

**Reserved**

**Court No. - 9**

**Case :-** CRIMINAL REVISION No. - 4152 of 2023

**Revisionist :-** Gaurav Mehta

**Opposite Party :-** Anamika Chopra

**Counsel for Revisionist :-** Ishir Sripat, Saurabh Patel, Sr. Advocate

**Counsel for Opposite Party :-** Anurag Vajpeyi, G.A.

**AND**

**Case :-** CRIMINAL REVISION No. - 4452 of 2023

**Revisionist :-** Anamika Chopra

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

**Counsel for Revisionist :-** Yash Raj Verma

**Counsel for Opposite Party :-** G.A., Ishir Sripat

**Hon'ble Vipin Chandra Dixit, J.**

1. The criminal revision no.4152 of 2023 has been filed by the revisionist against the order dated 01.07.2023 passed by Additional Principal Judge, Family Court, Gautam Buddh Nagar in Criminal Misc. Application No.- 167 of 2020 (Anamika Chopra Vs. Gaurav Mehta) filed under Section 125 Cr.P.C. by which learned Family Court has granted Rs.25,000/- per month as interim maintenance to the respondent-wife.

2. The criminal revision no.4452 of 2023 has been filed by the revisionist-wife against the order dated 01.07.2023 passed in Criminal Misc. Application No. 167 of 2020 (Anamika Chopra Vs. Gaurav Mehta) for enhancement of interim maintenance granted by the learned Family Court.

3. Since both the aforesaid criminal revisions have been filed against the same impugned order dated 01.07.2023 passed by learned Additional Principal Judge, Family Court, Gautam Buddh Nagar, the same are being decided by common judgement. Criminal Revision No.4152 of 2023 is leading criminal revision.

4. Heard Sri Rahul Sripat learned Senior Advocate assisted by Sri Ishir Sripat, learned counsel for the revisionist-husband and Ms. Anamika Chopra (wife) in person. Perused the record.

5. The brief facts of the case are that the marriage of revisionist Gaurav Mehta was solemnized with respondent Anamika Chopra on 27.02.2004 according to Hindu Rites and Customs. One son namely, Abhimanyu Mehta was born on 27.12.2004 out of their wedlock. The parties were resided together as husband and wife and lead matrimonial life peacefully till 16.08.2006 and thereafter due to differences between the parties they lived separately to each other.

6. Both the parties with mutual consent have filed divorce petition under Section 13B(1) of Hindu Marriage Act in the Court of District Judge, New Delhi, which was registered as Divorce Petition No. 483 of 2007. The statements of husband and wife were recorded by the learned Additional District Judge, Delhi on 20.08.2007. It was agreed between the parties that they had voluntarily filed petition for divorce without any pressure and the respondent-wife was agreed that she never claimed stridhan, maintenance or alimony from her husband in future. The relevant terms and conditions of divorce petition as mentioned in para 9 are quoted hereinbelow:-

*“9. That now the following have been agreed upon the between the petitioners interest:*

*A. ....*

*B. ....*

*C. The Petitioner No.2 does not owe any amount or sum of money, to the Petitioner No.1 in the form of Stridhan. The Petitioner No.1 has agreed that no moveable property of any sort/kind is in the possession of the Petitioner No.2 or his family members which belongs to the Petitioner No.1 either by Stridhan or otherwise.*

*D. The Petitioner No.1 agrees that the Petitioner No.1 shall not claim any amount of money by way of maintenance, compensation, damages etc. (Past, Present and Future) from the petitioner no.2.*

*E. Both the petitioners submit that they have no grievance against each other or their family members. That no criminal case is pending against either petitioner or their family members, and both the petitioners*

*undertake not to initiate any proceeding against each other, either under the criminal law or Civil law or litigate with them in this regard even in future.*

*F. ....*

*G. That son of the petitioners Master Abhimanyu Mehta shall remain in the custody of the petitioner no.1 till he attains the age of majority, whereafter it shall be his sole discretion. It has been agreed between the petitioners that the Petitioner no.1 shall remain the Legal/ natural Guardian of Master Abhimanyu Mehta, which the petitioner no. 2 undertakes not to challenge or dispute.*

