



2026:AHC:107573

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 5837 of 2025

Ramraj

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Saurabh Yadav, Suraj Raj

Counsel for Opposite Party(s) : G.A., Kailash Choudhary, Nitesh
Kumar Chaudhari

Court No. - 88

HON'BLE LAKSHMI KANT SHUKLA, J.

1. Rejoinder affidavit filed on behalf of revisionist, is taken on record.
2. Heard Mr. Saurabh Yadav, the learned counsel for revisionist, Mr. Gyanendra Singh, the learned AGA representing State-opposite party no. 1 and Mr. Kailash Choudhary, learned counsel representing opposite party no. 2 and perused the record.
3. The present revision has been preferred by revisionist Ramraj challenging the impugned judgment and order dated 27.06.2025 passed by learned Principal Judge, Family Court, Gorakhpur (hereinafter referred to as trial court) in Case No. 39/2021, under section 125 Cr.P.C. (Kumari Shushila Vs. Ramraj) wherein the trial court partially allowed the application of opposite party no. 2/the complainant under section 125 Cr.P.C. and the revisionist was ordered to pay Rs. 4,000/- monthly as maintenance to opposite party no. 2 the wife of revisionist.
4. Feeling aggrieved from that order the present criminal revision has been filed on the grounds that the impugned order has manifest error of law. It is absolutely illegal, unjust, improper, arbitrary against the evidence on record, hence the same is liable to be set aside by this Court invoking the revisional jurisdiction.
5. To elaborate his submission learned counsel appearing on behalf of

revisionist urged that the revisionist has claimed in his objection that the opposite party no. 2 is leading unchastity life but the trial court failed to frame any issue in this regard and consequently no finding in this record has been recorded by the trial court and it is thus contended that the impugned order is not sustainable in law. In support of his submission he placed reliance upon paragraph 8 and 10 of the written statement which occurs at page 90 of the paper book. The relevant paragraph nos. 8 and 10 of the aforesaid written statement are quoted here under:-

"8. यह कि याची का अश्वनी कुमार पुत्र अज्ञात ग्राम व पोस्ट-बरईपार, हाल मुकाम नहर चौराहा, डोहरिया कला, पोस्ट-मिनवा, थाना-सहजनवाँ, जनपद-गोरखपुर के साथ अनैतिक सम्बन्ध था जिसके सम्बन्ध में अश्वनी कुमार की पत्नी मीना देवी ने दिनांक 27-12-2020 को थानाध्यक्ष सहजनवाँ, गोरखपुर को एक शिकायती प्रार्थना पत्र दी थी जिसकी छायाप्रति शपथ पत्र के साथ संलग्न है। जिस पर एनेक्चर सं०-1 डाला गया है।

10- यह कि याची का चाल-चलन ठीक नहीं था इसीलिये वह शपथकर्ता के साथ रहकर वैवाहिक जीवन का निर्वाह बखूबी नहीं की और शपथकर्ता को वैवाहिक जीवन से वंचित रखी। याची व शपथकर्ता के बीच में कई बार सुलह-समझौता हुआ लेकिन याची ने सुलह समझौता का कभी पालन नहीं किया।"

6. Per contra learned AGA as well as learned counsel appearing on behalf of opposite party no. 2 submitted that there no issue was framed regarding chastity of opposite party no. 2. In such circumstances if there any evidence regarding unchastity or chastity had been adduced, such evidence could not be taken into consideration. It is further submitted that the parties are bound to lead evidence confining the issues framed in the matter and submitted that the revisionist could not show any material irregularity in the impugned order. The jurisdiction of trial court on the matter is not disputed so this criminal revision is liable to be set aside and impugned order is liable to be confirmed.

