

**Court No. - 16**

**Case :- CRIMINAL REVISION No. - 205 of 2016**

**Revisionist :-** Smt. Krishna Devi

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

**Counsel for Revisionist :-** Manjusha Kapil,Alok Saxena,Rehan Mubassir

**Counsel for Opposite Party :-** Govt. Advocate,Dileep Kumar Pathak,Sunil Kumar Bajpai

**Hon'ble Brij Raj Singh,J.**

Heard learned counsel for the revisionist and learned A.G.A. for the State.

Notice was issued to opposite party no.2 and the same has been served. Case has been revised but none has appeared on behalf of opposite party no.2 in the revised call.

The present revision has been preferred with a prayer to allow the revision and set aside the judgment and order dated 03.02.2016 passed by Additional Principal Judge, Family Court, Lucknow in Criminal Case No. 522/2008 (Smt. Krishna Devi Vs. Rameshwar Dayal), Under Section 125 Cr.P.C. and to direct the opposite party to pay at least Rs.10,000/- as the monthly maintenance.

The revisionist is the wife who filed an application under Section 125 Cr.P.c. before the Additional Principal Judge, Family Court, Lucknow with the averments that she was married to opposite party no.2 prior to 40 years and out of the wedlock three children namely, Neeraj Mohan, Chandra Mohan and Ravindra Mohan were born. The opposite party no.2 had provided maintenance to her till 1983, but thereafter it was stopped by him. She further stated in the application that she was dependent on her brother Shailendra who used to provide financial assistance but suddenly he had gone missing and the financial assistance was automatically stopped. She filed application due to the fact that she has no source of income at the relevant time, therefore, she needs maintenance from her husband.

On the application filed by the revisionist, opposite party no.2 appeared and filed his objection. In the objection he has stated that the marriage took place on 23.06.1967 but he denied the fact that he ever misbehaved with his wife or harassed her. He further stated that the revisionist has got illicit relation with one person namely Ram Singh @ Manjeet Singh. He has further stated that the nature of the revisionist is very obstinate and she had no adjustment with the family that is why the relationship between them became sour.

The court below examined the revisionist as P.W.-1 and opposite party no.2 as O.P.W.-1. After examining both the parties the case was heard and decided. The court below passed the order on 03.02.2016 rejecting the application under Section 125 Cr.P.C. filed by the revisionist. Revisionist has challenged the said order on many ground, which I am going to discuss point wise:-

(i) The court below has recorded the finding that the revisionist has not submitted as to why she was living separately but para 4 of the application filed under Section 125 Cr.P.C. indicates that she was married to opposite party no.2 prior to 29 years and thereafter the opposite party no. 2 had performed second marriage with Smt. Shushila Devi and she has submitted that the maintenance was not given to her by opposite party no.2. It is stated by the revisionist that due to the fact that opposite party no.2 had performed second marriage she has been deserted. This fact has not been dealt by the court below and finding has been recorded that she was unable to show as to why she was living separately.

(ii) The court below has further recorded the finding that the property at Farrukhabad was sold by the revisionist and she received money out of sold property which indicates that she has sufficient means. On this very finding the court below has come to the conclusion that the revisionist has concealed the material fact because she had not disclosed the said facts at the time of the filing of the application under Section 125 Cr.P.C.

The finding recorded by the court below appears to be perverse because if there was some property at Farrukhabad and money out of sold property was used for maintenance of the children as well as revisionist; it could not be inferred that the revisionist

has lost her opportunity for grant of maintenance under Section 125 Cr.P.C.

(iii) The court has further recorded a finding that the revisionist was unable to state as to whether her children were literate or illiterate or how much they were educated, therefore, some adverse inference were drawn by the court below. I am of the opinion that for determination of maintenance under Section 125 Cr.P.C. such finding and recourse are not proper and it is also not relevant.

(iv) The court below has further recorded a finding that all the three children were settled by her; thus she was having means to sustain. If some income was received by her out of sold property, it does not mean that she would sustain through out life.

(v) The court below has further recorded a finding that the opposite party no.2 stated the fact that revisionist had illicit relation with Ram Singh @ Manjeet Singh and the said fact was not denied by her. The said finding is also perverse because statement of fact cannot be relied because it will have a serious repercussions unless it is proved.

Learned counsel for the revisionist had relied upon the judgment of Hon'ble Supreme Court in the case of **Rajnish Vs. Neha and another** reported in **(2021) 2 Supreme Court Cases 324**. Para 13, 37, 38, 77, 78, 90, 90.1, 90.2 of the said judgment have been relied by him and emphasis has been placed wherein Hon'ble Supreme Court has pronounced that the status of the husband and wife should be looked into and even if the wife is working and has got some means of income, she is entitled for maintenance as per the status of the husband. Hon'ble Supreme Court has further taken a serious note in para 13 wherein it is provided that maintenance laws have been enacted as measure of social justice to provide recourse to dependent wife and children for their financial support so as to prevent them from falling into destitution. Relevant paragraphs of the said judgment are extracted hereinbelow:-

***"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 Sitabai*<sup>7</sup> 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 *Bhuvan Mohan Singh v Meena & Ors.*<sup>8</sup> 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*,<sup>39</sup> 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.<sup>40</sup> Sustenance does not mean, and cannot be allowed to mean mere survival.

90.2. In *Sunita Kachwaha & Ors. v Anil Kachwaha*<sup>42</sup> 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."*

The court below has passed the order without appreciating the facts in totality. The observation appears to be influenced by factual aspects which were not proved and without adducing them on record. The application has been rejected without application of mind. Since the income part and other relevant evidences have not looked into, it is not appropriate to arrive at any conclusion at the moment for granting maintenance because quantum can be assessed only after recording the finding on financial assets and income of the husband.

Therefore, it is a matter of remand and I am remanding the case to the court below to take a fresh decision within a period of four weeks from today, after affording an opportunity of hearing to the parties keeping in view the observation made above. The revision is **allowed**.

The judgment and order dated 03.02.2016 is set aside.

There is no order as to costs.

**Order Date :-** 4.5.2022

Abhishek Singh