



2026:AHC:196079

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 3354 of 2024

Shafiqurrahman

.....Revisionist(s)

Versus

State of U.P. and 2 others

.....Opposite Party(s)

Counsel for Revisionist(s) : B.s. Pandey, Kartikey Pandey
Counsel for Opposite Party(s) : Akhilesh Kumar Mishra, G.A.

Judgment Reserved on 30.07.2026
Judgment Delivered on 18.09.2026
Judgment Uploaded on 18.09.2026

Court No. - 87

HON'BLE LAKSHMI KANT SHUKLA, J.

1. Heard learned counsel appearing on behalf of revisionist, learned AGA appearing on behalf of State-opposite party no. 1, learned counsel appearing on behalf of opposite party no. 2 and perused the record.

2. The instant criminal revision has been preferred by the revisionist Sahffiqurrahman assailing the impugned judgment and order dated 23.05.2024 passed by Principal Judge, Family Court, Sant Kabir Nagar (hereinafter referred to as trial court) in Misc. Case No. 292/11/2016 (under section 125 Cr.P.C., 1973) bearing

CNR-UPSK020009952016 (Smt. Rubina Khatoon and Another Vs. Shafiqurrahman) wherein the trial court allowed the maintenance claim of opposite party no. 2 and 3 and ordered the revisionist to pay Rs. 4,000/- per month to opposite party no. 2 and Rs. 2,000/- per month to opposite party no. 3.

3. Feeling aggrieved from that order the instant criminal revision has been filed on the grounds that the trial court has passed the impugned order in arbitrary and cursory manner without application of judicial mind. The impugned judgment is perverse to law as well as facts and evidence available on record. The trial court has failed to exercise its jurisdiction while rejecting the application of revisionist for ascertaining the parentage of opposite party no. 3 in circumstance there is solid dispute in this regard has been raised by the revisionist before the trial court. The trial court did not persuade to get evidence to ascertain the biological relationship between the revisionist and opposite party no. 3 and a prayer for setting aside the impugned judgment and order and allowing the criminal revision has been made.

4. Learned counsel for revisionist submitted that the opposite party no. 2 has claimed to be legally wedded wife of revisionist and opposite party no. 3 to be daughter of revisionist the same has been denied by the revisionist stating that there was only some talking about the marriage of revisionist and opposite party no. 2 but when revisionist and opposite party no. 2 met to each other for cross observation the revisionist found that the opposite party no. 2's face was badly burnt and for that reason the revisionist refused to marry with opposite party no. 2. The opposite party no. 2 never married with revisionist she never came to the residence of revisionist but she dishonestly to get the maintenance filed the present case on false and fabricated grounds and for that purpose she put a false story of marriage and birth of opposite party no. 3 from her wedlock

from the revisionist. To support his version the revisionist occupied only oral evidence. Though the assertion of revisionist was negative she could not establish the negative things easily. So far that he moved an application for ascertaining the biological father of opposite party no. 3 but the same was rejected by trial court, accordingly the trial court refused to take evidence and similarly the trial court refused to do justice.

5. Learned counsel for revisionist further submitted that there are many other discrepancies and infirmity in the judgment but the trial court did not consider the evidence available on record in proper perspective. The trial court has placed reliance upon photocopy of so called Nikahnam wherein as the name of Qazi Mr. Asgar Ali and Hamid Ali have been mentioned but the opposite party no. 2 and all her witnesses has told the name of Qazi as Muzaffar Maulana. So the court cannot relied upon their statements that the marriage solemnized before them. Similarly the opposite party no. 2 tells the place of her marriage with revisionist her parental house while her mother says that marriage of revisionist and opposite party no. 2 took place at the residence of Sohrat Pradhan while AW-3 her father and AW-4 Mohd. Rafiq states that the Nikahnama of the parties took place at Sohnan Madarsa. In such circumstance, whose statement deserves to be relied upon is a miracle question. If there any marriage ceremony between revisionist and opposite party no. 2 would have been taken place there must be uniformity in the statement of AW-1, AW-2, AW-3, AW-4 and AW-5 regarding place of marriage. If it is relied that the Nikahnama was prepared in Sohanan Madarsa then again a miracle question arises that place of marriage of revisionist and opposite party no. 2 is either the residence of father of opposite party no. 2 or the residence of Sohrat Pradhan and then whose Nikahnama got prepared in Sonahan Madarsa meaning there the Nikahnama in Sohanan Madarasa does