*H. That the petitioner no.2 shall have the visitation rights to visit and meet Master Abhimanyu Mehta, once a month and in addition to that the petitioner no.1 shall be free to visit and meet him on special occasions i.e. his birthday or on the festivals such as Holi, Deepawali, Lori etc.*

*I. The petitioner no.2 shall visit and meet Master Abhimanyu Mehta in the presence of the petitioner no.1 at a place mutually decided and agreed in advance by both the petitioners. The petitioner no.2 shall not meet Master Abhimanyu Mehta at the residence of either of the petitioners.”*

7. It is apparent from the terms and conditions of divorce petition that the respondent-wife will not claim any amount of money by way of stridhan, maintenance, compensation, damages etc. (past, present and future) from her husband. It was also agreed between the parties that the son, namely, Abhimanyu Mehta shall remain in the custody of his mother till he attains the age of majority. The husband was given visiting rights to visit and meet his son once a month. The divorce petition was decreed by the Additional District Judge, Tis Hazari, Delhi vide judgment dated 20.8.2007 on the terms and conditions for which the parties were agreed.

8. After six years of divorce, son Abhimanyu @ Aryaman Chopra has filed a petition under Section 125 Cr.P.C. through her mother in the court of Principal Judge, Family Court, Gautam Buddh Nagar in the year 2013 which was registered as Case No.374 of 2013. The application under Section 125 Cr.P.C. was allowed by the learned Principal Judge, Family Court, Gautam Buddh Nagar vide judgement and order dated 21.11.2019 granting maintenance in favour of son at the rate of Rs.15,000/- per month from the date of filing petition and revisionist was directed to pay the

amount of maintenance on 07<sup>th</sup> day of each month. The revisionist-father has used to pay Rs. 15,000/- per month to his son.

9. The respondent-wife has also filed an application under Section 125 Cr.P.C. in the court of Principal Judge, Family Court, Gautam Buddh Nagar against revisionist claiming 25% income of the husband as maintenance on 29.02.2020, which was registered as Criminal Misc. Application No.- 167 of 2020. The respondent-wife has also moved an application on 24.8.2020 claiming interim maintenance @ Rs. 50,000/- per month. The revisionist-husband has put in appearance before the Principal Judge, Family Court, Gautam Buddh Nagar and has filed a detailed objection to the application filed under Section 125 Cr.P.C. It is specifically pleaded that the divorce petition was decreed with mutual consent and the respondent-wife was agreed that she will not claim any amount towards stridhan, maintenance, compensation and damages etc.

10. The learned Additional Principal Judge, Family Court, Gautam Buddh Nagar vide order dated 01.07.2023 has allowed the application of interim maintenance awarding Rs. 25,000/- as interim maintenance to the wife, which is impugned in both the criminal revisions.

11. It is submitted by learned Senior Advocate appearing for the revisionist-husband that both the parties had filed divorce petition with mutual consent under Section 13B(1) of Hindu Marriage Act and the divorce petition was decreed on the terms and conditions for which both the parties were agreed. It is further submitted that the respondent wife was agreed that she will not claim any maintenance or compensation from her husband. It is well settled law that once the wife waives off her right to maintenance from her husband at the time of divorce and the divorce decree was passed on the terms and conditions of agreement between the parties, it is not open to the wife to claim maintenance from her husband in future. The respondent-wife has waive off her right to claim maintenance by filing an affidavit in divorce petition as such the present

application filed by respondent-wife claiming maintenance, itself was not maintainable and the learned Family Court has committed gross illegality in granting interim maintenance @ Rs. 25,000/- per month to the respondent-wife.

