist in the affidavit filed in support before the learned trial court in compliance of case of ***Rajnish Versus Neha and Another (2021) 2 Supreme Court Cases 32***. The amount fixed by the learned trial court to the wife and son i.e. Rs. 10000/- and Rs. 5000/- respectively cannot be said to be in excess but it is less than sufficient for their maintenance.

Considering the facts and circumstances of the case, submissions made by learned counsel for the parties as well as learned A.G.A. perusal of record and the order passed by learned trial court, it appears that opposite party no. 2 is wedded wife of the revisionist and opposite party no. 3 is minor son. Due to neglect of the revisionist, the wife is living in her father's house from the year 2019 with her minor son. The revisionist is not paying any money to them for maintenance. Sending notice for *Talaknama* and filing

a suit for divorce after departure of wife to her *maika*, also shows that the revisionist neglected the wife, it is also evident from the statement of the revisionist that he is not ready to keep the child and the wife with him. In this way, the legal obligation to maintain the wife and minor child comes on the husband, if he is able bodied person and wife is not in a position to maintain herself. There is nothing on record to show that the wife is making any income and is capable to maintain herself with her minor son. On the other hand, the revisionist has stated before the learned trial court that he works in private company i.e. D.G. Kriyon which makes toys and gets Rs. 12000/- per month but on the contrary to it certified copy of divorce petition filed on the part of informant gets mention that there is a family business of the revisionist with his father and two brothers where diaphragm of speaker are made and earns monthly income which is about Rs. 1,50,000/-.

Keeping in view the aforesaid facts regarding income and the capability of the husband/ revisionist, the learned trial court has fixed the amount for maintenance in favour of wife and minor child. In the aforesaid circumstances, I am of the considered opinion that the income of the revisionist can only be guessed from his statement as made in his divorce petition from the family business operated with father and other two brothers. The revisionist cannot be said to be sole owner of the business but it is run alongwith other members of the family from which he will also get some share out of which the amount of maintenance in favour of wife and minor son be fixed. In case, his share in the income is deemed to be Rs. 30,000/- per month, the 1/4th part of his income can be awarded as monthly amount of maintenance in favour of wife i.e. about Rs. 8000/- per month on the place of Rs. 10,000/- per month. The amount of Rs. 5000/- in favour of minor child cannot be said to be more than sufficient, therefore, the amount fixed for the wife is reduced to Rs. 8000/- on the place of Rs. 10,000/- and amount of maintenance in favour of child will remain the same.

So far as the amount of arrears of maintenance is concerned, it may be divided into equal 15 monthly installments payable with the current amount of maintenance per month.

Accordingly, the present revision is ***disposed of*** at the admission stage.

Order Date :- 23.4.2025

Anurag Singh