not relate to marriage of revisionist and opposite party no. 2 and again a question arises that whether such marriage took place at above noted alternative two places then whose marriage was solemnized at Sonahana Madarsa. Similarly, if such marriage was solemnized either at the residence of the father of opposite party no. 2 or at the residence of Sohrat Pradhan, then the question arises as to where the Nikahnama was prepared. The absence of any clear explanation in this regard creates a serious doubt regarding the alleged marriage and, consequently, opposite party no. 2 herself has created a doubtful circumstance surrounding the alleged solemnization of the marriage.

6. Learned counsel for revisionist next submitted that it is admitted to opposite party no. 2 and her witnesses AW-2, AW-3, AW-4 and AW-5 that opposite party no. 2 was earlier married with another person of village Thanwa then she was under compulsion to show that when and where her Talaknama took place. In absence of Talak with her earlier husband the second marriage of opposite party no. 2 cannot be held as legal one, therefore, the opposite party no. 2 is not legally wedded wife of revisionist. Accordingly in absence of marriage of revisionist and opposite party no. 2 there is no question of birth of opposite party no. 3 from the wedlock of revisionist and opposite party no. 2. It is thus contended that all above conspectus remain unconsidered. Placing reliance upon the judgment of this Court naming *Jawahir Lal Jaiswal Vs. State of U.P. and another passed in Criminal Revision No. 1428 of 2025* wherein paragraph 20 and 21 of that judgment relied the Apex Court finding in *R. Rajendran Vs. Kamar Nisha & Others reported in 2025 INSC 1304* and a judgment of Co-ordinate Bench of this Court in *Sachin Agarwal Vs. State of U.P. & Another passed in Application under section 482 Cr.P.C. No. 28298 of 2021 decided on 30.05.2024*.

Paragraph 20 and 21 of Jawahir Lal Jaiswal (supra) case are reproduced hereunder:-

"20. This Court has not dispute the judgment of the Apex Court in the case of R. Rajendran VS. Kamar Nisha & Others reported in 2025 INSC 1304, wherein it has been opined by the Apex Court that D.N.A. testing should not be warranted if paternity is a collateral issue and not directly required to prove the primary allegations. Compelling DNA testing without such necessity amounts to unwarranted intrusion violating privacy and bodily autonomy. In paragraph no. 29 of the said case the Apex Court has framed certain guidelines for direction qua D.N.A. testing.

21. A Coordinate Bench of this Court in the case of Sachin Agarwal Vs. State of U.P. & Another passed in Application U/S 482 Cr.P.C. No. 28298 of 2021 decided on 30th May, 2024 in paragraph nos. 15 to 22 has opined as follows:

"15. For the pursuit of justice, the court must employ all available means to uncover the truth and safeguard the rights of all individuals. The fundamental duty of the judiciary is to ensure that justice prevails by utilizing the most accurate and reliable methods, thus upholding the principles of fairness and equity for everyone involved. In the case of Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik & Anr (2014) 2 SCC 576, the Hon'ble Supreme Court in para 17, highlighted the reliability and scientific accuracy of DNA tests. The Court emphasized that while Section 112 of the Evidence Act creates a presumption of conclusive proof under certain conditions, this presumption is rebuttable. The Supreme Court asserted that in the interest of justice, the truth must be ascertained using the best available science, stating :- "In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement

accepted by the world community to be correct, the latter must prevail over the former."

