



2026:AHC:42583

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 1707 of 2024

Sachin

.....Revisionist(s)

Versus

State Of U.P. And Another

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Abhishe Pandey, Praveen Singh
Counsel for Opposite Party(s)	:	G.A., Madhava Nand Shukla

Court No. - 86

HON'BLE JAI KRISHNA UPADHYAY, J.

1. This criminal revision has been preferred by the revisionist against the impugned judgement and order dated 11.01.2024 passed by Additional Principal Judge, Family Court No.02, Muzaffarnagar in Case No. 528 of 2019 (Smt. Kavita Vs. Sachin), under Section 125 Cr.P.C., Police Station Charthawal, District Muzaffarnagar whereby the learned trial Court has allowed the application under Section 125 Cr.P.C. and directed the revisionist to pay Rs. 4,000/- per month to the opposite party no.2 (wife) towards her maintenance from the date of application i.e. 23.07.2019.

2. As per the averments made in the maintenance petition, the marriage between the revisionist and opposite party no.2 was solemnized on 07.02.2010 as per Hindu rituals and customs. Soon after the marriage, husband (revisionist) of the opposite party no.2 and his other family members started demanding additional dowry of Rs. 2,51,000/- and one car. They threatened her that if she does not bring Rs. 2,51,000/- and one car, they would torture her. She was harassed mentally and physically by them. From the beginning just after the marriage, her father-in-law used to behave vulgarly with her. When opposite party no.2 narrated the aforesaid facts to her family members, father of the opposite party no.2 has given Rs. 1 lakh to her in-laws and stated that he was not in a position to pay the remaining amount as well as car as demanded by her in-laws. When opposite party no.2 became pregnant in the year, 2011, they threatened her that until her parents do not fulfill the aforesaid demand of dowry, they would not allow her to be a mother and they attempted to kill the baby conceived by her. When the condition of opposite party no.2 became serious, her family members reached her in-laws' house, and took her to hospital at Muzaffarnagar and from where, she was referred to Meerut. Her treatment was carried out in

Jyoti Nursing Home at Meerut, the baby conceived by her died due to physical assault caused by her in-laws. Opposite party no.2 again became pregnant in year, 2015 but they again assaulted her. Thereafter, she was brought to Tyagi Nursing Home at Muzaffarnagar by her brothers, doctor performed operation on her. On 24.05.2019, they again assaulted and ousted her. Thereafter, she reached her *maika* and narrated the whole incident to her parents. Thereafter, opposite party no.2 went to the police station Charthawal to lodge F.I.R. against revisionist and his family members but police did not take any action. On 30.05.2019, a notice was sent to her by the revisionist (husband) stating therein that he would enter into second marriage, if she failed to give consent for him to do so within seven days. On 23.06.2019 at around 6 pm, while she was alone at her *maika*, revisionist along with his other family members came to her *maika*. Revisionist Sachin attempted to kill her but when she raised alarm, some persons of nearby locality came there and saved her life. Thereafter, on 24.06.2019, she has given application to Senior Superintendent of police, Muzaffarnagar by registered post and the said application is under consideration. Her parents made request to her in-laws to keep her but they refused. She has no means of income to maintain herself and now she is dependent on her father. She stated that revisionist owns 15 to 20 bighas of agricultural land from which he earns about Rs. 1 lakh per month apart from that he has other sources of income from which he earns about Rs. 50,000/- Thus, he earns in total about Rs. 1.5 lakh per month.

3. The revisionist/opponent has presented the objection stating therein that the story narrated by the opposite party no.2 in the petition is forged and fabricated whereas the true fact is that when no child was born of their wedlock, she was taken for medical checkup where it was allegedly found that she is not physically fit to conceive. Being hopeless, she requested him to perform second marriage. Since he is the only son of his family, therefore, even he was not intending to marry again but on her request he agreed. Thereafter, opposite party no.2 went to her *maika*. The revisionist and his family members made every efforts to know the opinion of her parents in this respect but no reply was received at their end. Opposite party no.2 has lodged a false case regarding additional dowry against him and his other family members including his old parents and one unmarried sister. He further stated that he does not own any agriculture land, house in his name or bank balance and he earns his livelihood by working as a labour. Opposite party no.2 has left his house on her own. She earns about Rs.5,000/- to 7,000/- per month by doing stitching and embroidery work.

