

Neutral Citation No. - 2024:AHC:58465

A.F.R.
Reserved

Court No. - 38

Case :- CRIMINAL REVISION No. - 3032 of 2023

Revisionist :- Matapher

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Praveen Kumar Tripathi, Shri Krishna Tripathi

Counsel for Opposite Party :- G.A., Jitendra Kumar Pandey, Pankaj Dwivedi

Hon'ble Surendra Singh-I, J.

Heard Sri Praveen Kumar Tripathi, learned counsel for the revisionist and Sri Pankaj Dwivedi, learned counsel for the opposite party no. 2.

2. By means of this criminal revision, the revisionist has challenged the impugned order dated 10.12.2019 passed by learned Additional Principal Judge, IIIrd, Family Court, Allahabad in Maintenance Case No. 506 of 2015, Smt. Durga Devi Vs. Matapher filed u/s 125 Cr.P.C. and impugned judgement and order dated 07.12.2022 passed by learned Additional Principal Judge, Family Court- 2, Allahabad in Misc. Case No. 02 of 2020 (Matapher Vs. Durga Devi) instituted u/s 127 Cr.P.C.

3. By the impugned judgement and order dated 10.12.2019, the Additional Principal Judge, IIIrd, Family Court, Allahabad had allowed the application filed u/s 125 Cr.P.C. and granted maintenance of Rs.7,000/- per month to opposite party no. 2, Smt. Durga Devi.

4. By the impugned judgement and order dated 07.12.2022, the Additional Principal Judge, Family Court- 2, Allahabad, had rejected application u/s 127 Cr.P.C. filed by the revisionist, Matapher.

5. Averment has been made by learned counsel for the revisionist that in the trial court, arguments were made on behalf of the revisionist that opposite party no. 2, Smt. Durga Devi was not his legally wedded wife and her both children, namely, Akansha and Alok were not his children. He had

requested the trial court for DNA test but the trial court did not pass any order on his application for DNA test. It has also been submitted that the trial court without application of judicial mind to the facts and circumstances of the case and the evidence on record, passed the impugned order dated 10.12.2019 and 07.12.2022 and allowed the application of opposite party no. 2 u/s 125 Cr.P.C. and rejected the application u/s 127 Cr.P.C. filed by the revisionist respectively. The aforesaid orders were illegally passed by the court against the provisions of law merely based on surmises and conjectures. Therefore, they are liable to be set-aside. It has also been submitted that revisionist's marriage was not solemnized with the opposite party no. 2, Smt. Durga Devi and the children of opposite party no. 2 are not born out of their wedlock. It has also been submitted that opposite party no. 2, Smt. Durga Devi is cultivating his farm and taking the income arising out of selling of crops. Her son has also been settled and her daughter has been married. Therefore, the trial court has provided maintenance allowance to the opposite party no. 2 without any justification. It has also been submitted that the revisionist left his village for his education in his childhood. After completing education, he came into government service and solemnized his marriage with Gayatri Devi. Two sons, namely, Saurav Pathak and Ashutosh Pathak were born out of their wedlock. In the year 2013, he retired from the government job. Since then he is residing in Allahabad along with his wife and children. His brother, Vansh Raj kept opposite party no. 2, Smt. Durga Devi and is residing in the village with her. In the year 2013, his son Saurav Pathak died. On that occasion, his brother Vansh Raj visited his house. He threatened the revisionist not to move towards the agricultural land otherwise he will face dire consequences. It has also been submitted that on 03.11.2016, opposite party no. 2, Smt. Durga Devi lodged Case Crime No. 797 of 2016 u/s 420, 467, 468, 469, 471 I.P.C. in Police Station-Dhoomanganj, District- Allahabad, against the revisionist in collusion with his brother, Vansh Raj. She has also filed complaint case on 17.12.2015 u/s 12 of the Domestic Violence Act against him. His brother, Vansh Raj has illegally occupied the share of the revisionist in his parental agricultural land. It has also been submitted that the revisionist filed objection against