16. In Jamshed Vs. State of U.P. [1976 Cri L J 1680 (All)], wherein it was held that a blood sample can be compulsorily extracted during a "medical examination" conducted under Section 53 Cr.P.C. At that time, the collection of blood samples was not expressly contemplated in the said provision. Nevertheless, the Court had ruled that the phrase "examination of a person" should be read liberally so as to include an examination of what is externally visible on a body as well as the examination of an organ inside the body.

17. In light of the Hon'ble Supreme Court's decision in Aparna Ajinkya Firodia v. Ajinkya Arun Firodia 2023 LiveLaw (SC) 122, this court recognizes the significance and sensitivity surrounding the order for a DNA test. It is imperative to acknowledge that while a DNA test is a powerful tool in ascertaining biological relationships, its deployment must be carefully weighed against potential misuse, the resultant social stigma, and the psychological impact on the children. The court must be cautious to avoid directing such tests in a routine or casual manner, and instead should assess the necessity based on the specific facts and circumstances of each case.

18. The Supreme Court in the matter of Selvi Vs. State of Karnataka, 2010 (7) SCC 263 has categorically held that the civil court can direct for conducting medical examination to ascertain mental state of a party of a divorce proceeding.

19. Furthermore, the applicant's refusal to undergo the DNA test, a procedure deemed essential for determining paternity and safeguarding the child's welfare, could warrant an adverse inference under Section 114, Illustration (h) of the Indian Evidence Act. This provision allows the court to infer that

evidence which could be and is not produced would, if produced, be unfavorable to the person withholding it. In Rohit Shekhar v. Narayan Dutt Tiwari 2011 SCC OnLine Delhi 4076, the Delhi High Court affirmed this principle, stating that refusal to undergo a DNA test in a paternity dispute can lead to an adverse inference against the refusing party. Such an inference, while not conclusive, strengthens the court's ability to arrive at a just decision based on the available evidence and the best interests of the children.

20. The psychological and social implications of unresolved paternity disputes cannot be ignored. A definitive determination of paternity through a DNA test can provide closure and stability for all parties involved, particularly the children. Ensuring that the children receive rightful maintenance that not only fulfils their financial needs but also affirms their social and legal status.

21. In the present case, it is essential to consider the broader implications of directing a DNA test. The court is mindful of the potential trauma and stigma that might affect the children, should the paternity dispute be subjected to public scrutiny. The principle that the best interests of the children should be of the paramount consideration in all matters concerning them, as enshrined in Article 3 of the Convention on the Rights of the Children. The right to maintenance is not merely a legal provision but is deeply rooted in fundamental human rights. The Universal Declaration of Human Rights recognizes the right to an adequate standard of living, which includes food, clothing, housing, and medical care. In the context of children, maintenance is indispensable for their survival, growth, and development. Denying maintenance due to unresolved paternity issues would be a violation of their basic human rights. "

7. On the basis of aforesaid, it is submitted that in such a situation where strong question regarding biological father-ship is raised showing the different story the DNA is the sole way to ascertain the truth in the matter but the same was denied by the trial court.

8. Learned counsel for revisionist further submitted that in present matter firstly the matter was decided by trial court i.e. Additional Principal Judge, Family Court Sant Kabir Nagar on 10.01.2023 against that order a revision was filed by revisionist bearing Criminal Revision No. 822 of 2023 ***Shaffiurrahman Vs. State of U.P. and two others which was decided on 17.08.2023 by this Court***, where this Court has observed 6th paragraph onward is as under:-