4. As an oral evidence, opposite party no.2 has filed her affidavit on oath as

paper Nos. 10 Ka1 to 10 Ka6 and affidavit of witness lalit as Paper Nos. 30Ka/1 to 30 ka/3. opposite party no.2 Kavita (wife) examined herself as PW1 and Lalit as PW2. A paper No.30 Ka/4 Photographs, Paper Nos. 25 Kha/3 to 25 Kha/6 photocopy of notice, Paper Nos. 25 Kha/7 to 25 Kha/9, copy of photographs, Paper Nos. 25 Kha/10 Photocopy of Aadhar Card and Paper Nos. 10 Ka/1 to 10ka/2 photocopy of F.I.R. have been filed as a documentary evidence.

5. Revisionist Sachin has examined himself as DW1 and Vinod Kumar as DW2. As a oral evidence, revisionist has filed his affidavit on oath as paper No. 34 Ka/1 to 34 Ka/4 and affidavit of witness Vinod as paper No. 35Ka/1 to 35 Ka/4. No documentary evidence has been field on behalf of revisionist.

6. During his cross-examination revisionist has stated that he earns about Rs. 10,000/- to 12,000/- per month. He further stated that the land of 12 bighas shown by the opposite party no.2, is not in his name but in the name of his grand-father, who is alive at present. Similarly DW2 Vinod during his cross-examination stated that revisionist earns Rs. 8,000/- to 10,000/- per month. However, 12 bighas land is in the name of his father.

7. As per the evidence on record and submissions raised on behalf of the parties, learned Family Court has passed the impugned order whereby he has allowed the maintenance to opposite party no.2/wife Kavita @ of Rs.4,000/- per month from the date of filing the maintenance petition i.e. 23.07.2019.

8. I have heard Sri Praveen Singh, learned counsel for the revisionist, Sri Madhava Nand Shukla, learned counsel for the opposite party no.2 as well as learned A.G.A. for the State and perused the record.

9. The learned counsel for the revisionist submits that impugned order is not sustainable in the eyes of law and same is liable to be set aside. In support of his submissions learned counsel for the revisionist submitted that opposite party no.2/wife is not entitled to get maintenance because she has left the matrimonial home on her own will whereas revisionist was willing to keep her. All efforts to bring her in matrimonial home failed on account of her refusal. He further submitted that even quantum of maintenance is not sustainable in view of the income of the revisionist/husband.

10. *Per contra*, learned A.G.A. and learned counsel for the opposite party no. 2, defending the impugned order submitted that revisionist has performed second marriage without getting divorce from the opposite party no.2. They further stated that opposite party no.2 is living at her parental house due to physical and mental harassment of the revisionist and his

family members. So far as the averments of revisionist that opposite party no.2 earns about Rs.5,000/- to 7,000/- per month by doing stitching and embroidery work is concerned, no documentary evidence has been produced before the trial court in this regard. There is no illegality or infirmity in the order impugned and the present criminal revision is liable to be dismissed.

11. From bare perusal of evidence on record, I find that opposite party no.2 is legally wedded wife of the revisionist and her marriage with the revisionist was solemnized on 07.02.2010 in accordance with Hindu Customs. Revisionist has also admitted this fact before the trial court, therefore, the opposite party no.2 is admittedly his legally wedded wife. .

12. In her petition, opposite party no.2/wife has averted that she was subjected to mental and physical torture and her husband and in-laws pressurized her to bring Rs. 2,51,000/- and one car as additional dowry from her parents. She also stated that since she has no individual source of income therefore, she is unable to maintain herself. She stated that revisionist owns 15 to 20 bigha agricultural land and by which he earns about Rs. 1 lakh per month. Apart from that he has other source of income from which he earns about Rs. 50,000/-, thus, his total monthly income is approximately Rs. 1.5 lakh. The other witness namely PW2 Lalit has also supported the PW1 during his examination.

