



2025:AHC:162535

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 3822 of 2024

Veer Singh Prajapati

.....Revisionist(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Vinod Kumar Sharma
Counsel for Opposite Party(s)	:	G.A., Ravi Sahu

Court No. - 91

HON'BLE MADAN PAL SINGH, J.

1. Heard Mr. Vinod Kumar Sharma, learned counsel for the revisionist, Mr. Ravi Sahu, learned counsel for opposite party no.2 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. questioning the judgment and order dated 18th May, 2024 passed by the Additional Principal Judge, Family Court, Court No.1, Kanpur Nagar in Criminal Case No. 1455 of 2023 (CNR No. UPKN-02-003020-2023) (Veer Singh Prajapati Vs. Ruchi Prajapati) under Section 127 Cr.P.C., whereby the Family Court Judge has dismissed the said application filed for cancelling the order dated 21st May, 2019 passed by the Additional Principal Judge, Family Court No.4, Kanpur Nagar in Case No. 99 of 2013 (CNR No.-UPKN02-001541-2013) (Smt. Ruchi Prajapati Vs. Veer Singh Prajapati) under Section 125 Cr.P.C. whereby the trial court has directed the revisionist to pay Rs. 10,000/- per month in favour of opposite party no.2 namely, Smt. Ruchi Prajapati towards maintenance allowance.

3. The contention of the learned counsel for the revisionist is that opposite party no.2, namely, Ruchi Prajapati is not legally wedded wife of the revisionist. The real fact is that marriage of the revisionist was solemnized with opposite party no.3, namely, Smt. Rubi Prajapati, who is the elder sister of opposite party no.2. At the time of vidai after the marriage, the in-laws of the revisionist had sent opposite party no.2 with him in place of opposite party no.3. Learned counsel for the revisionist further submits that the revisionist came to know that his wife i.e. opposite party no.3 Smt. Rubi Prajapati had already solemnized her marriage with one Surendra Kumar on 26th November, 2009 and said Surendra Kumar had also filed a petition in which decree of divorce had been passed in favour of said Surendra Kumar. After that, the revisionist has filed a petition under Section 12 of the Hindu Marriage

Act before the Principal Judge, Family Court, Katani, Madhya Pradesh bearing Suit No. 305 of 2019 (Veer Singh Prajapati Vs. Smt. Rubi Prajapati and Ruchi Prajapati) in which a decree has been passed by the Family Court, Katani on 20th April, 2023, wherein the marriage of the revisionist with opposite party no.3 Smt. Rubi Prajapati has been declared as null and void and also the Family Court has held that opposite party no.2 Ruchi Prajapati is not the legally wedded wife of the revisionist. Order dated 20th April, 2023 is at page no. 154 onwards. Against the said order, the opposite party no.3 has also filed a First Appeal before the Madhya Pradesh High Court, which is pending consideration. Whereafter the revisionist has filed the instant application under Section 127 Cr.P.C. for cancelling the judgment and order dated 21st May, 2019 passed by the Additional Principal Judge, Family Court No.4, Kanpur Nagar in Case No. 99 of 2013 (Smt. Ruchi Prajapati Vs. Veer Singh Prajapati) under Section 125 Cr.P.C., whereby the revisionist has been directed to pay Rs. 10,000/- per month to opposite party no.2 towards maintenance allowance.

4. Learned counsel for the revisionist submits that the Additional Principal Judge, Family Court, Court No.1, Kanpur Nagar has completely misread, misinterpreted and mis-appreciated the evidence available on record while passing the impugned judgment and order. The Additional Principal Judge while passing the impugned judgment has not considered the vital aspect of the evidence placed by the revisionist through the judgment and order dated 20th April, 2023 passed by the court of Principal Judge, Family Court, Katni, Madhya Pradesh in Marriage Case No. 305 of 2019 filed under Section 12 of the Hindu Marriage Act by which the Principal Judge has held that the marriage of opposite part no.3 Smt. Ruby Prajapati with the revisionist is null and void, whereas the Principal Judge has further held that the opposite party no.2 Ruchi Prajapati is not legally wedded wife of the revisionist.

5. On the above premise, learned counsel for the revisionist submits that the impugned order cannot be legally sustained and is liable to be set aside.

