

Reserved on: 28.04.2022

Delivered on: 13.05.2000

Court No. - 16

Case :- CRIMINAL REVISION No. - 398 of 2016

Revisionist :- Km. Ankita Dikshit

Opposite Party :- State Of U.P. And Anr.

Counsel for Revisionist :- Mohammad Aslam Beg

Counsel for Opposite Party :- Govt. Advocate, Akhilesh Kumar
Srivastava

Hon'ble Brij Raj Singh, J.

1. Heard Sri Mohammad Aslam Beg, learned counsel for the revisionist, Sri Ravish Chandra, learned A.G.A. for the State and perused the record.
2. The present revision has been preferred with a prayer to admit it and set aside the judgment and order dated 06.04.2016 passed by the Principal Judge/A.D.J. Family Court, Lucknow in Misc. Criminal Case No. 932 of 2001 (Km. Ankita Dikshit Vs. Rajnesh Dikshit), under Section 125 Cr.P.C. after summoning the records of the court below with a further prayer to stay the implementation and operation of the aforesaid order and also to direct the opposite party No. 2 to provide Rs. 10,000/- per month towards interim maintenance to the revisionist and Rs.40,00,000/- for the purposes of marriage and education of the revisionist during the pendency of revision.
3. Km. Ankita Dikshit, the revisionist file Application No. Kha-3 through her mother, namely, Smt. Sunita Dikshit, for granting maintenance of Rs.5,000/- per month to be paid by her father, the opposite party No. 2. As per the application, the statement is made that after marriage the mother of the revisionist had went to the house of the opposite party No. 2 and out of the wedlock of the opposite party No. 2

and Smt. Sunita Dikshit, the mother of the revisionist, she (revisionist) was born, who has presently attained the age of ten years. She mentioned in the application that the revisionist is studying in St. Marry School, R.D.S.O., Lucknow and she needs maintenance to carry out her education and maintain her life. The mother of the revisionist was working in H.A.L. Division, Lucknow and was residing in the house of her maternal uncle. After one year of the marriage of opposite party No. 2 and her mother, the revisionist was born. The mother was misbehaved by the in-laws only because a son was not born out of the wedlock. The pressure was created on the mother of the revisionist to give divorce to opposite party No. 2 so as the opposite party No. 2 could perform a second marriage with other woman. The mother of the revisionist was forced to take rented house outside, whereas there were two tenants in the house of the opposite party No. 2 and the mother of the revisionist was not allowed to live in that house. It has further been stated that in 2000, the mother of the revisionist was deserted and ousted from the house of the opposite party No. 2 by scolding and rebuking her. It is further stated that opposite party No. 2 is Personal Assistant of the Minister in the Department of Mother & Child Welfare in the U.P. Secretariat and had handsome salary, therefore, she requested to pay Rs.5,000/- per month.

4. In proceedings of application under Section 125 Cr.P.C., the opposite party No. 2 appeared and filed objection. It is stated by opposite party No. 2 that the revisionist (daughter of the opposite party No. 2) is not sent to him by her mother and she wants to take advantage of this fact whereas the revisionist being minor was forcibly taken into her mother's custody. It is further stated that no dowry demand was ever made by the opposite party No. 2 or by his family. It has been further submitted that the mother of the revisionist is working in H.A.L., Division, Lucknow and she has sufficient income out of salary and she is financially capable to maintain the revisionist. He further submitted that he wants to bring his daughter (the revisionist) in his house so that he can maintain her.

5. After hearing both parties and recording the statement of P.W. -1 and O.P.W.-1 i.e. opposite party No. 2, the impugned order was passed on 06.04.2016 and the application filed by the revisionist was rejected. Hence, the present revision has been filed.

6. The court below while passing the impugned order, has recorded the finding that the revisionist was born out the wedlock of opposite party No. 2 and the mother of the revisionist, which requires no consideration. The court below observed that the mother of the revisionist has not disclosed her salary though she is working in H.A.L., Division, Lucknow and the court below recorded that since 1991, she is maintaining her daughter, the revisionist. The court below further observed that the mother of the revisionist has not apprised the income to the court, therefore, her motive is not fair and good. The court below has further recorded the finding that the opposite party No. 2 has disclosed his salary whereas the mother of the revisionist deliberately failed to disclose the same, thus, a case for maintenance in favour of the revisionist is not made out.

7. It was further observed by the court below that the revisionist never showed a compassion and good behaviour towards her father, on the dates when the case was taken up and she discarded him. It was observed that once the daughter has a feeling of discard towards her father, she may not be entitled for maintenance. The argument that the opposite party No. 2 is financially strong, has no force and according to the opinion of the court below, the revisionist was not entitled for maintenance from her father on the ground that her mother was maintaining her and had sufficient means of income.

8. The Court, in this regard, takes note of the settled law enunciated by Hon'ble Supreme Court, rendered in **Rajnish Vs. Neha and Another [(2021) 2 SCC 324]**, that both, the working mother and working father, have to take the liability of the child and if the mother is working, it does not mean that the father will be absolved from taking responsibility of his

child. The father is legally bound to maintain his child according to the status and life style. Hon'ble Supreme Court has taken a serious note in Para -13, wherein it is provided that maintenance laws have been enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy. The relevant extracts of **Rajnesh (supra)**, are quoted below:

"Guidelines / Directions on Maintenance

13. Maintenance laws have been enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy. Article 15(3) of the Constitution of India provides that:

"Nothing in this article shall prevent the State from making any special provision for women and children."

Article 15(3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

37. In Chaturbhuj v Sitabai⁷ this Court 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. Section 125 of the Cr.P.C. is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

38. Proceedings under Section 125 of the Cr.P.C. are summary in nature. In Bhuwan Mohan Singh v Meena & Ors.⁸ this Court held that Section 125 of the Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

III. Criteria for determining quantum of maintenance

77. The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether

the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

Where wife is earning some income

90. The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

90.1. In Shailja & Anr. v Khobbanna,³⁹ this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home.⁴⁰ Sustenance does not mean, and cannot be allowed to mean mere survival.

90.2. In Sunita Kachwaha & Ors. v Anil Kachwaha ⁴² the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance."

9. The finding of the court below that the revisionist was not showing emotional feeling and compassion towards her father on the dates when the case was fixed for hearing, has got no legs. It is the duty of the father to maintain her child and the revisionist being daughter is entitled to seek maintenance from her father.

10. The court below further committed error while making observation that the mother herself was working in H.A.L., Lucknow, therefore, she has to maintain the revisionist. The finding is further incorrect, wherein, it is observed that the mother is maintaining her daughter since 1991 and thus it is presumed that all the needs of child is being fulfilled.

11. The salary slip, which was submitted by the opposite party No. 2 indicates that his total salary was Rs.78,825/-, out of which he had deposited Rs.45,000/- in provident fund just to show that he was getting lesser income as Rs.23,025/- per month. He deposited the heavy amount

in the provident fund so that the revisionist may not claim appropriate amount for maintenance.

12. In view of the findings recorded above, I do not find that the order passed by the court below dated 06.04.2016 is sustainable in the eyes of law. Therefore, the revision is **allowed**. The order dated 06.04.2016 is set aside. The court below is directed to pass a fresh order on the application for maintenance within a period of three months from today. I further direct that the court below while passing fresh order within the aforesaid period, will keep in mind the observations made hereinabove.

Order Date :- 13.5.2022

Arun K. Singh

(Brij Raj Singh, J.)