Neutral Citation No. - 2024:AHC:54224

Reserved

Court No. - 37 **A.F.R.**

Case :- CRIMINAL REVISION No. - 1762 of 2023
Revisionist :- Rana Pratap Singh
Opposite Party :- Neetu Singh And 2 Others
Counsel for Revisionist :- Ashok Kumar Shukla
Counsel for Opposite Party :- Chandan Kumar Jaiswal

Hon'ble Surendra Singh-I,J.

Heard Sri Ashok Kumar Shukla, learned counsel for the revisionist and Sri Chandan Kumar Jaiswal, learned counsel for the opposite parties.

2. By means of the instant criminal revision, the revisionist has assailed the impugned judgment and order dated 01.03.2023 passed by the Principal Judge, Family Court, Gorakhpur in Criminal Case No. 657 of 2018 (Neetu Singh and others Vs. Rana Pratap Singh) filed under Section 125 Cr.P.C.

3. By the impugned judgment and order, the trial court has allowed the criminal case instituted by the opposite party no.1 under Section 125 Cr.P.C. and granted maintenance allowance of Rs.15,000/- per month to the opposite party no. 1 (wife) and Rs. 5000/- each to her children i.e opposite party no. 2, Keerti Singh, and opposite party no. 3, Krishna Singh from the date of filing of the criminal case. The opposite party nos.2 and 3 were provided maintenance till they attain the age of majority.

4. It has been submitted by learned counsel for the revisionist that the trial Court has passed the impugned order against the weight of evidence on record as well as law applicable to the facts of the case. The trial court has misread and misinterpreted the documentary as well as oral evidence on record. The trial court has not taken into consideration the fact that without any fault of the revisionist, the opposite party no.1 was residing away from him. It has also been submitted that a decree for restitution of conjugal rights was passed by the concerned Family Court under Section 9 of the Hindu Marriage Act against the opposite party no.1 still she failed to live with the revisionist and perform her matrimonial duties, therefore her rights to maintenance allowance against the revisionist is barred under Section 125

(4) Cr.P.C. It has further been submitted that while determining the amount of maintenance allowance, the trial Court has not taken into consideration the monthly income of the revisionist.

5. Learned counsel for the revisionist has relied on the following judgments of the different High Courts:

(i) Amit Kumar Kachhap vs. Sangeeta Toppo passed in Criminal Revision No.512 of 2023 (Ranchi High Court).

(ii) Balaram Dash vs. Smt. Gitanjali Dash and others; 2000 CRI. L.J. 4175.

6. **Per contra**, learned counsel for the opposite parties submits that the trial Court has passed the impugned order after proper appreciation of oral and documentary evidence on record and it should not be interfered with. It has also been submitted that the revisionist is a central government employee and was getting monthly salary of Rs.83,910/- per month in the year 2020 as it is mentioned in the trial court order. Now his salary has increased from that amount. It has also been submitted that the parents of opposite party no. 1 are bearing expenses of opposite party nos. 1 to 3. The opposite party no. 2, Keerti Singh, is studying in Class 7th, whose annual fees is Rs.37,700/- whereas opposite party no. 3, Krishna Singh, is studying in Class 5th and his annual fees is Rs. 35,800/-, their expenses for books stationary and transportation is in addition to this amount. The opposite party no. 1 has filed receipt of fees of opposite party nos. 2 and 3 with her counter affidavit. Learned counsel for the opposite parties has relied on the judgement of Hon'ble the Apex Court in **Rajnesh vs. Neha and Another, (2021) 2 SCC 324.**

7. The opposite party no.1 had filed an application under Section 125 Cr.P.C. with the averments that the opposite party No.1, Neetu Singh, had married to the revisionist, Rana Pratap Singh on 26.02.2008 according to Hindu Rites and Rituals and from their wedlock, opposite party no.2 and 3 were born. In the said marriage, father of the opposite party no.1 had given gifts and cash as per his capacity. The revisionist/husband and her in-laws were not satisfied with the dowry given to them in the marriage, they started

beating her and subjected her to physical and mental harassment for coercing her to bring a Honda City car from her parents in dowry. After the birth of children, the revisionist used to tell her that he is not able to bear the expenses, therefore the children should be kept in an orphanage or sold to some rich person. When the opposite party no.1 opposed the suggestion of the revisionist, she was beaten by her husband with kicks and fists and was also confined in the room. After living for some years in village, the revisionist took opposite party no.1 and his parents to Gandhinagar, Tamil Nadu where they stayed in their own house situated near CRPF camp. On 09.04.2018, the revisionist abused and severely beat the opposite party no. 1 and forcibly took her by train and left her near her parental home. The opposite party no. 1 told her mother about the conduct of his husband. She went with her mother to police station Gagaha but her first information report was not registered by the police. On 29.05.2018 she sent her complaint through registered post to S.S.P. Gorakhpur, but no action was taken by the police. While she is staying in her parental home, the revisionist has not provided maintenance allowance for her children. Further averment has been made that the revisionist has enough fertile agricultural land from which he has enough income. The revisionist is a Constable in CRPF and is earning 40,000/- per month salary. The opposite party no. 1 has no source of income to maintain herself and her children.

