



2025:DHC:740



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 30th January, 2025**

+ **CRL.REV.P. 220/2023 & CrI.M.A.31641/2024**

SMT. REKHA DEVI

.....Revisionist

Through: **Mr. M. Hasibuddin, Advocate**

versus

MR. NIRVESH KUMAR

.....Respondent

Through: **Mr. Mandeep Baisla, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition has been filed on behalf of the revisionist under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") challenging the impugned judgment dated 24th January, 2023 passed by learned Principal Judge (North), Family Court, Rohini Courts, New Delhi in M.T. No. 390/2018 whereby the petition under Section 127 of the Cr.P.C. seeking alteration and modification of the order dated 24th August, 2016 passed by the learned Family Court in M.T. No. 332/2015 has been dismissed.

2. The brief facts of the case are that the revisionist got married to the respondent on 19th April, 1995 and out of the said wedlock, two children namely, Nitin and Sumit, were born on 25th March, 1999 and 21st August,



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2000, respectively. Due to some personal issues, the respondent abandoned the company of the revisionist and deserted her in November, 2014.

3. Consequently, the revisionist started facing financial hardship in her life and being unable to maintain herself, she along with her sons filed a petition under Section 125 of the Cr.P.C. against the respondent claiming maintenance for themselves and vide order dated 24th August, 2016, the said petition was disposed off after recording the compromise statement of the parties, directing the respondent to pay a sum of Rs. 5000/- each to the revisionist and her two sons per month i.e., Rs. 15,000/- in total, with 5% increase every year from 1st January, 2017 onwards. It was further directed that the revisionist shall be entitled to the said maintenance for the entirety of her lifetime, while the sons of the revisionist were entitled to the said maintenance till they attain the age of majority.

4. Thereafter, the revisionist challenged the order dated 24th August, 2016 vide petition under Section 127 of the Cr.P.C. seeking enhancement of the maintenance amount on the ground that the education of her sons was getting hampered due to financial constraints. However, *vide* the impugned judgment dated 24th January, 2023, the said petition was dismissed by the learned Principal Judge, Family Court.

5. Learned counsel for the revisionist submitted that the impugned judgment has been passed without appreciating the facts as well as evidence on record as the learned Family Court failed to appreciate the fact that the respondent being an ASI in Delhi Police is earning approximately Rs.77,000/- per month. It is further submitted that the revisionist is entitled



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to at least one-third portion of his salary.

6. It is submitted that the revisionist has no other source of income except the maintenance amount given to her by the respondent. It is further submitted that the respondent, who earns a handsome salary and has no liability, is neglecting his responsibility towards his wife and not taking care of the education expenses of both his sons.

7. In view of the foregoing submissions, it is prayed that the instant petition be allowed.

8. *Per contra*, learned counsel for the respondent vehemently opposed the instant revision petition submitting that all the facts and the submissions as advanced by the learned counsel for the revisionist during the course of arguments have already been duly considered by the learned Principal Judge, Family Court while passing the impugned judgment.

9. It is submitted that the learned Family Court while deciding the application under Section 125 of the Cr.P.C. filed by the revisionist, has taken care of her interests by directing the respondent to pay a sum of Rs. 5000/- each to the revisionist and her two sons per month i.e., Rs. 15,000/- in total, with 5% increase every year from 1st January, 2017 onwards.

10. It is submitted that the said order has never been challenged by the revisionist and she only sought enhancement of the maintenance amount by filing petition under Section 127 of the Cr.P.C. on the ground that there was a significant increment in the salary of the respondent without any substantial evidence.

11. It is submitted that while deciding the application under Section 125



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of the Cr.P.C., the learned Family Court has also taken into consideration the increment in the respondent's salary which is evident from the said order as the maintenance was directed to be paid with 5% increase every year.

12. It is submitted that the revisionist has already admitted in her cross-examination that she has 50 *bighas* of land, a house in Burari, Delhi and a *gher* in the village which were gifted by her father-in-law, i.e., father of the respondent herein. It is further submitted that the revisionist is earning more than 25,000/- per month as rental income from the house in Burari, Delhi.

