



2026:AHC:43447

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 3161 of 2024

Smt. Vijay Bharti And 2 Others

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Rohit Nandan Pandey
Counsel for Opposite Party(s)	:	G.A., Krishna Mohan Asthana

Court No. - 86

HON'BLE JAI KRISHNA UPADHYAY, J.

1. By means of the instant criminal revision, revisionists have assailed the judgement and order dated 14.03.2024 passed by Additional Principal Judge, Family Judge Court No.1, Kanpur Nagar in Case No. 1267 of 2019 (Smt. Vijay Bharti and others vs. Premnarayan Vyas), under Section 125 Cr.P.C.
2. By the impugned order, the trial Court has awarded interim maintenance of Rs. 11,000/- to the revisionist No.1 and of Rs. 8,000/- to the revisionist No. 3 per month each under Section 125 Cr.P.C. The revisionists have prayed in the revision for enhancement of maintenance allowance awarded by the trial Court in their favour.
3. In view of the statement explained in para 6 of the counter affidavit, filed by the respondent No. 2. It is cleared that the revisionist No.-2 Diksha Vyas born on 28.02.2003, as per statement she is major. Hence, the Principle Judge Family Court, Kanpur Nagar has not awarded any maintenance for revisionist no. 2.
4. It has been submitted by the learned counsel for the revisionists that before calculating the quantum of maintenance, the trial court has not taken into consideration the salary of the opposite party No.2 (husband) and the status of family. It has also been submitted that, opposite party No.2 is still neglecting to maintain the revisionists, who are his wife and two minor daughters. The revisionists are not capable to maintain themselves.
5. The revisionist No.1 has filed payslip of opposite party No.2, which was provided by the GAIL (India) LIMITED, through Right to Information Act,

2005 on 25.01.2023 by the Sri Ajay Rawat, Addl. Regional Manager and Central Information Officer, GAIL INDIA LIMITED, by E-mail-ajayrawat@gail.co.in. The same has been annexed as Annexure No.3 along with supplementary affidavit. In statement of salary, the Net income of the opposite party No.2 is shown as Rs. 94,360/-

6. Learned counsel for the revisionists has placed reliance on the following judgments of the Hon'ble Apex Court as well as this Court:-

(i) Rajnesh vs. Neha and Another, (2021) 2 SCC 324.

(ii) Smt. Kuldeep Kaur and Another Vs. State of U.P. and Another, (2012) 3 JIC 522 (AII).

7. *Per contra*, learned counsel for the opposite party No.2 has opposed the prayer of the revisionists and submitted that trial court has passed the impugned order based on the evidence on record. It has also been submitted that the trial court did not provide specific reasons for fixing the amount of maintenance allowance. It was further submitted that opposite party No.2 who is posted as an E-1 Accountant Officer in GAIL is receiving a monthly net salary of amount 87,279/- after compulsory deduction. Apart from that opposite party no. 2 is ready and willing to bear the expenses of education and marriages of both of the daughters.

8. Heard Sri Rohit Nandan Pnaday, learned counsel for the revisionists, learned A.G.A. for the State and K.M. Asthana, learned counsel for opposite party no.2

9. Factual matrix of the case, in brief, is that Smt. Vijay Bharti, who is revisionist No.1 in this revision filed an application under Section 125 Cr.P.C. for herself and her two minor daughters. She alleged that, she was married to opposite party No.2- Prem Narayan Vyas according to Hindu rites and rituals on 18.11.2000 and that her parents have given sufficient dowry and cash at the time of her marriage. After marriage, she began to live in her matrimonial home, where her husband (opposite party No.2) and her in-laws started harassing her for not providing additional dowry. Two daughters were born from the wedlock of the revisionist and opposite party No. 2. On 06.05.2019 the revisionist was turned out of the matrimonial house by her husband under a involving, conspiracy of his brother. On 08/05/2019, with the help of the police, the applicant brought her children back to Kanpur and began living in her in-laws' house in Kanpur, maintaining the house. All of the applicant's jewellery and clothing remain in the possession of the

defendant. The opponent fraudulently opened a factory in Noida Sector 7 E-110 and fraudulently induced the applicant to sign and got the GST etc. registered in the applicant's name, whereas the applicant has no knowledge or information about the factory and no payment etc. has been made. On 14.07.2019 in the evening, the opponent along with his brother-in-law C.L. Gahlor and Jaan ji came to the revisionist's house and banged the gate loudly and abused her. They threatened to kill her and said that get out of my house otherwise I will kill you and your children. After some time they ran away, using abusive language. The applicant has lodged a report of this incident on 17.07.2019 in Police Station Chakeri, bearing Case Crime No. 646/2019 under sections 498A, 323,504,506,406,420 IPC and 3/4 DP Act.

10. Learned counsel on behalf of revisionist submitted that the revisionist is a lady with two daughters (revisionist no. 2 and 3). After being evicted by opposite party no.2 from his house, she began living in a vacant, dilapidated house belonging to opposite party no.2, which she cannot afford to maintain. The elder daughter of O.P. No.2 (revisionist no.2, Diksha Vyas) living in the aforesaid house and completed her B.C.A. in 2024; however, revisionist no.2 cannot afford the expenses of her daughter's MCA's degree. Opposite party no.2 is refusing to provide funds for her to pursue this degree. Even though he acknowledged this need during mediation. Revisionist nos. 1 and 2 appeared in mediation before this Hon'ble Court, where opposite party no.2 assured them that he would provide money for her to pursue MCA degree. Despite this, he has done nothing today. His current instance that he is willing to pay marriage expenses is unreasonable. O.P. No.2 is unwilling to live with them or take take responsibility, and mediation failed due to his lack of cooperation. Revisionist no.2 attempted to settle the issue at the mediation centre, but no to avail.

