



2025:AHC:160331

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 4690 of 2024

Dinesh Tewatia

.....Revisionist(s)

Versus

State Of U.P. And 2 Others

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Abhishek Mayank
Counsel for Opposite Party(s)	:	Anurag Vajpeyi, G.A., Prateek Dwivedi

Court No. - 91

HON'BLE MADAN PAL SINGH, J.

1. Supplementary affidavit filed on behalf of the revisionist in the Court today is taken on record.
2. Heard Mr. Abhishek Srivastava, holding brief of Mr. Abhishek Mayank, learned counsel for the revisionist, Mr. Prateek Dwivedi, learned counsel for opposite party no. 2 and the learned A.G.A. for the state as well as perused the record.
3. The instant criminal revision has been preferred against the judgment and order dated 30th July, 2024 passed by the Additional Principal Judge, Family Court, Gautam Budh Nagar in Case No. 520 of 2021 (Smt. Rashim & Others Vs. Dinesh Tewatia), under Section 125 Cr.P.C., Police Station-Surajpur, District-Gautam Budh Nagar, whereby the trial court while partly allowing the application under Section 125 Cr.P.C. filed by opposite party nos. 2 and 3 along with two others, has directed the revisionist to pay Rs. 30,000/- per month to opposite party no.2 and Rs. 30,000/- per month to opposite party no.3 from the date of filing of application under Section 125 Cr.P.C., and also the revisionist has further directed pay Rs. 40,000/- per month to opposite party no.2 and Rs. 35,000/- per month to opposite party no.3 from the date of passing of the impugned judgment.
4. It is pertinent to mention here that the instant application under Section 125 Cr.P.C. has been filed by wife (opposite party no.2 herein), son (opposite party no.3 herein) and two daughters of the revisionist for monthly maintenance allowance. However, while partly allowing the application under Section 125 Cr.P.C., the trial court under the impugned judgment has rejected the claim of two daughters of the revisionist for monthly maintenance allowance.
5. The contention of the learned counsel for the revisionist is that since marriage opposite party no.2 being a peevish and cantankerous nature used

to misbehave with the revisionist and always ready to fight with him. Without any sufficient reason, opposite party no.2 is living separately from the revisionist at one of the flat of the revisionist at Noida. It is further submitted by the learned counsel for the revisionist that the revisionist having a degree of M.A. is working in Denso India Private Limited and he is now getting salary approximately Rs. 1 lakh per month. He, therefore, submits that the amount of monthly maintenance allowance awarded by the court below in favour of opposite party nos.2 and 3, which is 75% of his total monthly salary, is excessive and exorbitant and is not in commensurate with the income of the revisionist. Since the aforesaid aspect of the matter has not been considered by the trial court, the impugned judgment is liable to be set aside.

6. On the other-hand learned counsel for opposite party no.2 and the learned A.G.A. have opposed the present criminal revision by submitting that there is no illegality or infirmity in the impugned judgment passed by the trial court so as to warrant any interference by this Court in exercise of revisional jurisdiction.

7. Besides the above, learned counsel for opposite party no.2 submits that the revisionist is owner of two flats at Noida, having 1.5 bighas of agricultural land. As per own admission of the revisionist before the trial court given in his cross-examination, his gross salary is Rs. 93,000/- per month and after deduction, he receives Rs. 70,000/- to 72,000/- per month in his hand. It is further submitted that along with the written submissions, it has been admitted that as per Income Tax Return of 2021-2022, the total salary of the revisionist was Rs. 7,90,680/- per year, in 2022-2023 his salary was Rs. 9,44,220/- per year, whereas in 2023-2024 his salary was Rs. 11,03,484/- per year. In the written submissions it has also been stated that his salary increases every year when increment is given by the Company. The revisionist has also admitted that he has given his one of the flats on rent from which he earns handsome amount of money.

8. Learned counsel for opposite party no.2 then submits that since opposite party no.2 is being tortured and harassed and also ill-treated by the revisionist, therefore, she is living separately from her husband i.e. revisionist along with her son and two daughters in one of the flats of the revisionist. He, therefore, submits that since the trial court has not committed any error in passing the impugned judgment, the present criminal revision is liable to be dismissed.

9. Considering the facts and circumstances of the case and the submissions made by the learned counsel for the parties and perusal of record including the impugned judgment passed by the trial court, this Court finds that the trial court while deciding issue no.2 has recorded that the marriage of opposite

party no.2 was solemnized with the revisionist on 9th June, 1998 and from the aforesaid wedlock three children i.e. two daughters and one son were born. Since the marriage, the behaviour of the revisionist with opposite party no.2 is not cordial or decent. The revisionist is a miser who did not give money to the opposite party no.2 even at the time of birth of the children. Under the influence of his elder brother, he neither gave money to opposite party no.2 nor to the children for expenses, and whenever opposite party no.2 used to exert too much pressure, he used to beat her. It has further been recorded that on 2nd May, 2019, when the revisionist had beaten the opposite party no.2 she made a complaint against the revisionist at Police Station Surajpur on which the police called revisionist to the police station and on reaching there, the revisionist assured the police that he would not beat up or misbehave with party no.2 anymore and would also bear the expenses of the opposite party no.2 and her children. But there was no change in the behaviour of the revisionist and no expenses were paid by him. On the basis of such finding, the trial court has opined that the opposite party no.2 has sufficient cause to live separately from her husband i.e. revisionist along with her children.