"Learned court below has placed reliance on photocopy of Nikahnama without seeking any explanation from the applicant regarding want of original copy. AW-3 has stated that Shafiqurrahman has laid the grooms party at the place of Izhar (father of Rubina) on 1.5.2014. Rubina resided at the place of opposite party for 2-3 months. The family of Shafiqurrahman is engaged in profession of 'Dholki' who play 'Dholak' usually in marriage parties and gets some reward. This was third marriage of Shafiqurrahman and second marriage of Rubina but he could not tell that when did separation from her previous husband. There is no evidence that any legal divorce of the applicant Rubina with her previous husband ever took place and without a valid divorce her alleged marriage with the revisionist cannot be considered as valid. Learned court below has decided the question that whether the applicant is married wife of the revisionist in summary manner in spite of specific denial of opposite party of the said marriage on the basis of photocopy of Nikahnama (marriage deed) without considering over all evidence on record on this point, therefore, learned court below has passed the impugned order

without considering the material on record in proper perspective and there is apparent legal error in impugned judgment and order and same cannot be sustained, therefore, revision deserves to be allowed and the impugned order passed by learned court below deserves to be set aside.

Accordingly, revision stands allowed and impugned order passed by learned court below is set aside. Court below is directed to decide the application under Section 125 Cr.P.C. afresh after giving opportunity of hearing to both the parties and giving them opportunity to lead further documentary or oral evidence, if they apply for the same, and decide the application preferably within a period of three months from the date of production of a certified copy of this order in the light of observations made in present revision.

Court below is further directed to give specific finding after considering the pleadings and evidence of parties and considering any further evidence if adduced by the parties regarding factum of marriage of the revisionist and respondent no. 2 and also give finding as to whether the marriage of respondent no. 2 with her previous husband was legally dissolved or not. However, in order to ensure sustenance of respondent no. 2 and her minor daughter during pending fresh decision on the matter, revisionist is directed to pay Rs. 3500/- to respondent no. 2 and Rs. 1500/- to respondent no. 3, as interim maintenance during pendency of maintenance case under Section 125 Cr.P.C. by the court below. "

9. In view of above conspectus, it is submitted that even while passing the impugned judgment and order the trial court did not follow the direction made by this Court and in above premise the impugned judgment and order is not sustainable in law.

10. Learned counsel appearing on behalf of opposite party nos. 2 and 3 submitted that it is clear from evidence available on record that the marriage of revisionist was solemnized with opposite party

no. 2 and the Nikahnama in this regard was prepared whose copy is part of record.

10. So far as dispute regarding Nikahnama is concerned, learned counsel for revisionist has raised an objection regarding statement of witness in respect of the Nikahnama that as per statement of applicant-witnesses the Nikahanama was solemnized by Qazi Muzaffar Hussain but according to Nikahnama occurred at page 77 of the paper book the Qazi who got solemnized the Nikah of parties are Asgar Ali and Hamid Ali but it is a wrong statement and learned counsel for revisionist filed its hindi translation in wrong way which is at page 76 of the paper book. The true translation of such Nikahnama regarding the names of Qazi at page 7 of written statement and it is clear that the names of Qazi mentioned in such Nikahnama as Muzaffar Hussain and Hamid Ali, therefore, the Court cannot disbelieved the statement of AWs regarding the solemnizing the Nikah of parties by Muzaffar Hussain as Qazi.

11. After giving consideration on page 7 & 8 of written statement filed by opposite party nos. 2 and 3 and page 76 and 77 of the paper book which transpires that learned counsel for revisionist has mentioned a wrong fact before the Court regarding Qaziship of Asgar Ali in the impugned matter. He further submitted that Nikahnama is a genuine document which was never challenged by the revisionist in any court of law or made any complaint against opposite party no. 2 with the allegation that the forged Nikahnama was filed in the present case but only to avoid the maintenance to his wife and child the genuineness of the said Nikahnama has been challenged by the revisionist in the present maintenance proceeding. He further submitted that it is also pertinent that at the time of marriage the revisionist has knowledge about the first marriage of opposite party no. 2 but now only to avoid to pay maintenance to his wife and daughter he is concocted the entire false and frivolous