13. DW1 Sachin (revisionist) and DW2 Vinod have supported the version of counter affidavit. The revisionist has stated that he does not own any agriculture lands or house in his name nor does have any bank balance whereas he earns Rs. 10,000/- to 12,000/- per month for his livelihood by working as a labour. Opposite party no.2 left the matrimonial house on her own. She earns about Rs. 5,000/- to 7,000/- per month by doing stitching and embroidery work. DW2 has also supported the version of DW1 during his examination before the trial court.

14. Before deciding the case, it would be imperative to refer the relevant statutory provision.

15. The provision of Section 125 Cr.P.C. provides for maintenance of wives, children and parents. The Section 125 Cr.P.C. reads as under:-

"125.Order for maintenance of wives, children and parents.- "(1) If any person having sufficient means neglects or refuses to maintain-"
(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation. *For the purposes of this Chapter-*

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due : Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation-*If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be a just ground for his wife's refusal to live with him.*

(4) No wife shall be entitled to receive an allowance for the

maintenance or interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

16. In paragraph Nos.37, 38, 39 and 40 of **Rajnish vs. Neha and Another: (2021) 2 SCC 324**, the Hon'ble Apex Court has observed as under:-

"37. In Chaturbhuj v. Sita Bai [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] this Court held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. Section 125 CrPC is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

38.Proceedings under Section 125 CrPC are summary in nature. In Bhuwan Mohan Singh v.Meena [Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200] this Court held that Section 125 CrPC was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

39.The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would give rise to a claim under Section 125 CrPC came up for consideration in Chanmuniya v. Virendra Kumar Singh Kushwaha [Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 : (2011) 1 SCC (Civ) 53 : (2011) 2 SCC (Cri) 666. This judgment was referred to a larger Bench.] before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation must be given to the term "wife", to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a precondition for grant of maintenance under Section 125 CrPC. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage.

40.The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a

number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings under Section 125 CrPC such strict standard of proof is not necessary. [Kamala v. M.R. Mohan Kumar, (2019) 11 SCC 491 : (2019) 4 SCC (Civ) 732 : (2019) 4 SCC (Cri) 242]."

17. The Hon'ble Apex Court in paragraph Nos.77, 78, 79 and 80 of **Rajnish vs. Neha and Another (supra)** has provided for criteria for determining quantum of maintenance, which reads as under:-

"77.The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78.The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.[Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; Refer to Vinny Parmvir Parmar v.Parmvir Parmar, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]"

79.In Manish Jain v. Akanksha Jain [Manish Jain v.Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80.On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]"

18. Having heard the rival submissions advanced on behalf of learned counsel for the parties and perusing the record, I find that smt. Kavita/

opposite party no.2 is the legally wedded wife of revisionist Sachin. I further find that revisionist failed to prove that his wife was living at her *maika* without any rhyme and reason. On the contrary, materials brought on record clearly indicates that she was compelled to leave the matrimonial home on account of physical and mental harassment by her husband and in-laws. More so, it is an admitted fact that without getting divorce from opposite party no.2, he performed second marriage. So far as the evidence with regard to the quantum of maintenance awarded by learned Family Court to opposite party nos. 2 @ Rs. 4,000/- per month is concerned, it is evident from the pleadings and evidence on record that opposite party no.2 has no independent source of income sufficient to maintain herself whereas revisionist lives in a joint family and 12 bighas land is owned by his grandfather from which he has sufficient earning. More so, during his cross he admitted that he earns Rs. 10,000/- to 12000/- per month. Hence, considering the aforesaid facts, the opposite party no. 2 is entitled for maintenance from the revisionist.

19. In view of the aforesaid facts and circumstances, the quantum of maintenance awarded by the Family Court concerned is not excessive and there is no perversity in finding of fact or error of law, requiring any interference in the impugned order, hence the present criminal revision is liable to be dismissed and is accordingly, ***dismissed***.

20. A copy of this order be sent to the trial court concerned forthwith for necessary compliance.

February 25, 2026
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(Jai Krishna Upadhyay,J.)