8. The revisionist has admitted that the opposite party no.1 is legally wedded wife and opposite party nos.2 and 3 are his daughter and son. He has also admitted that he is doing job in CRPF. The revisionist has stated that he did not receive any dowry in the marriage. He has also denied that he or his parents are physically or mentally tortured her for getting a Honda City car in dowry. He has also admitted that after marriage, she started staying in Tamil Nadu where revisionist was doing his job. In his written statement, the revisionist has stated that he has purchased two plots in the name of opposite party no. 1 and one plot in the name of opposite party nos. 2 and 3. He has also taken Life Insurance Policy in their name and is paying premium of the policy. The revisionist has denied that on 09.04.2018, after beating the opposite party no. 1, he forcibly took her and left her at parental home and

since then he has not provided any maintenance allowance to his wife and children. The revisionist has also stated that she has done B.Ed course and she is working in a private school as teacher and earns about Rs.40,000/- as salary as well as taking tuitions of children.

9. From the pleadings and documentary evidence of the parties, the Principal Judge, Family Court/trial court has framed following four issues:-

(i) Whether the applicant no. 1, Neetu Singh, is legally wedded wife of the revisionist and applicant nos. 2 and 3 are their children born from their wedlock ?

(ii) Whether the applicant no. 1 is residing away from the revisionist due to reasonable and justified cause ?

(iii) Whether the applicant No.1 does not have sufficient source of income to maintain herself and her children ?

(iv) Whether the applicants are entitled to any relief, if yes how much and from whom and from when ?

10. Regarding the issue no.1, there is no dispute between the parties, opposite party No.1 (Rana Pratap Singh) has admitted that applicant-Neetu Singh was married with him in the year 2008 and from their wedlock two children, namely, Keerti Singh and Krishna Singh were born. Regarding issue no.2, he has pleaded the rights of the applicant-Neetu Singh for maintenance allowance is barred under Section 125 (4) Cr.P.C.

11. Regarding the above mentioned issue no.2, revisionist has pressed the fact that he had filed Case No.264 of 2018, under Section 9 of the Hindu Marriage Act against his wife in the Family Court, Mau. The Family Court passed ex-parte judgment and order dated 24.01.2019 in favour of the revisionist, the opposite party No.1 did not comply with the same and has not resided with him in compliance of the aforesaid order, therefore, her right for maintenance is barred under Section 125 (4) Cr.P.C.

12. In rebuttal of the aforesaid averments of the revisionist, the opposite party No.1 has filed copy of order 14.12.2019, ‘paper no. 33 kha to 35 kha’ from which, it transpires that by instituting an application, the opposite party

No.1 got the execution proceedings of aforesaid exparte judgement and decree set aside in the Lok Adalat.

13. The revisionist has also pleaded, in his written statement, that his wife has illicit relation with his younger brother, therefore, her right for maintenance is barred under the provision of Section 125 (4) Cr.P.C.

14. Regarding the existence of aforesaid ex-parte judgment and order dated 24.01.2019, the revisionist has pleaded, in his written statement, that opposite party No.1 had filed Misc Application for setting aside the aforesaid ex-parte judgment and order. This misc application was dismissed in default on 28.10.2021 and ex-parte order is still in force, but revisionist had not filed certified copy of the aforesaid order dated 28.10.2021, therefore, pleadings of the revisionist, in his written statement, in this regard cannot be accepted whereas opposite party No.1 had filed certified copy of the order passed in Lok Adalat by which ex-parte judgment and order passed under Section 9 of Hindu Marriage Act was set aside.

15. From the above discussion, it can be concluded that ex-parte judgement and order passed under Section 9 of the Hindu Marriage Act is not in force.

16. Revisionist has also pleaded that he had lodged FIR against his wife in Police Station Tank Factory, District Chenni for leaving his house after committed theft of cash, jewellery and documents related to property. He has also pleaded, in his written statement, that he had submitted application in Police Station Kant, District Gorakhpur regarding the conduct of his wife, but he has not filed the aforesaid FIR or application given to the police authority regarding the offence committed by his wife.