13. It is submitted that the learned Principal Judge, Family Court while deciding the application under Section 127 of the Cr.P.C., had considered all the evidence, submissions and the contents of the application under Section 125 of the Cr.P.C. filed by the revisionist.

14. In view of the foregoing submissions, it is prayed that the instant revision petition being devoid of merits may be dismissed.

15. Heard learned counsel for the parties and perused the material placed on record including the impugned judgment dated 24th January, 2023 passed by the learned Principal Judge, Family Court.

16. Before advertng to the merits of the present case, it is important to discuss the settled position of law on the scope of jurisdiction of the High Court under Sections 397/401 of the Cr.P.C. In the case of ***Amit Kapoor v. Ramesh Chander***, (2012) 9 SCC 460, the Hon'ble Supreme Court held:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this



provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

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20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness



of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily....”

17. The revisional jurisdiction of this Court has to be exercised in a limited manner. The said jurisdiction can be exercised in case of a palpable error, non-compliance with the provisions of law or when the decision involves arbitrary exercise of judicial discretion. The purpose of the exercise of the said jurisdiction is to ensure that the ends of justice are secured and there is no abuse of process of the court.

18. At this stage, it is also important to discuss the position of law with respect to the enhancement of maintenance under Section 127 of the Cr.P.C, which reads as under:

“127. Alteration in allowance.—

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a



divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to 2 [maintenance or interim maintenance, as the case may be,] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a 3 [monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person 1 [as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order...”

19. The plain import of sub-section (1) of Section 127 Cr.P.C is that a provision is made therein for an increase or decrease of the allowance as a



result of a change in the circumstances of the parties at the time of the application for the alteration of the original order of maintenance. It must be shown that there has been a change in the circumstances of either the husband or the wife. The amount of maintenance once fixed under section 125 of the Cr.P.C. is not something which can be taken to be a blanket liability in future. It is subject to variation on both sides and it can be increased or decreased as per the change in circumstances.

20. A bare perusal of the record shows that the revisionist admitted in her statement before the learned Trial Court that her father-in-law has gifted an agriculture land of about 50 *bighas* to her sons, who have the possession of it and they look after the same along with the revisionist. She also admitted that her father-in-law had a house, and a *gher*, and after his death, she is taking care of the said house and the *gher*.

21. It is also an admitted position on the part of the revisionist that her elder son is around 23 years old and the younger son is around 21 years old. Therefore, it is clear that they have attained the age of majority and the respondent is not liable to pay maintenance to them. Therefore, the respondent has acted in accordance with the order dated 24th August, 2016 passed by the learned Family Court.

22. In the present case, there is nothing placed on record to show that there was a change in circumstances which warrants enhancement of the maintenance amount. It is also undisputed that the respondent has been paying monthly maintenance amount in compliance with the order dated 24th August, 2016 passed by the learned Family Court.



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23. Upon a perusal of the impugned judgment, this Court is satisfied that the learned Principal Judge, Family Court has duly considered all the facts and circumstances of the case and reached the conclusion that no ground for enhancement of maintenance amount is available with the petitioner and thereby, the petition filed by the petitioner under Section 127 of the Cr.P.C was rightly dismissed. There is no reason for this Court to exercise its revisional jurisdiction in the present case as there is no palpable error of fact or law leading to miscarriage of justice.

24. In view of the aforesaid facts and circumstances, this Court does not find any reason to interfere with the impugned judgment dated 24th January, 2023 passed by the learned Principal Judge, Family Court and observes that the impugned order has been passed after a thorough consideration of facts and circumstances of the case and clearly shows application of judicial mind.

25. Accordingly, the impugned judgment dated 24th January, 2023 in M.T. No. 390/2018 is, hereby, upheld and the instant revision petition along with pending applications, if any, stands dismissed.

CHANDRA DHARI SINGH, J

JANUARY 30, 2025

Rt/st/mk

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 07.02.2025
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