the application u/s 125 Cr.P.C. and produced his oral and documentary evidence. He had filed application u/s 127 Cr.P.C. for alteration of maintenance allowance granted by the court concerned vide order dated 10.12.2019. The court concerned illegally allowed the application filed u/s 125 Cr.P.C. by the opposite party no. 2, Smt. Durga Devi and rejected the application of the revisionist filed u/s 127 Cr.P.C. It has also been submitted that the revisionist is 79 years old and suffering from old-age related diseases for which he is undergoing treatment at Medanta Hospital, Lucknow. It has also been submitted on behalf of the revisionist that he had filed application u/s 127 Cr.P.C. for modification of the maintenance allowance granted in favour of opposite party no. 2 by the trial court. The application was filed on the ground that the trial court while granting maintenance allowance u/s 125 Cr.P.C. had not only taken into consideration his monthly pension of Rs.34,656/- but also included in it income from agricultural land and had fixed the total monthly income as Rs.40,000/- per month. The trial court on the basis of his monthly income of Rs.40,000/- had granted Rs.7,000/- per month as maintenance allowance to opposite party no. 2 whereas he is not in possession of the agricultural land and he is not getting any income from the crops grown on it. The cultivation of their agricultural land is being done by opposite party no. 2 and she is utilizing the income by selling the crops grown on it but the trial court while rejecting his application u/s 127 Cr.P.C. did not consider his pleadings in this regard.

6. Per contra, learned counsel for the opposite party no. 2 has opposed the criminal revision and has submitted that the trial court passed the impugned order in the case u/s 125 Cr.P.C. as well as 127 Cr.P.C. on the basis of the evidence available on the record and considering the statutory provisions of the law allowed by the Hon'ble Apex Court under the law applicable to it. It has also been submitted that while passing the aforesaid impugned order, the trial court had taken into consideration both the oral as well as documentary evidence produced by the revisionist. There is no illegality or irregularity in the impugned orders and no interference by the revisional court is warranted.

7. Learned counsel for the revisionist and learned counsel for the opposite party no. 2 have been heard. Perused the evidence available on the record of the revisional court including the impugned orders passed by the Additional Principal Judge, IIIrd, Family Court, Allahabad and Additional Principal Judge, Family Court- 2, Allahabad.

8. The trial court in its impugned judgement and order dated 10.12.2019 has considered the averments made by the applicant, P.W.1 Smt. Durga Devi in her application u/s 125 Cr.P.C. as well as her oral evidence and oral evidence of revisionist's brother, P.W.2 Vansh Raj and brother of opposite party no. 2, P.W.3 Ram Dular Dubey in detail. The trial court has also discussed the documentary evidence filed by the opposite party no. 2 in the case u/s 125 Cr.P.C.

9. The opposite party no. 2, Smt. Durga Devi had pleaded in her application u/s 125 Cr.P.C. that her marriage was solemnized in 1972 according to Hindu rites and customs with the revisionist Matapher. About 9-10 years after the marriage, a daughter, namely, Akansha and in the year 1992, a son, namely, Alok, were born from their wedlock. After the birth of their son in 1992, the revisionist left opposite party no. 2. He was working as Senior Marketing Officer in Regional Food Corporation and staying in the city. He started living with Gayatri Devi. In the year 2001, he finally refused to keep opposite party no. 2, Smt. Durga Devi with him. The opposite party no. 2, Smt. Durga Devi is a *purdahnasheen* lady of rural background. She is living in her matrimonial home with her son. Whereas revisionist in his written statement had denied that opposite party no. 2, Smt. Durga Devi is his legally wedded wife and Akansha and Alok are his children. He has submitted that he got government job in the year 1981 and married Gayatri Devi. From that marriage, two sons were born. His elder son died in the year 2014 and opposite party no. 2, Smt. Durga Devi in conspiracy with his brother Vansh Raj to grab his land illegally, has prepared forged document and filed a false case for maintenance.

10. P.W.1 Smt. Durga Devi in her evidence had supported the averments made by her in her pleadings. In her cross-examination, she had given

details regarding her father-in-law, mother-in-law, husband and brother-in-law as well as farming in her matrimonial home. She had deposed that she was living with her children in the village of the revisionist. The revisionist's elder brother, P.W.2 Vansh Raj Pathak has supported the averments made in the application u/s 125 Cr.P.C. as well as the deposition of P.W.1 Smt. Durga Devi. He has stated in his evidence that Smt. Durga Devi was married to his brother Matapher in 1972 and presently, she is living in her husband's parental house with her children. He has also deposed that his brother is living with a lady, namely, Gayatri Devi from whose relationship, he has two children. Through forgery, his brother has incorporated the name of Gayatri Devi in his service record. His brother was not married to Gayatri Devi.

