2026:AHC:212453

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 2839 of 2024

Smt Puja

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Ravikant Shukla
Counsel for Opposite Party(s)	:	Ashish Pandey, G.A., Nikil Pathak

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Court No. - 84

HON'BLE LAKSHMI KANT SHUKLA, J.

1. Heard Mr. Ravikant Shukla, learned counsel for the revisionist, learned A.G.A. for the State and Mr. Nikil Pathak, learned counsel for O.P. No. 2.

2. Perused the record.

3. Revisionist Smt. Pooja has approached this court by means of present criminal revision assailing the impugned judgement and order dated 03.04.2024 passed by Principal Judge, Family Court, Jhansi (herein after referred as to "the Trial court") in Case No. 669 of 2022 wherein the trial court partly allowed the application under Section 125 Cr.P.C. filed by the revisionist and ordered the O.P. No. 2 to pay Rs. 6,000/- per month as maintenance.

4. Feeling aggrieved from that aforesaid order of maintenance, the present criminal revision has been filed on the grounds that the impugned order has been passed without applying the judicial mind, The impugned order is against the material available on record. It is fully illegal, arbitrary and based upon misconception of material available on record. In the aforesaid conspectus, a prayer for allowing the present criminal revision and setting aside the impugned order has been made.

5. Learned counsel for the revisionist submitted that according to salary slip of O.P. No. 2, the monthly income in the month of December, 2022 is Rs. 63,690/- while salary certificate occurred at page No. 57 of the paper book reveals that gross payment of O.P. No. 2 in the month of November,

2023 is Rs. 71,292/- According to aforesaid paper, out of aforesaid amount of Rs. 71,292/- the gross deduction from the salary is Rs. 36,787/- and net pay is Rs. 34,505/-. The trial court assumed the income of O.P. No. 2 is only Rs. 34,505 on the basis of aforesaid paper, but the said deduction is not against the compulsory deduction applicable to all the employees. If the O.P. No. 2 has taken any loan, it is his own conduct which enhance the responsibility of O.P. No. 2 and O.P. No. 2 can not be benefited for his own fault affecting adversely the interest of the revisionist. Accordingly, the maintenance amount fixed by the trial court is not only too meager to maintain the revisionist in dignified manner but it is against the law laid by the Apex Court in the case of **Kalayan Dey Chudhary Vs. Rita Dey Choudhary Nee Nandy (2017)14 SCC 200**. It is thus contended that in view of above, the present criminal revision may be allowed by this court.

6. Per contra, learned A.G.A. for the State as well as learned counsel for O.P. No. 2 have vehemently opposed the present criminal revision. Learned counsel for O.P.No. 2 submitted that the O.P. No. 2 has taken a home loan against which he is under compulsion to pay its E.M.I. The house loan is normal for any person. No one can live under open sky, every person wants shelter of a roof and to fulfill his basic need of roof, the O.P. No. 2 took loan from bank to construct house in which his entire family except revisionist resides. So, the aforesaid liability of E.M.I. can not be ignored by the court while adjudicating the amount of maintenance. In view of the aforesaid premise, the present criminal revision may be dismissed by this court.

7. Having heard the rival submissions and perusal of record, if the court accepts the entire submissions urged by learned counsel for O.P. No. 2 even then the amount of Rs. 6,000/- is purely against the law laid down by the Apex court in the case of **Kalayan Dey Chudhary (Supra)** wherein the Apex Court has provided that in normal situation, the amount of maintenance payable to wife may be up to 25% income of husband. In its thoughtful finding the Hon'ble Apex Court left a major part of income of husband with him to meat out his each and every responsibility against 75% part of his income.

8. Accordingly, the present criminal succeeds and is hereby **allowed**. The impugned order dated 03.04.2024 passed by Principal Judge, Family Court, Jhansi, in Case No. 669 of 2022, under Section 125 Cr.P.C. is hereby set aside.

9. Matter is remitted to the trial court to adjudicate a fresh order in the light of observation made in the case of **Kalayan Dey Chudhary (Supra)** within three months from the date of production of certified copy of this order.

10. It is further directed that the O.P.No. 2 shall continue to pay Rs. 10,000/- per month as interim maintenance till the final disposal of the case before trial court.

(Lakshmi Kant Shukla,J.)

October 9, 2026
RPD

Digitally signed by :-
RATAN PRAKASH DWIVEDI
High Court of Judicature at Allahabad