12. On the other hand opposite party Anamika Chopra who appears in person submits that she is facing great financial hardship. Her son was studying in Canada and a very huge amount are being spent by her in education of son. At the time of divorce she was working in Snapdeal company and was getting salary of Rs.1,86,000/- per month but later on she left the job and at present her income is only Rs.75,000/- as Intern from law firm and after deduction she received Rs.67,500/- per month whereas the income of her husband is about 4,50,000/- per month. It is further submitted that her son Aryaman Chopra is studying in University of Toronto, Canada for which she has to incur a huge expenditure and she is unable to pay the educational fee of her son. She further submits that earlier she has not filed any claim for maintenance for last 13 years but now in change circumstances, she is facing great financial crises, whereas the husband is having a very handsome income and is leading very luxurious life. No amount of maintenance has been paid by husband after the divorce. It is further submitted that learned Family Court without considering the financial status and income of the husband, has awarded a very meagre amount of Rs.25,000/- per month as interim maintenance. She has also filed Criminal Revision No.4452 of 2023 for enhancement of maintenance. Lastly, it is submitted that considering the income of the husband which is around Rs.4,50,000/- per month the revision filed by her for enhancement of interim maintenance is liable to be allowed and the interim maintenance may be enhanced from Rs.25,000/- to Rs.50,000/- per month.

13. Considered the submissions of learned counsel for the revisionist as well as opposite party, who appears in person and perused the record.

14. Admittedly the divorce petition was filed under Section 13B(1) of Hindu Marriage Act by the parties seeking divorce with mutual consent. It was agreed by the husband and wife that the respondent wife will not claim any amount towards maintenance from her husband and the custody of minor son namely Abhimanyu Mehta shall remain with the mother. The divorce petition was decreed on 20.8.2007 on the terms and conditions for which both the parties were agreed. The respondent wife has changed the name of her son from Abhimanyu Mehta to Aryaman Chopra. After the divorce the respondent wife lives separately along with her son. In the year 2013 after about six years of divorce, an application under Section 125 Cr.P.C. was filed on behalf of minor son which was allowed on 21.11.2019 and the revisionist father was directed to pay Rs.15,000/- per month as maintenance to his son. The respondent wife had also filed an application under Section 125 Cr.P.C. claiming 25% income of the husband as maintenance in the year 2020 after about 13 years of divorce. An application for interim maintenance was also filed, which was allowed and interim maintenance of Rs.25,000/- per month was awarded by the impugned order.

15. The Hon'ble Apex Court in the case of ***Ruchi Agarwal Vs. Amit Kumar Agrawal and others*** reported in ***2004 (8) Supreme 525*** has laid down that once the wife has obtained divorce without contest on the basis of terms of compromise, it is not open to the wife to pursue the criminal complaint against her husband and it amounts to harassment of the husband. The relevant paragraph is quoted herein below:-

*“It is based on the said compromise the appellant obtained a divorce as desired by her under Section 13(B) of the Hindu Marriage Act and in partial compliance of the terms of the compromise she withdrew the criminal case filed under Section 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.*

*Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the above-*

*mentioned terms in it, the same was obtained by the respondent-husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her Stridhan properties, we find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent-husband has given her a consent divorce which she wanted thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 Cr.P.C. proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.”*

16. Section 125(4) Cr.P.C. also provides that no wife shall be entitled to receive the allowance for maintenance from her husband if she is living separately by mutual consent. Section 125(4) Cr.P.C. is quoted herein below:-

*“(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”*

17. Since the respondent wife is living separately from her husband since 2006 and divorce was also taken place by mutual consent and the respondent wife has voluntarily waive off her right to claim maintenance, the learned Family Court has erred in awarding interim maintenance at the rate of Rs.25,000/- per month.

18. In view of above, the Court is of the view that respondent wife is not entitle for any interim maintenance as she has already waive off her right to claim maintenance at the time of divorce. The Criminal Revision No.4152 of 2023 filed by revisionist-husband is allowed and the order dated 1.7.2023 passed by Additional Principal Judge, Family Court, Gautam Buddh Nagar in Criminal Misc. Application No.167 of 2020 is set-aside.

19. For the aforesaid reasons, the Criminal Revision No.4452 of 2023 filed by wife for enhancement of interim maintenance is dismissed.

20. Interim order, if any, stands discharged.

**Order Date :- 06.03.2024**

Virendra/Kpy