story alleging that he was never married with opposite party no. 2 and the Nikahnama is nothing but forged document. The Parivar Register clearly shows that the same is nothing but details of the parivar of the father of the revisionist and not the parivar of the revisionist and in the said Parivar Register the name of earlier wife of the revisionist and the present wife of the revisionist is also missing. The opposite party no. 2 and the witnesses produced on her behalf have clearly stated that the Nikah had taken place between the revisionist and opposite party no. 2 and opposite party no. 3 was born out of the wedlock between the revisionist and the opposite party no. 2. It is further submitted that the opposite party no. 2 is a illiterate and Pardanshin lady hence some discrepancies in her statement would not demonstrate that Nikah was never solemnized with the revisionist and opposite party no. 2 and the opposite party no. 3 is not the daughter of the revisionist. It is further contended that the trial court has not committed any error of law or fact. The impugned order has been passed by the trial court after due consideration of the material available on record. Learned counsel further submits that the mother of a child is the only person who can explain the actual paternity of the child. The Opposite party no. 2 has claimed that the girl child was born out of the wedlock between the revisionist and opposite party no. 2, which has been denied by the revisionist. In the aforesaid circumstances, in order to ascertain the truth and determine the biological paternity of opposite party no. 3, a DNA test is necessary. Learned counsel for opposite party nos. 2 and 3 has also relied upon the law laid down by this Court in the case of *Jawahir Lal Jaiswal (supra) case* in this regard.

12. Having heard the rival submissions and upon perusal of the record, it is evident that the submission advanced by opposite party nos. 2 and 3 with regard to the Nikahnama is clearly borne out from the record, whereas the submission advanced by learned counsel for

the revisionist in this regard is misleading one. But it is remarkable that the said Nikahnama produced before the trial court is only a photocopy, and the original Nikahnama could not be brought on record. Though its contents have been supported by the witnesses examined on behalf of opposite party nos. 2 and 3, it is assertion of opposite party nos. 2 and 3, who have claimed maintenance, that the Nikah between the revisionist and opposite party no. 2 had taken place. Though there is some discrepancy in the statements of the witnesses examined on behalf of opposite party nos. 2 and 3 with regard to the place where the Nikah between the parties was solemnized, which creates some doubt, but it is the sacred duty of the court to secure the right of a child to get maintenance from his or her biological parents, and the child cannot be put to suffer on account of a dispute between the parents. In the present case, the revisionist himself moved an application seeking a DNA test. On the other hand, learned counsel appearing for opposite party nos. 2 and 3 has submitted that, in order to ascertain the true biological paternity of opposite party no. 3, a DNA test is required meaning thereby both the parties have expressed their willingness to have the biological paternity of opposite party no. 3 be ascertained through a DNA test. Both parties have expressed their positive approach even at different stages. In view of the above, in the interest of justice, this Court is of the considered view that, without ascertaining the true biological paternity of opposite party no. 3 through a DNA test, her right to maintenance cannot be secured in justified manner. It is also remarkable that on one hand the right of a child to get maintenance from his or her biological parent must be secured but the Court is equally under an obligation to safeguard the rights of the other party i.e. a person who is not the true biological father of a child cannot be fastened with the liability to maintain a child born to another person but the trial court passed the impugned order

ignoring the material contradictions in the statements of the witnesses examined on behalf of opposite party nos. 2 and 3 regarding the place of solemnization of the Nikah and the place where the Nikahnama was prepared. In view of the aforesaid contradictions, the evidence brought on record in support of the alleged Nikah requires fresh consideration. Consequently, the impugned judgment and order is liable to be set aside.

13. Accordingly, the impugned judgment and order is hereby set aside. The matter is remitted to the learned trial court for fresh adjudication in accordance with law, after affording adequate opportunity to both the parties to adduce additional evidence, especially regarding the DNA test for determination of the biological paternity of opposite party no. 3, as both the parties have expressed their willingness in this direction.

14. With the aforesaid direction the present criminal revision stands **disposed of.**

(Lakshmi Kant Shukla,J.)

September 18, 2026
Arti