



2025:AHC:178404

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 6057 of 2024

Sarvesh Kumar

.....Revisionist(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Atul Kumar Singh, Ravi Kant Vikram
Counsel for Opposite Party(s)	:	Anita Singh, G.A., Prem Babu Verma

Court No. - 89

HON'BLE MADAN PAL SINGH, J.

1. Heard Mr. Atul Kumar Singh, learned counsel for the revisionist, Ms. Anita Singh, learned counsel for opposite party nos. 2 and 3 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 16th February, 2024 passed by the Additional Principal Judge, Family Court, Court No.1, Firozabad in Maintenance Case No. 225 of 2017 (Smt. Sobha Vs. Sarvesh Kumar), under Section 125 Cr.P.C. Police Station Sikohabad, District-Firozabad, whereby the trial court while partly allowing the application filed by opposite party nos.2 and 3, has directed the revisionist to pay Rs. 2,000/- per month to opposite party no.2 (wife) and Rs. 5,000/- per month to opposite party no.3 (son) towards maintenance allowance from the date of filing of the instant application and also Rs. 3,000/- per month to opposite party no.2 (wife) and Rs. 1,000/- per month to opposite party no.3 (son) towards maintenance allowance from date of passing of the impugned judgment.

3. The sole and solitary contention of the learned counsel for the revisionist is that the monthly maintenance allowance as awarded by the trial court under the impugned judgment in favour of opposite party nos. 2 and 3 to the tune of total Rs. 3,000/- and Rs. 1,000/- per month respectively (total Rs.4,000/- per month) from the date of passing of the impugned judgment is too excessive and exorbitant and not commensurate with the net income of the revisionist as he has no source of income. He then submits that trial court, without any documentary evidence, has only on the basis of oral averments made before that since the revisionist, who is an able bodied person, has some agricultural lands in his village, he also works as a contractor in a shoe factory and has a house which he lets out on rent through which he earns approximately Rs. 35,000/- per month, has assessed wrong monthly income of the revisionist

and has awarded the monthly maintenance allowance in favour of opposite party no.2 under the impugned judgment, which is not correct in the eyes of law.

4. On the above premise, learned counsel for the revisionist prays that since the amount of maintenance allowance as awarded by the trial court under the impugned judgment is too excessive and exorbitant and is not in accordance with the guidelines framed by the Apex Court, therefore, the impugned judgment is liable to be set aside.

5. On the other-hand, the learned counsel for opposite party nos. 2 and 3 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 awarding Rs. 5,000/- per month in favour of opposite party nos. 2 and 3 from the date of passing of the impugned judgment, so as to warrant any interference by this Court in exercise of revisional jurisdiction.

6. Besides the above, learned counsel for opposite party nos. 2 and 3 submits that the revisionist, having some agricultural lands and a house, which is let out, works as contractor in a shoe factory from which the revisionist obtains sufficient income, therefore, he is able to maintain his wife and son i.e. opposite party nos.2 and 3. However, no documentary evidence has been led before the trial court from any side qua the aforesaid income of the revisionist.

7. Except the above issue, neither the learned counsel for the revisionist nor the learned counsel for the opposite party no.2 and learned A.G.A. have stated anything else on any other issue.

8. 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 finds that it is an admitted case that the opposite party no. 2 is legally wedded wife and opposite party no. 3 is real son of the revisionist and as per the settled law, the revisionist cannot shirk from his pious liabilities for maintaining his legally wedded wife and son.

9. So far as separate living of the opposite party no.2 from her husband i.e. revisionist is concerned, the trial court has categorically recorded that the opposite party no.2 is living separately from her husband at her parental house with sufficient cause. In the opinion of the Court, the finding returned by the trial court, while passing the impugned judgment, on the said issue is a categorical finding of fact. Since this Court sits in a revisional jurisdiction, it cannot embark upon a re-appreciation of evidence as suggested by the learned counsel for the revisionist. The evidence led before the trial court has

been dealt with by the trial court while passing the impugned judgment. Therefore, this Court is of the view that this Court cannot substitute its own finding while exercising its powers under Section 397/401 Cr.P.C.

10. Qua the income of the opposite party no.2, from the perusal of the impugned judgment, it transpires that there is nothing on record to establish that she is a working lady and she has any source of income in order to maintain herself. The trial court has also opined that opposite party no.2 has no source of income.

11. So far as the monthly income of the revisionist is concerned, this Court may record that there is no documentary evidence adduced during the course of trial that the revisionist is, having agricultural land and a house which is let out, is working as contractor in a shoe factory from which receives handsome money. However, perusal of the entire record goes to show that the revisionist has not claimed that he is not physically deformed. During the course of argument, learned counsel for the revisionist points out that the revisionist is a labourer only.

12. The Hon'ble Supreme Court of India in the case of **Rajnish Vs. Neha** reported in (2021) 2 SCC 324 has opined that since it is the sacrosanct duty of the husband to provide financial support to the wife, the husband is required to earn money even by physical labour, if he is able-bodied, and cannot not avoid his obligation.

13. In that circumstance, at the present time, in the opinion of the Court, if the revisionist, who is an able bodied person, is treated as a labourer at present, he would earn Rs. 600/- per day and his monthly income would be Rs. 18,000/- per month.

14. The Hon'ble Supreme Court of India in the cases of **Rajnish Vs. Neha** (Supra) and **Kulbhushan Kumar (Dr) v. Raj Kumari** reported in (1970) 3 SCC 129, has observed that the maintenance allowances can be granted up to the extent of 25% of the net income of the husband. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury.

15. Keeping in view the income of revisionist as well as guidelines issued by the Hon'ble Apex Court in **Rajnish v. Neha and Kulbhushan Kumar (Dr) (Supras)**, this court is of the considered opinion that the amount of maintenance allowance fixed by the court below is already in lower side as per the law laid down by the Hon'ble Supreme Court in the aforesaid cases and

25% of Rs. 18,000/- per month would be Rs. 4,500/- per month. As such, Rs. 4,000/- towards total monthly maintenance allowance as awarded in favour of opposite party nos. 2 and 3 (Rs. 3,000+Rs.1,000/- respectively) is just reasonable and realistic.

16. Consequently, this Court finds that there is no illegality or infirmity in the impugned judgment so as to warrant any interference by this Court in exercise of revisional jurisdiction.

17. The present criminal revision is devoid of merit and is, accordingly, **dismissed.**

18. There shall be no order as to costs.

October 8, 2025

Sushil/-

(Madan Pal Singh,J.)