2026:AHC:209258

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 4272 of 2025

Nitin Minor

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Hemant Kumar
Counsel for Opposite Party(s)	:	Dinesh Kumar Pandey, G.A.

Court No. - 84

HON'BLE LAKSHMI KANT SHUKLA, J.

1. Heard Mr. Piyush Pandey, Advocate holding brief of Mr. Hemant Kumar, learned counsel for the revisionist, learned A.G.A. representing the State and Mr. Dinesh Kumar Pandey, learned counsel for opposite party no. 2.

2. Perused the record.

3. Revisionist Nitin (minor) through his guardian has approached this Court by means of present Criminal Revision challenging the impugned judgement and order dated 26.04.2024 passed by the Principal Judge, Family Court, Maharajganj (hereinafter referred to as "the Trial Court") in Maintenance Case No. 215 of 2018, Nitin v. Chhotelal, under Section 125 Cr.P.C., whereby the Trial Court rejected the application under Section 125 Cr.P.C. filed by the revisionist.

4. Feeling aggrieved by the aforesaid order the present Criminal Revision has been filed on the grounds that the Trial Court has passed the impugned order arbitrarily, without due application of judicial mind. The impugned order is not sustainable in the eyes of law. Therefore, a prayer for setting aside the impugned order allowing the present Criminal Revision has been made.

5. Learned counsel for the revisionist submits that it is evident from the findings recorded by the Trial Court that opposite party no. 2 had established physical relations with the mother of the revisionist on several occasions, as a consequence whereof she became pregnant. It is further submitted that upon opposite party no. 2 having subsequently refused to marry her, the

mother of the revisionist lodged a criminal case against him under Section 376 I.P.C., which ultimately resulted in his acquittal. The revisionist is stated to have been born out of the aforesaid relationship between opposite party no. 2 and his mother. It is, therefore, contended that the revisionist is entitled to claim maintenance from his biological father i.e. opposite party no. 2.

6. Learned counsel for the revisionist further submits that the Trial Court, however, failed to consider the aforesaid aspect and relying upon the provision contained in Section 112 of the Indian Evidence Act, dismissed the maintenance petition filed by the revisionist on the ground that he was born during the subsistence of the marriage of his mother with another person and, therefore, the presumption arises that he was born out of that wedlock.

7. It is further submitted that in order to ascertain the true biological parentage of the revisionist, an application dated 30.08.2019 was moved before the Trial Court seeking permission for conducting his D.N.A. test. A copy of the said application is annexed at page 50 of the paper book and the application was registered as Paper No. 17-Kha. The Trial Court invited objections thereto, which were filed as Paper No. 20-Kha. However, without adjudicating the aforesaid applications, the Trial Court proceeded to pass the impugned order, thereby causing serious prejudice and injustice to the revisionist.

8. In view of the aforesaid conspectus, it is thus contended that the impugned order, having been passed without adjudicating the aforesaid applications, suffers from material illegality and infirmity and is liable to be set aside. Accordingly, a prayer has been made to allow the present Criminal Revision and set aside the impugned order.

9. *Per contra*, learned A.G.A. as well as the learned counsel for opposite party no. 2 vehemently opposed the revision but could not dislodge the aforesaid submissions urged by the learned counsel for the revisionist.

10. It is submitted by the learned counsel for opposite party no. 2 that opposite party no. 2 has agreed to undergo D.N.A. testing for the purpose of ascertaining the biological parentage of the revisionist.

11. Having heard the learned counsel for the parties and perusal of record, we find force in the submissions of the learned counsel for the revisionist.

The present Criminal Revision is liable to be allowed.

12. It is, accordingly, **allowed**. The impugned order dated 26.04.2024 passed by the Principal Judge, Family Court, Maharajganj in Maintenance Case No. 215 of 2018 is hereby **set aside.**

13. The matter is remitted to the Trial Court for fresh adjudication in light of the observations made hereinabove and in accordance with law. Before proceeding to adjudicate the maintenance proceedings afresh on merits, the Trial Court shall first decide Application Nos. 17-*Kha* and 20-*Kha* in a positive way, keeping in view the fact that both the parties have agreed to undergo D.N.A. testing. The Trial Court shall obtain D.N.A. report and thereafter will proceed to decide the maintenance proceedings afresh. For the said purpose, the Trial Court may direct the concerned parties to provide D.N.A. samples in accordance with law.

October 6, 2026
Brijesh Maurya

(Lakshmi Kant Shukla,J.)

Digitally signed by :-
BRIJESH KUMAR
High Court of Judicature at Allahabad