

Neutral Citation No. - 2024:AHC:45615

Reserved
A.F.R.

Court No. - 38

Case :- CRIMINAL REVISION No. - 167 of 2023

Revisionist :- Rakhi @ Rekha

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

Counsel for Revisionist :- Jayant Kumar, Kanhiya Lal Chauhan

Counsel for Opposite Party :- G.A., Sandeep Kumar Srivastava

Hon'ble Surendra Singh-I,J.

By means of the instant criminal revision, revisionist has assailed the judgement and order dated 01.11.2022 passed by Principal Judge, Family Court, Amroha in Case No.05 of 2019 (Smt. Rakhi vs. Amit Kumar), under Section 125 Cr.P.C., Police Station Amroha, District Amroha.

2. By the impugned order, the trial Court has granted monthly maintenance allowance of Rs.5,000/- to the revisionist from the date of presentation of application under Section 125 Cr.P.C. The revisionist has prayed for enhancement of maintenance allowance granted by the trial Court in her favour. The opposite party No.2 has not challenged the aforesaid impugned order, therefore, findings in the impugned judgment and findings regarding the marriage of the revisionist with opposite party No.2 as well as there being sufficient reason for her residing away from the opposite party No.2, has become final.

3. It has been submitted by the learned counsel for the revisionist that this criminal revision has been filed on the point of quantum of maintenance payable to the revisionist contending that it is quite meagre considering the monthly net income of the opposite party No.2 (husband). The averments have been made on behalf of the revisionist that admittedly opposite party No.2 is working in Indian Navy and he is getting monthly salary of about Rs.35,000/- to 40,000/- per month. The trial Court may have fixed at-least 25 % of the net monthly salary of the opposite party No.2, but trial Court has awarded maintenance allowance of Rs.4000/- till date of order, and thereafter, Rs.5000/-, which is on the lower side. It has also been submitted that trial Court has not given any reason for fixing aforesaid monthly

maintenance allowance payable to the revisionist. It has also been submitted that earlier trial Court vide judgment and order dated 11.02.2020 had ex-parte granted Rs.12,000/- per month as interim maintenance allowance to the revisionist. Later on, recall application under Section 126 (2) Cr.P.C. was filed by the opposite party No.2, which was allowed and there is no ground to provide the revisionist lesser monthly maintenance allowance than the interim one, since the trial Court passed the impugned judgment and order without considering the evidence on record and without applying judicial mind it should be enhanced.

4. Per contra, learned counsel for the opposite party No.2 has submitted that trial Court has passed the impugned judgment and order on the basis of oral and documentary evidence on record and there is no ground to make interference into it. It has also been submitted that interim maintenance was passed ex-parte without considering the contentions raised by the opposite party No.2. The trial Court has rightly granted a reasonable maintenance allowance, which is not liable to be altered.

5. Learned counsel for the opposite party No.2 has raised objection about the maintainability of the criminal revision and contended that the revisionist should have filed an application under Section 127 Cr.P.C. in the trial Court itself for enhancement of the amount of monthly maintenance allowance. It has also contended that since there is a statutory provision for enhancement of the amount of maintenance allowance under Section 127 Cr.P.C., the criminal revision for such enhancement is not maintainable in this Court.

6. Heard Sri Jayant Kumar, learned counsel for the revisionist, learned A.G.A. for the State and Sri Sandeep Kumar Srivastava, learned counsel for opposite party no.2.

7. The revisionist has filed instant criminal revision for enhancement of the amount of monthly maintenance allowance not on the ground of change of circumstances, since the order was passed but on the ground that the trial court while fixing the amount of monthly maintenance allowance has not considered the evidence on record, therefore, order passed is illegal or liable to be altered.

8. Learned counsel for the opposite party No.2 has raised preliminary objection as per jurisdiction of this Court in view of the provision given in Section 127 Cr.P.C. for enhancement of maintenance allowance.

9. Section 127 Cr.P.C. provides for alteration of maintenance allowance or interim maintenance allowance on the ground that circumstances have been changed since the order was passed.

10. Section 127 Cr.P.C., provides for alteration of maintenance allowance in the following circumstances:-

(i) The Magistrate finds that competent civil court has passed any order due to which maintenance allowance granted has to be cancelled or modified;

(ii) The woman in whose favour maintenance allowance has been provided, has remarried after obtaining divorce such order of maintenance can be cancelled from the date of her remarriage;

(iii) Such woman has received whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce;

(iv) The woman has obtained divorce from her husband and she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.

11. The alteration of maintenance allowance under Section 127 Cr.P.C. can be done by the trial Court on the ground of change of circumstances as mentioned in that section. In case, the person in whose favour maintenance allowance is passed, assailing the amount of maintenance allowance on the ground that it was fixed against the evidence on record, he/she can file criminal revision to this Court and Court shall has jurisdiction to decide it.