6. On the other-hand, learned counsel for opposite party no.2 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 order by rejecting the application of the revisionist under Section 127 Cr.P.C. so as to warrant any interference by this Court in exercise of revisional jurisdiction. They, therefore, submits that present criminal revision is liable to be dismissed.

7. 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 may record that the Additional Principal Judge while passing the impugned order has recorded following findings:

" So far as the decision dated 21st May, 2019 under Section 125 Cr.P.C. is concerned, the same has been passed on merits and against the said decision, the revisionist has not filed any appeal nor has he refused to accept the opposite party no. 2 as his wife. The Additional Principal Judge has further recorded that since the first appeal filed against the decision of Principal Judge, Family Court, Katni, Madhya Pradesh, which is said to be pending as per the revisionist, therefore, he should have filed any order of the Madhya Pradesh High Court, if passed in the first appeal, mentioning therein that an order declaring that opposite party no.2 is not his legally wedded wife, before the said Court i.e. Additional Principal Judge. Therefore at this stage, it cannot be clearly said whether the opposite party no.2 is the legally wedded wife of the revisionist or not. However, until any order of a higher court is filed, the present order has to be complied with. As such, the parties can file any order of the Hon'ble High Court, if any. But at this stage, the revisionist's application under 127 Cr.P.C. is liable to be dismissed."

8. From deeper scrutiny of the same, this Court is of the considered opinion that such findings recorded by Additional Principal Judge are not correct in the eyes of law.

9. As per Section 125 (1) (a), a Magistrate may direct/order any person having sufficient means, who neglects his wife, who is unable to maintain herself, upon the proof of such neglect or refusal, to make a monthly allowance for the maintenance of his wife, as such Magistrate thinks fit, and to pay the same to such wife as the Magistrate may from time to time direct. According to Section 127 (2) in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied by the Magistrate concerned, he shall cancel the order or, as the case may be, vary the same accordingly.

10. Joint reading of the aforesaid two provisions makes it clear that on receipt of proof of a change in the circumstances of any person, receiving under Section 125 Cr.P.C. for a monthly maintenance allowance, the Magistrate may make such alteration either by cancel the said order of grant of maintenance allowance or by varying the said order passed under Section 125 Cr.P.C. However, the Additional Principal Judge has completely failed to comply with the aforesaid statutory provisions in passing the impugned order.

11. It is admitted position that the Additional Principal Judge has recorded that

judgment and order dated 20th April, 2023 passed by the court of Principal Judge, Family Court, Katni, Madhya Pradesh in Marriage Case No. 305 of 2019 filed under Section 12 of the Hindu Marriage Act is operating as on date because the same has not been stayed or set aside by the Madhya Pradesh High Court in the first appeal filed by opposite party no.3.

12. It is settled law that mere filing of an appeal does not automatically operate as a stay of the decision under appeal and till an application for stay is moved and granted by the appellate Court, meaning there by that mere filing of the appeal before the Madhya Pradesh High Court, against any order of the Principal Judge, Family Court, Katni, Madhya Pradesh cannot be a justification for disobedience or non-compliance of the order of the Family Court. Of course the position would be different if the Madhya Pradesh High Court, where the first appeal is pending, takes cognizance of appeal and passes any positive order of stay.

13. Consequently, the judgment and order dated 18th May, 2024 passed by the Additional Principal Judge, Family Court, Court No.1, Kanpur Nagar in Criminal Case No. 1455 of 2023 (CNR No. UPKN-02-003020-2023) (Veer Singh Prajapati Vs. Ruchi Prajapati) under Section 127 Cr.P.C. is set aside. The matter is remanded back to Additional Principal Judge, Family Court, Court No.1, Kanpur Nagar to decide Criminal Case No. 1455 of 2023 (CNR No. UPKN-02-003020-2023) (Veer Singh Prajapati Vs. Ruchi Prajapati) under Section 127 Cr.P.C. afresh. The Additional Principal Judge, Family Court, Court No.1, Kanpur Nagar shall decide the same, in accordance with law, by means of a reasoned speaking order, preferably within a period of two months from the date of production of a certified copy of this order after affording opportunity of hearing to the parties concerned.

14. The present criminal revision is, accordingly, **allowed** subject to the observations made above.

15. There shall be no order as to costs.

September 12, 2025
Sushil/-

(Madan Pal Singh,J.)