

**Court No. - 27**

**Case :-** CRIMINAL REVISION No. - 191 of 2024

**Revisionist :-** Vinod Kumar @ Sant Ram

**Opposite Party :-** Smt. Shiv Rani

**Counsel for Revisionist :-** Sadhu Sharan Chaubey, Abha Srivastava, Manish Barnwal

**Hon'ble Subhash Vidyarthi, J.**

1. Heard Sri S. S. Chaubey, the learned counsel for the revisionist.
2. Supplementary affidavit filed today is taken on record.
3. The instant revision under Section 19(4) of the Family Courts Act, 1984 has been filed assailing validity of the judgment and order dated 30.11.2023 passed by the Principal Judge, Family Court, Shravasti in Maintenance Case No. 36/2019, under Section 125 Cr.P.C. filed by the opposite party-wife of the revisionist. The validity of the judgment has been assailed on the ground that the parties had taken divorce by mutual consent in accordance with the customs of the locality, about 14 years prior to filing of the application under Section 125 Cr.P.C. and this fact was concealed by the opposite party in the application under Section 125 Cr.P.C. The judgment has also been assailed on the ground that the opposite party did not disclose her source of maintenance for the long period of 14 years between dissolution of marriage between the parties and filing of the application under Section 125 Cr.P.C.
4. The Family Court had framed six points for determination, the second being whether the opposite party is living separately from the revisionist without any sufficient reason. While deciding this issue, the Family Court mentioned that it is

contended that a divorce agreement was written on 29.11.2005.

5. A copy of the alleged divorce agreement executed by mutual consent has been annexed with the revision, a bare perusal whereof indicates that it was written unilaterally by the opposite party on a stamp paper worth Rs. 10/-. Numerous other persons have put their signatures on this unilateral declaration written and signed by the opposite party and the revisionist has also signed on it as a witness of its execution but he is not a party to execution of this unilateral divorce declaration.

6. A marriage between two Hindus can be dissolved only by modes recognized by the Hindu Marriage Act and unilateral declaration executed on a stamp paper worth Rs. 10/- is not a mode of dissolution by Hindu Marriage recognized by law. Therefore, the marriage between the parties was not dissolved in accordance with law and she continues to be legally wedded wife of the revisionist.

7. The Family Court has also recorded that the revisionist stated in his cross examination that he got married to one Sunita in his childhood. Some litigation took place between the revisionist and his first wife Sunita, which was closed in the year 2002. Thereafter the revisionist married the opposite party and got separated from her in the year 2005. In the year 2008, he married yet another lady Bina Pathak.

8. The Family Court has observed that the revisionist has not given any particulars of the litigation that took place between him and his first wife Sunita and no document relating to that litigation was brought on record by the revisionist.

9. Regarding the plea of delay of 14 years in filing the application under Section 125 Cr.P.C., the Family Court held that Section 125 Cr.P.C. does not prescribe any period of limitation for filing the application. The Family Court took into

consideration the statement of the opposite party that earlier she had filed an application for maintenance in the year 2011 but her brother died after some time and she was very sad, for this reason, she could not pursue the case. Thereafter, she filed the application in question.

10. The family Court concluded that without dissolution of marriage with the opposite party, the revisionist has married another lady Bina Pathak and three sons have borne out of the wedlock between the revisionist and Bina pathak and this gives rise to a sufficient cause for the opposite party to live separate from the revisionist.

11. There appears to be no error or illegality in the aforesaid findings of the family court.

12. Regarding quantum of maintenance, the Family Court noted the statement of the revisionist that he works as a priest. DW-2 Munna Lal alias Radhika Nandan stated that the applicant is M.A. in Sanskrit and he preaches Bhagwat Katha and performs other religious rituals as a priest.

13. Keeping in view the aforesaid facts, the Family Court directed the revisionist to pay Rs. 2200/- per month as maintenance to his wife-respondent.

14. The Family Court has passed the impugned order after taking into consideration all the relevant facts and circumstances of the case, as noted above and there is no error or illegality in any finding of the Family Court. The revisionist relied upon a decision of the High Court of Jharkhand at Ranchi in ***Amit Kumar Kachhap v. Sangeeta Toppo***, Criminal Revision No. 512 of 2023 decided on 02.02.2024 wherein the Jharkhand High Court held that where the respondent had been residing aloof from the husband without any reasonable cause, the wife was not entitled to claim maintenance.

15. There can be no dispute against the aforesaid proposition of law and it is in accordance with the statutory mandate contained under Section 125 (4) Cr.P.C. but when the marriage between the revisionist and the opposite party has not been dissolved by any manner known to law, it continues to subsist and the respondent having married another lady and having procreated three children from her, has given rise to a reasonable cause to the opposite party to live separate from the revisionist.

16. Even otherwise the application under Section 125 Cr.P.C. can be filed by the applicant even after dissolution of her marriage as has been held by the Hon'ble Supreme Court in ***Swapan Kumar Banerjee v. State of West Bengal***, (2020) 19 SCC 342.

17. In these circumstances, the finding of the Family Court that the opposite party is living away from the revisionist because of sufficient cause, is absolutely correct and the judgment cannot be said to be vitiated on any score.

18. Accordingly, the revision lacks merit and the same is ***dismissed***.

**Order Date :- 5.3.2024**

Pradeep/-