12. The opposite party No.2 has annexed his monthly salary slip as Annexure-SA-I to his supplementary counter affidavit. According to his salary slip, after deducting other expenses, he gets Rs.34,020/- per month in hand. From the perusal of the pay slip filed by the opposite party No.2, which is annexed as Annexure No.S.A.1 to the supplementary counter affidavit, it is found that gross monthly salary of the opposite party No.2 is of Rs.54,684/-, in which total amount of Rs.20,664/- is deducted and balance of Rs.34,020 is credited in the account of opposite party No.2. In the statement of salary slip filed by the opposite party No.2, the amount deducted under different heads is not legible, only total deduction of Rs.20,664/- is legible. The opposite party No.2 submitted, in his counter

affidavit, that he has taken personal loan of Rs.5 lakhs, for which he has to pay instalment of Rs.9000/- per month.

13. The Hon'ble Apex Court has held in paragraph No.9 and 10 of the judgement in **Anju Garg and Another vs. Deepak Kumar Garg: (2022) SCC OnLine SC 1314**, 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**¹. 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”.

10. This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provisions under Section 125 of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In *Chaturbhuj v. Sita Bai*², it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.”

14. The Hon’ble Apex Court in **Dr. Kulbushan Kumar vs. Smt. Raj Kumari: (1970) 3 SCC 129** has held that only statutory deductions as income tax can be reduced from the gross salary, which have to be made compulsory. No deduction is permissible for payment of house rent, electricity charge, contribution of provident fund, instalments towards payment of loan and expenses for maintaining the car.

15. From the salary slip of opposite party No.2, it appears that deduction of Rs.20,664/- includes *inter alia* for house rent, payment of instalment of personal loan of Rs.9000/- per month. Therefore, deduction of Rs.9000/- per month made for payment to the monthly instalment of personal loan is not permissible and it should be added in the net monthly income of the opposite

party No.2. Thus, his net monthly income becomes Rs.34020 +Rs.9000/- i.e. Rs.43,020/-

16. In reply to the application filed under Section 125 Cr.P.C. as well as in the oral evidence produced by the opposite party No.2, he has submitted that his father is patient of heart and blood pressure, for which he has to spend Rs.15,000 to 16,000/- per month for medicine and he also submitted that his mother is also suffering from liver disease and her treatment is going on, for which, he has to spend Rs.10,000/- to 12,000/- per month. In this regard, no documentary evidence, prescription of doctor and medicine receipts for purchase of medicines have been filed by the opposite party No.2, therefore, this cannot be accepted that for treatment of his parents, he has spent aforesaid amount on medicine.

17. Opposite party No.2, in his reply as well as oral evidence, has submitted that revisionist is B.A. pass and earns Rs.10,000/- per month by taking tuition and she has done course of beautician, by which she can also earn money and she has enough money to maintain herself, but opposite party No.2 has not produced any documentary evidence in support of earning of the revisionist.

18. The Hon'ble Apex Court in the case of **Shailja And Another vs. Khobbanna: (2018) 12 SCC 199** has held:

“we find that the High Court has proceeded on the basis that Appellant 1/wife was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court. Whether Appellant 1 is capable of earning or whether she is actually earning are two different requirements. Merely because Appellant 1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court.”

19. Considering the above law laid down by the Hon'ble Apex Court merely on the ground that revisionist is B.A. pass and has done some professional course, no presumption can be drawn that she is earning sufficient money to maintain herself. Thus the plea advanced on behalf of the opposite party No.2 (husband) is without any legal basis.

20. In **Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy: (2017) 14 SCC 200**, the Hon'ble Apex Court has held that 25% of the

husband's net salary would be just and proper to be awarded as maintenance to the wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance.

21. In view of the aforesaid factual and legal aspect, I am of the view that the order impugned dated 01.11.2022 is erroneous and cannot survive in the eyes of law, therefore, I set aside the impugned order for the aforesaid reasons.

22. The prayer for enhancement of maintenance allowance made by revisionist is allowed and it is observed that she will be entitled for Rs.10,000/- per month, which is approximately 25 % of the next monthly income of Rs.43,020/-, as maintenance allowance.

23. Thus, opposite party No.2 shall be bound to provide maintenance allowance of Rs.10,000/- per month to his wife (revisionist) from the date of application. The arrears of maintenance allowance shall be paid by the opposite party No.2 in four equal instalments within a period of four months. The monthly interim maintenance shall be paid regularly till 7th day of each month.

24. The present criminal revision is **allowed** in terms of above mentioned conditions.

25. The copy of the order be sent to the trial Court concerned for necessary compliance, forthwith.

Order Date :- 13.03.2024

Amit