10. On perusal of the aforesaid findings returned by the trial court while passing the impugned judgment, this Court finds that the trial court has recorded categorical finding of facts on the above issue. 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.

11. This Court may also record that the opposite party no.2 is legally wedded wife of the revisionist, whereas opposite party no.3 is real son of the revisionist inasmuch as they have no source of income. The provisions of Section 125 Cr.P.C. are beneficial to the woman, hence it was enacted for the protection of every women and children from the despair, destitution and frustration. Therefore, it is legal and pious duty of the revisionist to maintain his wife and son i.e. opposite party nos. 2 and 3 respectively.

12. So far as total income of the revisionist is concerned, this Court finds that in the written submissions filed before the trial court, the revisionist himself has admitted that for the financial year 2023-2024 as per income tax return, his salary was Rs. 11,03484/- per year. While deciding issue no.4, it has been recorded by the trial court at page no.20 of the paper book that the earlier Presiding Officer, while deciding the interim maintenance application, has

recorded that during the course of argument on interim maintenance application, on a query being put up by the court, the revisionist has replied that on the first floor of Delta-2 House, having three floors, opposite party no.2 and her children reside, whereas on the second floor the revisionist resides, while the remaining third floor is given on rent by the revisionist from which he earns handsome money from them. It has also been stated by the revisionist that he has also another house being Alfa-1 House, having two and half floors, has also been given on rent by the revisionist and from the same he receives handsome amount of rent per month. In that case, three flats are given on rent by the revisionist.

13. However, it is not cropped up from the oral as well as documentary evidence led during the course of trial as to how much amount the revisionist receives from rent of the aforesaid flats. In Noida if it is presumed that monthly rental value of a flat is Rs. 10,000/-, then from the three flats, the revisionist earns total Rs. 30,000/- from rent of the aforesaid flats. Similarly, as per the records, the revisionist has 1.5 bighas of agricultural land from which he would earn Rs. 15,000/- per month. Apart from the above, if as per the own admission of the revisionist that in the financial year 2023-2024 his salary was Rs. 11,03,484/- per year then in that circumstance, in the financial year his salary would approximately Rs. 12 lakh and he would get Rs. 1 lakh per month. Thus, after adding the total monthly income of the revisionist, it can be concluded that the revisionist earns a total of Rs 1,45,000/- per month from the aforesaid three sources.

14. The Hon'ble Supreme Court in the cases of **Rajnesh v. Neha** reported in (2021) 2 SCC 324 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. From deeper scrutiny of the aforesaid facts as noted above and the judgment of the trial court while awarding monthly maintenance allowance in favour of opposite party nos. 2 and 3 to the tune of total Rs. 75,000/- (Rs. 40,000/-+Rs. 35,000/-), and also on perusal of the aforesaid judgments of the Supreme Court, this Court is sorry to record that the trial court has not applied its judicial mind, while passing the impugned judgment. As to on what circumstances, which basis and evidence, the trial court has awarded total Rs. 75,000/- per month in favour of opposite party nos. 2 and 3 towards maintenance allowance, which in no way amounts to 25% even after

calculation of the total income of the revisionist from the aforesaid three sources. 25% of the total income of the revisionist from aforesaid two sources as quantified above is Rs. 1,45,000/- per month would be Rs. 36,000/- per month.

16. Since in the opinion of the Court the maintenance allowance awarded by the trial court in favour of opposite party nos. 2 and 3 to the tune of Rs. 40,000/- per month and Rs. 35,000/- per month respectively, normally this Court would have remanded the instant matter under Section 125 Cr.P.C. to the trial court for deciding afresh, but looking to the huge pendency before the trial court and also for saving the precious time of the trial court, this Court is proceeding to modify the impugned judgment.

17. Keeping in view of 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 awarded by the trial court is not commensurate and is highly excessive as per the law laid down by the Hon'ble Supreme Court in the aforesaid cases, hence, the same are reduced to Rs. 20,000/- per month to opposite party no.2 from Rs. 40,000/- per month and to Rs. 16,000/- per month to opposite party no.3 from Rs. 35,000/- per month and the same shall be payable from the date of passing of the impugned judgment

18. Consequently, judgment and order dated 30th July, 2024 passed by the Additional Principal Judge, Family Court, Gautam Budh Nagar in Case No. 520 of 2021 (Smt. Rashim & Others Vs. Dinesh Tewatia), under Section 125 Cr.P.C., Police Station-Surajpur, District-Gautam Budh Nagar, is modified to the extent that now the revisionist shall pay Rs. 20,000/- per month to opposite party no. 2 (wife) and Rs. 16,000/- per month to opposite party no.3 (son) towards maintenance allowance from the date of passing of the impugned judgment.

19. It is also clarified that the arrears of amount towards maintenance allowance as awarded by the court below shall be calculated on the basis of amount of maintenance allowance as fixed by this Court herein above and after that if it is found that any amount has been paid in excess, the same shall be adjusted from the amount to be paid.

20. The present criminal revision is, accordingly, **partly allowed**.

21. There shall be no order as to costs.

September 10, 2025/Sushil/-

(Madan Pal Singh,J.)