11. Learned Counsel on behalf of opposite party No. 2, stated that on 08.05.2019, the revisionist no.1 along with her 3 brothers lodged false case against the OP no 2 and managed to have him behind the bar at Police Station Sector 24 NOIDA on the false and fabricated complaint under Section 151/107/116 Cr.P.C. the OP no 2 remained in the lock-up and was produced before the City Magistrate NOIDA in handcuff from where he was granted bail on 09.05.2019 at 05:00 PM.

12. Learned Counsel for O.P. No. 2, further stated that on 06.02.2025 an order was passed by the learned Additional Principal Judge, Family Court in

Case No.1437 of 2024 U/S 125 of Cr.P.C., by which opposite party no.2, apart from the Rs.19,000/- per month maintenance, was directed to pay a sum of Rs. 16,000/- towards arrears, total amount of Rs.35,000/-per month till the payment of entire arrears of Rs.3,88,000/- to the revisionists. The said amount of Rs. 16,000/- per month is for the payment of arrears of maintenance accrued due to enhancement of maintenance from Rs.16,000/- to Rs.19,000/- from the date of application.

13. Learned Counsel for O.P. No. 2, further stated that it is wrongly alleged by the revisionist no.1 that opposite party no.1 is earning more than Rs. 2,00,000/- per month. It is also submitted that after statutory deductions the opposite party no.2 is left with payment of Rs.87,729/- per month, out of which he is paying a sum of Rs.19,000/- per month towards maintenance and additional amount of Rs.16,000/- per month towards arrears of maintenance. The opposite party no.2 is residing in the rented house at Sadhunagar, Meerut, where he is paying 18,750/- per month to the landlord including the electricity charges and is further incurring huge expenses towards food and convenience expenses. He is left with almost no money. He also stated that despite these hardships, the opposite party no.2 is ready and willing to meet marriage and education expenses of his two daughters. However the revisionist no.1 is not allowing either to meet his daughters or even to talk to them.

14. 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—4

(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.”

15. 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].**”

16. The Hon’ble Apex Court in paragraph Nos.77, 78, 79 and 80 of **Rajnesh 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 SC 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]**”

17. After thoroughly discussing the numerous judgements of the Hon’ble Apex Court and this Court, the Apex Court in para-109 of *Rajnish vs. Neha and Another* (supra) held that maintenance should be provided from the date of application not from the date of order. The para- 109 of the aforesaid judgement reads as under:-

“109. The judgments herein-above reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the court to grant

maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.”

18. The Hon’ble Apex Court in the decision of **Rajnish vs. Neha** and Another (supra) has held that the husband is bound to provide maintenance allowance to his wife and children which may be upto 25% of his monthly income.

19. So far as the loan is concerned, it is clear that it is a voluntary deduction and the amount in lump sum was already received by the respondent in advance as this amount is being repaid in installments, therefore, the said installment cannot be said to be a statutory and mandatory deduction. Furthermore, according to the revisionist no.1 the said loan was taken after the separation and, therefore, it was deliberately done by the respondent to bring down his net take home salary. Therefore, it cannot be taken into consideration for calculating the quantum of maintenance.

20. Considering the law propounded by the following decisions and facts and circumstances of the case, there is sufficient ground to allow the present criminal revision and enhance the amount of maintenance allowance to be paid to the revisionist Nos.1 and 2.

21. In view of the aforesaid factual and legal aspect, I am of the view that the impugned order dated 14.03.2024 is erroneous and cannot survive in the eyes of law, therefore, I set aside the impugned order for the aforesaid reasons.

22. The application for enhancement of maintenance allowance filed by revisionist nos.1 and 3 is allowed and it is observed that revisionist no.1 will be entitled for Rs.15,000/- per month as maintenance allowance and revisionist no.3 (minor daughter of opposite party no.2) with Rs.10,000/- per

month.

23. Thus, opposite party No.2 shall be bound to provide maintenance allowance @ of Rs.15,000/- to his wife (revisionist No.1) and Rs.10,000/- to his minor daughters each (revisionist No. 3) and total Rs.25,000/- per month shall be given to the revisionists from the date of application. The arrears of maintenance allowance shall be paid by the opposite party No.2 in four equal amounts at the gap of four months. The monthly interim maintenance shall be paid regularly by 10th day of each month.

24. It is observed that revisionist no.2 was born on 28.2.2003 and hence she is major. As a major daughter she is ineligible for maintenance under section 125 Cr.P.C. However, she is at liberty to seek such legal remedies as may be available to her under appropriate law regarding her maintenance as unmarried daughter, who is unable to maintain herself.

25. The present criminal revision is allowed in terms of above mentioned conditions.

26. The copy of the order be sent to the trial Court concerned for necessary compliance, forthwith.

(Jai Krishna Upadhyay,J.)

February 18, 2026

Kumar Manish