



HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 138 of 2019

24 April, 2026

Gaurav Jain

--Revisionist

Versus

1: State of Uttarakhand

2: Smt. Priyanka Jain

3: Km. Sunakshi

--Respondents

Presence:-

Mr. Tarun Prakash Singh Takuli, Advocate for the revisionist.

Ms. Zeba Naaz, learned Counsel i/b Mr. Siddhartha Singh, learned
counsel for respondent nos.2 and 3.

Hon'ble Pankaj Purohit, J. (Oral)

1) The present criminal revision, preferred under Sections 397/401 of the Code of Criminal Procedure, has been preferred by the revisionist against the order dated 15.12.2018 passed by the learned Judge, Family Court, Haridwar in Misc. Criminal Case No. 96 of 2017, titled "Gaurav Jain vs. Smt. Priyanka Jain & Anr.", under Section 126(2) Cr.P.C., whereby the application of the revisionist seeking recall of the ex-parte order has been dismissed.

2) The facts of the case are that the revisionist, Gaurav Jain, is the husband of respondent no. 2, Smt. Priyanka Jain, and father of respondent no. 3, a minor child. Disputes arose between the parties, following which respondent no. 2 began residing separately with the minor child. Matrimonial proceedings were initiated before the Family Court at Saharanpur, U.P., including a petition under Section 13 of the Hindu Marriage Act and



an application under Section 24 thereof, wherein the learned Principal Judge, Family Court, Saharanpur, vide order dated 09.10.2017, directed the revisionist to pay Rs. 5,000/- per month towards maintenance of the minor child and the said proceedings have since culminated in a decree of divorce dated 12.10.2018. In the meantime, respondent no. 2 instituted proceedings under Section 125 Cr.P.C. before the Family Court, Haridwar, being Criminal Case No. 115 of 2016, wherein the revisionist was proceeded ex-parte and an order dated 07.07.2017 directing payment of maintenance to the tune of Rs.5,000/- was passed in respect of respondent no.3 herein (minor daughter). Upon gaining knowledge of the said order, the revisionist filed an application under Section 126(2) Cr.P.C. on 06.10.2017 for recall of the ex-parte order, which was registered as Misc. Criminal Case No. 96 of 2017 and subsequently dismissed by the learned Family Court, Haridwar vide impugned order dated 15.12.2018, leading to the present revision.

3) Learned counsel for the revisionist submits that the impugned order dated 15.12.2018 passed by the learned Judge, Family Court, Haridwar is illegal, arbitrary, and liable to be set aside, as the same has been passed without proper appreciation of the material on record. It is contended that the ex-parte order dated 07.07.2017 was passed in violation of principles of natural justice, as the revisionist was never duly served with notice of the proceedings under Section 125 Cr.P.C. and had no knowledge thereof. It is further submitted that the learned Family Court failed to properly examine the issue of service while rejecting the application under Section 126(2) Cr.P.C., despite the revisionist having shown



sufficient cause for his non-appearance, including the nature of his employment with the Central Bank of India.

4) It is further argued that the learned court below has ignored relevant material pertaining to the financial status of respondent no. 2, who, according to the revisionist, is gainfully employed and earning sufficient income. It is also contended that the learned Family Court failed to consider that maintenance in favour of the minor child had already been awarded by the Principal Judge, Family Court, Saharanpur, U.P., and the continuation of proceedings under Section 125 Cr.P.C. has resulted in duplication of maintenance liability. On these grounds, it is submitted that the impugned order deserves to be set aside and the ex-parte order dated 07.07.2017 be recalled.

5) Per contra, learned counsel for the respondents (wife and minor daughter) submits that the impugned order passed by the learned Family Court does not suffer from any illegality or perversity warranting interference in revisional jurisdiction. It is contended that due process was duly followed and sufficient opportunity was afforded to the revisionist; however, despite service of notice, he failed to appear, resulting in the ex-parte order dated 07.07.2017. It is further submitted that the plea of non-service and lack of knowledge is an afterthought, rightly rejected by the court below while dismissing the application under Section 126(2) Cr.P.C. It is also argued that there is no duplication of the maintenance granted in favour of the minor child as Rs.5,000/- was granted to her and her minor child during pendency of the divorce suit which was only a maintenance *pendente lite*. Accordingly, it is submitted that the impugned order calls for no interference.



6) Having heard the submissions advanced by learned counsels and perused the material available on record. It is well settled that revisional jurisdiction under Sections 397/401 Cr.P.C. is limited and can be exercised only in cases of manifest illegality, perversity, or jurisdictional error, and not for re-appreciation of evidence. In the present case, the contention of the revisionist regarding non-service of notice and lack of knowledge of the proceedings has been duly considered and rejected by the learned Family Court, which recorded a finding that sufficient opportunity had been afforded. Such a finding of fact does not warrant interference in revisional jurisdiction, particularly when no material has been brought on record to establish any illegality or perversity in the impugned order. The submission regarding maintenance awarded by the Family Court, Saharanpur also does not, by itself, render the proceedings under Section 125 Cr.P.C. unsustainable so as to justify interference as that was maintenance *pendete lite* only which came to an end with final decision of the divorce suit on 12.10.2018 when suit was decreed.

7) This Court finds no illegality or infirmity in the impugned order dated 15.12.2018 warranting interference.

8) Accordingly, the present criminal revision lacks merit and is hereby dismissed. Impugned order dated 15.12.2018 passed by the learned Judge, Family Court, Haridwar in Misc. Criminal Case No. 96 of 2017 is hereby affirmed.

(Pankaj Purohit, J.)
24.04.2026