7. Having heard the submissions urged by learned counsel appearing on behalf of revisionist regarding fact of unchastity claimed by revisionist and non framing of issue in this regard is clearly borne out from the record. Section 125 of Cr.P.C. entitles the wife, children and parents having no sufficient means of maintenance to get maintenance from husband, parents

or children as the case may be, having sufficient means to maintain his wife, his/her parents or children as the case may be. In addition to that the wife has to qualify certain additional qualifications to get maintenance from her husband. Section 125 Cr.P.C. reproduced herein 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 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 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 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 the 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"

8. Due to existence of Clause 4 to section 125 of Cr.P.C. if wife leads her life in adulterous she cannot claim any maintenance from her husband meaning thereby if specific pleading in this regard is made by husband i.e. crucial point which must be determined prior to order of payment of any maintenance. It is apparent from perusal of written statement of revisionist occurred on page 90 of paper book that the revisionist has placed specific versions disclosing the name and address of co-adulterer. Though the revisionist is defendant/opposite party before the trial court and the case was filed by opposite party no. 2. Though the provision under section 125 Cr.P.C. is a part of criminal proceeding but when such proceeding is initiated the provisions of civil procedure code applies. In ***Vijay Kumar Prasad Vs. State of Bihar (2004) 4 SCC 468*** and ***Savitri Vs. Govind Singh***

Rawat (1985) 4 SCC 337 it is held by Hon'ble Apex Court that the jurisdiction exercised by Magistrate under Chapter IX Cr.P.C. is not strictly criminal in nature and that proceedings under section 125 Cr.P.C. are essentially civil in nature. In **Jaiminiben Hirenghai Vyas and Another Vs. Hirenghai Rameshchandra Vyas and Another (2015) 2 Supreme Court Cases 385** the Apex Court has held that every final order under section 125 Cr.P.C. and other sections referred to in sub-section (c) of Section 354 must contain points for determination, the decision thereon and the reasons for such decision. In other words, Section 125 and Section 354(6) must be read together. In **Shailesh Kumar Yadav Vs. State of U.P. and Another** order dated 14th November, 2025 passed by the co-ordinate Bench of this Court it is observed that several judgments passed by the learned Trial Court have been decided without framing any points for determination. A perusal of the record further shows that the trial court decided the section 125 Cr.P.C. application without framing any points for determination, which is mandatory as per Section 354(6) Cr.P.C. This provision requires that every order under section 117 or sub-section (2) of Section 138, and every final order made under Section 125, Section 145, or Section 147, shall contain the point or points for determination, the decision thereon, and the reasons for the decision. It is clarified that in the absence of framing any points for determination, it is difficult to ascertain the basis on which the Trial Court passed the order or awarded the maintenance amount.

9. At the stage of framing of points for determination the trial court should be very cautious while considering the provisions contained under section 125 of Cr.P.C. Living in adultery constitutes a statutory Bar to the entitlement of a wife to get maintenance meaning thereby it is the legal requirements that the petition of wife in this regard must contained the pleading that the she is not living in adultery in any manner whatsoever.

10. In view of above discussions, I am of the considered opinion that although no assertion regarding chastity of opposite party no. 2 was present in petition under section 125 Cr.P.C. but the allegation of unchastity of opposite party no. 2 has been made in written statement filed by revisionist before the trial court. But the trial court did not frame any point for determination in this regard. Consequently no finding on that point could be given by the trial court which causes serious injustice to the revisionist in the

matter.

11. In view of above, the impugned judgment and order dated 27.06.2025 passed by learned Principal Judge, Family Court, Gorakhpur in Case No. 39/2021, under section 125 Cr.P.C. suffers from material irregularities, therefore, the same is liable to be set aside invoking its revisionist jurisdiction and present criminal revision deserves to be allowed.

12. Accordingly, the present criminal revision is hereby allowed. The Judgment and order dated 27.06.2025 passed by learned Principal Judge, Family Court, Gorakhpur is hereby set aside.

13. The Trial Court is directed to frame a specific point for determination regarding unchastity of opposite party no. 2 and, thereafter, after affording adequate opportunity to the parties to adduce evidence on the said issue, if court requires necessary, to pass fresh order/judgment in accordance with law, expeditiously and without causing any undue delay.

(Lakshmi Kant Shukla,J.)

April 27, 2026

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