



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 2350 of 2024

Smt Sonu Devi And Another

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Santosh Kumar Singh
Counsel for Opposite Party(s)	:	Gavendra Kumar Mishra, G.A.

Court No. - 86

HON'BLE JAI KRISHNA UPADHYAY, J.

1. The present revision has been preferred by the revisionist against the impugned judgment and order dated 16.3.2024 passed by the learned Principal Judge, Family Court, Aligarh in Misc. Case No. 295 of 2019 (Smt. Sonu Devi and another) Vs. Vipin Kumar) under Section 125 Cr.P.C., Police Station Khair, District Aligarh whereby the learned Principal Judge has directed the opposite party no.2, Vipin Kumar (husband) to pay Rs. 3,000/- per month to his wife/applicant No.1 (Smt. Sonu Devi) and Rs. 2,000/- per month to his minor son applicant no.2 (Dheeraj) towards their maintenance.

2. As per the allegations made in the maintenance application the marriage between revisionist no.1 and opposite party no.2 was solemnized on 5.3.2015 as per Hindu Rites and Rituals and out of the wedlock of revisionist no.1 and opposite party no.2 a son (revisionist no.3) was born after approximately 1.5 years of marriage. Just after the marriage the husband and his relatives started demanding a bullet motorcycle and buffalo as dowry and started harassing her physically and mentally. She informed her parents of all these demands and her parents tried to resolve this issue with her in-laws but they did not agree and continued to harass revisionist no.1 in various ways. About 1-1/2 years ago her in-laws physically assaulted her and drove her out of their house along with her minor son. She further stated that she is unable to do any kind of sewing, knitting or embroidery work and, therefore, she and her son minor son are on the verge of starvation. However, the respondent is a practicing lawyer, earning approximately Rs. 50,000/- per month. He owns 20 Bighas of good agricultural land in the village from which he earns Rs. 10,000/- per month. The applicants/revisionists require Rs. 10,000/- for herself and Rs. 5,000/- for her minor son as a maintenance

allowance from the date of filing of the application.

3. The opponent presented an objection and accepted the marriage with the revisionist no.1 and during their wedlock a son was born. He further stated that he got registered as an advocate with Bar Council of Uttar Pradesh in 2017. He is presently a trainee advocate and preparing for a competitive examination and is completely financially dependent on his parents with no income of his own. He never harassed the revisionists/applicants for dowry further more, due to revisionists' cruel behaviour and conduct he filed a divorce petition to prevent himself, which is pending in the court. The revisionist/applicant left matrimonial home without any reason.

4. In the oral evidence the petitioner examined herself as P.W.1 and Bani Singh as P.W.2, in the documentary evidence on behalf of the petitioner, Photocopy of Bar Council of Uttar Pradesh registration identity card of opposite party no.2 (husband), photocopy of date of birth certificate of minor son, Dheeraj, photocopy of F.I.R. under Section 498A, 307 IPC and 3/4 Dowry Prohibition Act. The opponent got himself examined as opposite party no.1. No documentary evidence has been field on behalf of the opponent/husband.

5. As per the evidence on record and submissions of the parties, learned family court has passed the impugned order.

6. I have heard learned counsel for the revisionist nos. 1 and 2, learned A.G.A. for the State and learned counsel for opposite party no.2 and perused the record.

7. Learned counsel for the revisionist herein submits that learned Principal Judge, Family Court, Aligarh has illegally granted less maintenance to the revisionist nos. 1 and 2 of Rs. 3,000/- and Rs. 2,000/- per month respectively.

8. The learned trial court has not considered the income of opposite party no.2 who earns Rs. 60,000/- per month. The opposite party no.2 has deliberately concealed his income in his affidavit filed before the learned Family Court. He further submits that revisionist is unable to maintain herself and her son and she has claimed maintenance of Rs. 10,000/- to herself and Rs. 5,000/- to her minor son.

9. Learned A.G.A. for the State and learned counsel for opposite party no.2

have defended the impugned order submitting that there is no illegality, infirmity or perversity in it and the instant criminal revision is liable to be dismissed.

10. Now coming to the evidence of the parties, I find that admittedly revisionist no.1 is legally wedded wife of opposite party no.2 and revisionist no.2 is son of opposite party no.2. In her own petition the revisionist no.1 (wife) submits that after the marriage the husband and his relatives started demanding bullet motorcycle and buffalo as dowry and started harassing her physically and mentally, therefore, she lives with her parental home. She further stated that she is unable to maintain herself and her minor son.

11. In support of their submissions, affidavits have been filed by both the parties. Revisionist no.1/applicant was examined as P.W.1 and Bani Singh, father of opposite party no.1 was examined as P.W.2 and they have supported the application filed under section 125 Cr.P.C. Opposite party no.2 Vipin Kumar (husband) has supported the version of the objection and admitted doing of farming work with his father. Further more, he accepted that he has been registered as an advocate with Bar Council of Uttar Pradesh since 2017 and concurrently engaged in G.S.T. office related business. Additionally, the learned Principal Judge, Family Court has found that opposite party no.2 earns approximately 20,000/- rupees per month. However, before deciding the case it would be appropriate to refer to relevant statutory provision and case laws.

12. 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."

13. In paragraph Nos.37, 38, 39 and 40 of **Rajnesh 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]."

14. 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]"

15. As such, I find as per the evidence on record that the revisionist no.1, Smt. Sonu Devi is the legally wedded wife of opposite party no.2 and revisionist no.2 (minor) is the son of opposite party no.2.

16. I further find that revisionist no.1, Smt. Sonu Devi is living at her parental house due to physical and mental harassment by her husband and his relatives. Regarding source of income I find that revisionist has no means to maintain herself and her minor son living with her. Whereas her husband has income of Rs. 20,000/- per month. Hence I find that there is no doubt about entitlement of revisionist to get maintenance from opposite party no.2.

17. In view of the aforesaid facts and circumstances of the case the monthly income of her husband is Rs. 20,000/- per month, regarding the quantum of maintenance, I find that maintenance award granting sum of Rs. 3,000/- per month for revisionist no.1 and Rs. 2,000/- for revisionist no.2 by the Family Court to be appropriate, reasonable and in accordance with law and there is no perversity in the finding of fact or error of law requiring any interference in the impugned order. Hence the criminal revision is accordingly dismissed.

18. Copy of this order shall be sent to the concerned court forthwith.

February 23, 2026
Kumar Manish

(Jai Krishna Upadhyay,J.)