11. P.W.3 Ram Dulare Dubey had also corroborated the evidence of P.W.1 Smt. Durga Devi and P.W.2 Vansh Raj Pathak regarding the marriage of Smt. Durga Devi with Matapher and from their marriage, birth of two children. In the cross-examination of P.W.1, P.W.2 and P.W.3, nothing is found which may raise doubt about the veracity of their deposition. Apart from aforesaid oral evidence, the trial court has also taken into consideration the deposition of D.W.1 Matapher and the documentary evidence filed by the opposite party no. 2, Smt. Durga Devi. No documentary evidence was filed by the revisionist in the trial court. In the documentary evidence paper no. 5 Kha/2, which is the aadhar card of Smt. Durga Devi, name of her husband is registered as M. Pathak. In paper no. 5 Kha/3 which is family register of village- Barasata Kalan, the revisionist Matapher is recorded as the head of the family and Smt. Durga Devi is shown as his wife and Akansha and Alok as their daughter and son respectively. The other document filed by opposite party no. 2 in the trial court paper no. 20 Kha/2 is marksheet of High School examination, 2006 of Alok Kumar Pathak which has been issued by U.P. Board of High School and Intermediate Education in the year 2006 in which Smt. Durga Devi and Matapher are recorded as mother and father of Alok Kumar. The year of birth of Alok Kumar is recorded as 1992. The opposite party no. 2 had also filed the certificate of Intermediate and marksheet of Intermediate Examination, 2008 of Alok Kumar paper no. 20 Kha/4 and 20 Kha/5. In these documents also,

his parents name is shown as Smt. Durga Devi and Matapher. Similarly, in the certificate of High School Examination, 2000 and Intermediate Examination, 2002 paper no. 20 Kha/6 and 20 Kha/7 of Kumari Akansha Pathak, Smt. Durga Devi and Matapher are shown as her mother and father respectively. Her date of birth is recorded as 1984. In paper no. 20 Kha/8 which is Akansha Pathak's marksheet of 2012 of Sampurnanand Sanskrit Vidyalaya, Smt. Durga Devi and Matapher are shown as her parents. These documents were issued before opposite party no. 2, Smt. Durga Devi filed her application u/s 125 Cr.P.C. for maintenance allowance against the revisionist Matapher. These documents corroborate the pleadings and deposition of opposite party no. 2 and her witnesses that the daughter was born 9-10 years after their marriage which was solemnized in the year 1972 as her year of birth is shown of the year 1984 and also the year of birth of their son, Alok Kumar Pathak is shown of the year 1992. The trial court has also examined the identity card of Smt. Durga Devi paper no. 20 Kha/11 in which her husband's name is recorded as Matapher. Similarly, in the ration card, paper no. 20 Kha/12, Matapher is shown as the husband of Smt. Durga Devi and Alok Kumar Pathak as their son. Aforesaid papers filed by opposite party no. 2 are two public documents and under Indian Evidence Act, there is presumption of genuineness of the entries made in them.

12. D.W.1 Matapher has admitted in his deposition that after opposite party no. 2 filed these documents in her case u/s 125 Cr.P.C., in the year 2015, he came to know about them. He has admitted that he has not filed any first information report before police authority or complaint before any public authority in regard to the alleged forged documents. He has also admitted that he did not file any case in the Court.

13. From the deposition of D.W.1 Matapher, the trial court has concluded that in case, he had considered the documents forged, he would have definitely filed first information report or made complaint before police/public authorities and drawn inference that the documents are genuine. The trial court has also taken the fact into consideration that in the service record of revisionist, Matapher Pathak, the name of Gayatri Devi is

mentioned as his wife. The name of Smt. Durga Devi is not mentioned in the column of wife. The trial court has also considered the documentary evidence filed by the revisionist, namely, medical prescription of the treatment of Gayatri Devi in which her husband's name is shown as Matapher. The trial court has rightly concluded that since revisionist, Matapher has not produced any oral evidence or documentary evidence regarding his marriage to Gayatri Devi and there is reliable evidence filed by opposite party no. 2, Smt. Durga Devi about her marriage with Matapher and birth of Akansha and Alok born from their wedlock, the aforesaid entries of service book and medical papers of Gayatri Devi, cannot be relied upon. It merely corroborates the pleading and evidence of Smt. Durga Devi that sometime after birth of both the children, revisionist finally left her in the year 2001 and did not visit her anytime nor provided any maintenance to her.

14. The proceeding u/s 125 Cr.P.C. is summary in nature in which only prima facie it has to be seen that the applicant is the wife of opposite party. It is a social legislation enacted for protecting the wife, minor children and parents of a person from vagrancy and destitution.