17. Thus, allegation regarding his wife fled from his house after stealing jewellery and other items has not been proved or substantiated by oral or documentary evidence adduced by him in the trial Court. He has also pleaded in his written statement that on 29.03.2018 at 9:00 A.M. a whatsapp message was sent through the mobile of his younger brother to his wife to leave her matrimonial home with him. He informed to his mother about the

said message. On 29.03.2018, his wife, in conspiracy with his younger brother, left his house along with jewellery and cash etc. In this regard, revisionist has not filed screen short of the aforesaid whatsapp message. There is ground to accept the averments made by the revisionist that his wife has left his house with his younger brother and she is living in adultery with him. Therefore, it cannot be concluded that his wife is living in adultery with the younger brother of the revisionist. Thus, issue no.2 was rightly determined by the trial Court in affirmative against the revisionist.

18. Regarding issue no.3, the revisionist has pleaded, in his written statement filed against the application under Section 125 Cr.P.C. that his wife has done B.Ed., course in computer and beautician. He has also pleaded that that his wife earns about Rs.40,000/- per month by taking tuitions and other professional works, but he has not submitted any documentary or oral evidence in this regard. Opposite party No.1 has denied in her application filed under Section 125 Cr.P.C. that she has no earning and she is financially dependent on her parents.

19. Admittedly, revisionist is working as constable in CRPF. Opposite party No.1 has filed his salary slip for the month of January, 2023, in which, his monthly salary has been shown as Rs.65,773/- The revisionist has pleaded in his written statement that his salary is only Rs.40,000/- per month and after deduction of instalment towards loan taken for purchasing land and paying premium of LIC, he is receiving only Rs. 28,446/- per month.

20. The Hon'ble Apex Court in **Dr. Kulbhushan Kumar vs. Smt. Raj Kumari: (1970) 3 SCC 129** has held that only compulsory statutory deductions as income tax can be reduced from the gross salary. No deduction is permissible for payment of LIC, home loan, instalments towards payment of loan for purchasing land or premium of policy of insurance.

21. Thus, the alleged deduction from the gross salary of the revisionist/husband due to payment for premium of insurance or instalment of plots purchased by him cannot be taken into consideration as no such deduction from gross salary is permissible under the law.

22. Under these facts and circumstances, the monthly salary of the revisionist is taken to be Rs.65,773/- in January, 2023 as evidenced by the salary slip filed by his wife in the trial Court.

23. The Hon'ble Apex Court in **Rajathi Vs. C. Ganesan, (1999) 6 SCC 326** has held that the words "unable to maintain herself" would mean the means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after the desertion to survive somehow. Section 125 was enacted on the premise that it is the obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no monetary means to discharge his obligation and he did not neglect or refuse to maintain them or anyone of them. The statement of the wife that she was unable to maintain herself would be enough and it would be for the husband to prove otherwise.

24. The Hon'ble Apex Court in the case of **Rajnesh vs. Neha and Another, (2021) 2 SCC 324** has held that maintenance laws have been enacted as a measure of social justice to provide succour to dependant 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."*

25. In the case of **Chander Parkash Bodh Raj vs. Shila Rani Chander Prakash: 1968 SCC Online Del 52,** the Delhi High Court has held that :

> *"an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."*

26. The Apex Court has held that while deciding the criminal revision against the order passed under Section 125 Cr.P.C. or corresponding section under Domestic Violence Act, Court shall take only consideration the present income of the husband and wife for determining maintenance payable to the wife and children. Apart from the fees for school of opposite party Nos.2 and 3, money is also required for purchasing books, stationary, conveyance to school and other expenses of opposite party Nos.2 and 3. In this regard, trial Court has provided Rs.15,000/- per month to the opposite party No.1 and Rs.5000/- each to the opposite party Nos.2 and 3, total of Rs.25,000/- per month, which cannot be considered to be excessive. Thus, the trial Court has rightly and justly fixed the maintenance allowance payable to the opposite party Nos.1 to 3.

27. From the above discussion, I am of the view that while passing the impugned judgement and order, the trial court has not committed any illegality, irregularity, jurisdictional error or impropriety.

28. There is no merit in the criminal revision and the same is liable to be dismissed.

29. Accordingly, the criminal revision is **dismissed.**

30. Let a copy of this order be sent to the concerned trial court for necessary action.

Order Date :- 29.03.2024
Pratima/A/-

Digitally signed by :-
AMIT KUMAR
High Court of Judicature at Allahabad