

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 824 OF 2024
(@ SPECIAL LEAVE PETITION(CRL.) NO(S). 5944 OF 2023)

ASIYA KHAN & ANR.APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH & ANR.RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). 825 OF 2024
(@ SPECIAL LEAVE PETITION(CRL.) NO(S). 5945 OF 2023)

ORDER

1. Leave granted.
2. The dispute is about maintenance payable to the appellants.
3. The first appellant is the wife of the second respondent and the second appellant is the minor daughter of the second respondent. By the order dated 20.03.2021, the Family Court allowed the application under Section 125 of the Code of Criminal Procedure, 1973 (for short 'CrPC') filed by the appellants and granted total maintenance of Rs. 12,000/- per month. There were revision applications preferred both by the appellants and the second respondent.
4. In Criminal Appeal No. 824 of 2024 arising out of SLP(Crl.) No. 5944 of 2023, by the impugned order dated 26.08.2021, without hearing the appellants, the High Court, by a very cryptic order, reduced the maintenance by a sum of Rs. 2,000/- per month. Obviously, the High Court could not have passed such order ex-parte, without giving an opportunity of hearing to the appellants.
5. In Criminal Appeal No. 825 of 2024 arising out of SLP(Crl.) No. 5945 of 2023, by the impugned order, the High Court has

dismissed the revision application preferred by the appellants against the same order. It appears from the impugned order dated 08.04.2022 that even a notice was not issued to the second respondent-husband and based on the opposition made by the learned counsel appearing for the State of Uttar Pradesh, the revision application was dismissed. We are surprised to note that the learned counsel for the State has taken up the cause of the husband.

6. As the revision application(s) filed by the second respondent-husband will have to be restored to the file of the High Court by setting aside the order dated 26.08.2021, even the order dated 08.04.2021 on the revision application filed by the appellants will have to be set aside.

7. Before we part with the judgment, we must mention two strange facts. As noted earlier, the revision application preferred by the appellants (wife and the minor daughter) was vehemently opposed by the learned counsel representing the State of Uttar Pradesh, as specifically noted in the order dated 08.04.2022 passed by the High Court. Moreover, in both the appeals, there is a counter affidavit filed by the Superintendent of Police, Rampur, U.P., opposing the appeals. The legality of the impugned order has been justified in the affidavit. The approach of the State of taking the side of the husband in a maintenance case, to say the least, is very strange.

8. In fact, the learned counsel, who appeared for the State was under a duty and obligation to act as an officer of the Court and to assist the Court in arriving at a correct conclusion. Both the impugned orders are set aside and CRLR No. 1465 of 2021 and

Criminal Revision No. 260 of 2022 are restored to the file of the High Court of Judicature at Allahabad.

9. Registrar(Judicial) of the High Court of Judicature at Allahabad will list the revision application(s) for directions before the roster Bench on 11.03.2024 in the morning session, when the first appellant, the first respondent and the second respondent will appear before the concerned Court for fixing the date for hearing of the revision applications.

10. The appeals are partly allowed on the above terms.

11. All contentions on merits are kept open.

12. The result of this order is that the original order dated 20.03.2021 of the Family Court granting maintenance to the appellants has been restored. It will be open for the appellants to seek appropriate directions from the High Court regarding deposit of arrears and the payment of current maintenance in terms of the said order.

13. A copy of this order shall be forwarded to the Secretaries of the Home and Law Departments for the State of Uttar Pradesh. We, however, clarify that the State Government of Uttar Pradesh will not blame or penalise the Advocates who represented it before this Court.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
FEBRUARY 12, 2024.

ITEM NO.41

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 5944/2023

(Arising out of impugned final judgment and order dated 26-08-2021 in CRLR No. 1465/2021 passed by the High Court Of Judicature At Allahabad)

ASIYA KHAN & ANR.

Petitioner(s)

VERSUS

STATE OF U.P. & ANR.

Respondent(s)

(MEDIATION REPORT RECEIVED

IA No. 76867/2023 - EXEMPTION FROM FILING O.T.)

WITH

SLP(Crl) No. 5945/2023 (II)

IA No. 77389/2023 - EXEMPTION FROM FILING O.T.)

Date : 12-02-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Mr. Sulaiman Mohd. Khan, Adv.
Mrs. Taiba Khan, Adv.
Mr. Bhanu Malhotra, Adv.
Mr. Gopeshwar Singh Chandel, Adv.
Mr. Gopeshwar Sigh Chandel, Adv.
Mr. Abdul Bari Khan, Adv.
Mr. Rohit Amit Sthalekar, AOR

For Respondent(s) Ms. Garima Prasad, Sr. Adv., AAG UP
Mr. Sudeep Kumar, AOR
Mr. Ramesh Thakur, Adv.

Mr. Sarfaraz Khan, Adv.
Mr. Kausar Raza Faridi, AOR
Mr. Shahbaaz Jameel, Adv.
Mr. Ali Muzaffar, Adv.
Ms. Sarika Verma, Adv.
Mr. Amit Pandey, Adv.
Mr. Nbvs Reddy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are partly allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)

(Signed order is placed on the file)