15. In paragraph no. 9 of its judgement in **Anju Garg and Another Vs. Deepak Kumar Garg, 2022 SCC Online SC 1314**, the Apex Court has mentioned the purpose of Section 125 Cr.P.C. which is as follows :

9.it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, as observed by this Court in Bhuwan Mohan Singh v. Meena. This Court in the said case, after referring to the earlier decisions, has reiterated the principle of law as to how the proceedings under Section 125 Cr.P.C have to be dealt with by the Court. It held as under:

“In Dukhtar Jahan v. Mohd. Farooq [(1987) 1 SCC 624 : 1987 SCC (Cri) 237] the Court opined that : (SCC p. 631, para 16)

16. “... Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.”

8. A three-Judge Bench in Vimala (K.) v. Veeraswamy (K.) [(1991) 2 SCC 375 : 1991 SCC (Cri) 442], while discussing

about the basic purpose under Section 125 of the Code, opined that : (SCC p. 378, para 3)

3. *“Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”*

9. A two-Judge Bench in *Kirtikant D. Vadodaria v. State of Gujarat* [(1996) 4 SCC 479 : 1996 SCC (Cri) 762], while adverting to the dominant purpose behind Section 125 of the Code, ruled that : (SCC p. 489, para 15)

15. *“... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”*

10. In *Chaturbhuj v. Sita Bai* [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356], reiterating the legal position the Court held : (SCC p. 320, para 6)

6. *“... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787].”*

11. Recently in *Nagendrappa Natikar v. Neelamma* [(2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346], it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children”.

16. In the case of **Chander Parkash Bodh Raj vs. Shila Rani Chander Prakash: 1968 SCC Online Del 52**, the Delhi High Court has held that :

“an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child.”

17. The Hon’ble Apex Court in **Rajnish vs. Neha (supra)** has approved the above law laid down by the Delhi High Court.

18. From the above analysis, I am of the opinion that the trial court has rightly concluded that opposite party no. 2 is the legally wedded wife of revisionist, Matapher. As far as quantum of maintenance determined by the trial court as Rs.7,000/- per month payable to the opposite party no. 2, Smt. Durga Devi, the monthly income of revisionist should be taken into consideration. The revisionist had admitted in his pleadings as well as deposition that he retired in the year 2013 and is getting Rs.34,656/- as monthly pension.

19. The Hon’ble Apex Court in **Kulbhushan Kumar Vs. Raj Kumari, (1970) 3 SCC 129** has held that 25% of the husband’s net salary would be just and proper to be awarded as maintenance allowance to the wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the financial capacity of the husband to make the payment.

20. In **Kalyan Dey Chaudhary Vs. Rita Dey Chaudhary Nee Nandy, (2017) 14 SCC 200**, the Hon’ble Apex Court has followed the quantum of maintenance fixed by the Hon’ble Apex Court in **Kulbhushan Kumar (supra)** that 25% of net income of the husband should be paid to the wife as maintenance.

21. The trial court has added Rs.5,344/- as agricultural income into the amount of monthly pension of Rs.34,656/- of the revisionist Matapher and

has taken his monthly income as Rs.40,000/-. The objection of revisionist is that he is neither in the possession nor drawing any income from the agricultural land. Even if the income from agricultural land is excluded, admittedly revisionist is earning Rs.34,656/- as monthly pension.

22. Applying the law laid down by the Hon'ble Apex Court, 25% of monthly pension will be Rs.8,664/- whereas the trial court has granted Rs.7,000/- per month as monthly maintenance allowance to the opposite party no. 2, Smt. Durga Devi. Therefore, the maintenance allowance granted to the opposite party no. 2 cannot be considered as excessive vis-a-vis the monthly pension of the revisionist rather it is on the lower side. Therefore, the trial court has rightly rejected his application filed u/s 127 Cr.P.C. for reduction in the maintenance allowance on the ground that he is not drawing any income from the agricultural land.

23. From the above discussion, I am of the view that there is no illegality, irregularity, or jurisdictional error in the impugned orders dated 10.12.2019 and 07.12.2022 passed by the trial court. There is no merit in the criminal revision and is liable to be dismissed.

24. The monthly maintenance allowance provided by the trial court of Rs.7,000/- shall be payable to the opposite party no. 2, Smt. Durga Devi from the date of her filing application u/s 125 Cr.P.C. which shall be payable till 10th of each calendar month. The arrears of maintenance allowance shall be paid by the revisionist in four equal amounts within a period of six months. The amount of maintenance allowance already paid to the opposite party no. 2 shall be set off against this amount.

25. The present criminal revision is **dismissed** in terms of above mentioned conditions.

26. The copy of the order be sent to the trial court concerned forthwith for necessary compliance.

Order Date :- 04.04.2024

KS