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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 5100 of 2022

Brijmohan

.....Revisionist(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Revisionist(s)	: Akhilesh Singh, Ram Pravesh Yadav, Vinay Kumar
Counsel for Opposite Party(s)	: Dinesh Rai, G.A., Sanjay Yadav

Court No. - 44

HON'BLE SANJIV KUMAR, J.

1. The instant Criminal Revision has been filed on behalf of Brijmohan against the judgment and order dated 06.09.2022, passed by learned Additional Principal Judge, Court No.1, Family Court, Firozabad in Maintenance Case No. 1907 of 2014 (Smt. Dhirjesh Vs. Brijmohan), under Section 125 Cr.P.C. Police Station Makkhanpur, District Firozabad.

2. In the impugned judgment and order, the learned trial court allowed maintenance application filed under Section 125 Cr.P.C. by Smt. Dhirjesh and directed the revisionist Brijmohan to pay a sum of Rs.3000/- per month as maintenance to her from the date of application and Rs.5000/- per month from the date of order.

3. Brief facts of the case are that Smt. Dhirjesh filed application under Section 125 Cr.P.C. against the revisionist Brijmohan, alleging therein that her marriage with Brijmohan was solemnized on 17.02.2012

as per Hindu rites. Her in-laws were not satisfied with the dowry and demanded three lakhs in the form of additional dowry and started committing physical and mental torture. Brijmohan did not maintain physical relations with her. On 23.07.2013, she was badly beaten by her husband and in-laws for additional demand of dowry. Her relatives took her to hospital at Shikohabad, District Firozabad for treatment, where she was medically examined. Her father lodged a criminal case regarding torture for want of dowry and in that case the police has filed charge-sheet before the competent court. The said case is pending at the stage of trial.

4. It is further alleged that her husband thrown her out of the her matrimonial home and, since then, has not taken her care and not willing to keep her with him. She is living at her father's home. It is further alleged that due to cruelty committed by her in-laws, she has not been able to apply for a job. Her husband is B.Sc. graduate and his father is retired from Railways. The husband of opposite party no. 2 has thirty *bigha* of agricultural land besides two beer shops and four wine shops. Brijmohan earns about Rs.1,00,000/- per month and she wants Rs.20,000/- per month from her husband for her maintenance, studies and to apply for a job.

5. The revisionist, Brijmohan, appeared before the court and filed his written submissions denying all the allegations levelled against him and stated that the allegations against him are false and concocted. Smt. Dhirjesh always quarrels with him and his family members and wanted partition to live separately from his parents. He has no licence to run any wine shop. Further, he has no business. His father has some land whereas Smt. Dhirjesh is engaged in making bangles and *kadas*. She is a graduate women and earns about Rs.10,000/- per month from tuition and sewing work, therefore, she is in no need to get any maintenance, as she is able to maintain herself. Therefore, the application be rejected.

6. After exchange of pleadings, Smt. Dhirjesh appeared in witness box and examined herself as A.P.W. 1 and produced Prem Shankar as A.P.W. 2. Besides this, she also filed some documentary evidence in the

form of copy of FIR, her own affidavits, photo-copy of four wheeler R.C. registered in the name of Brij Mohan, photo-copy of her bank account, copy of sale deed and injury report *et cetera*.

7. The revisionist Brijmohan examined himself as O.P.W. 1 and in his documentary evidence, he has filed copy of *ex-parte* judgment dated 04.04.2016, copy of order sheet, copy of recovery warrant issued in Misc. Case No. 108 of 2016, under Section 125(3) Cr.P.C., photograph C.D., Challani order and his own affidavit *et cetera*.

8. After hearing the arguments of both the parties and examining the record, the learned court came to the conclusion that, admittedly, both the parties are married to each other and the applicant Dhirjesh is unable to maintain herself. It was also observed that opposite party Brijmohan has means to maintain his wife Smt. Dhirjesh. It was also observed that due to mental and physical torture committed, Smt. Dhirjesh has reasonable and sufficient cause to live separately from her husband and, in view of the above, the maintenance application filed under Section 125 Cr.P.C. was partly allowed and interim order regarding maintenance passed against the revisionist Brijmohan

9. Feeling aggrieved, this revision has been filed on the ground that the learned court has not appreciated the evidence and material in its right perspective. Smt. Dhirjesh herself left the house out of her own sweet will without any reasonable cause. She deserted the revisionist without any sufficient cause and thus, is not liable to claim maintenance. It is also alleged that the maintenance amount granted is excessive. The revisionist is engaged in agricultural work. It is further submitted that the court has not assigned any specific reason in granting maintenance from the date of filing of application. Thus, the impugned order is not sustainable and liable to be set aside.

10. Learned counsel for opposite party no.2 has appeared and filed a counter affidavit on her behalf, wherein she has denied the submissions of learned counsel for the revisionist. Learned counsel for the revisionist has filed a rejoinder affidavit.

11. During the course of hearing, this Court sent the matter for mediation before the Mediation and Conciliation Centre, High Court, Allahabad but the mediation failed. Thereafter, on 17.02.2025, it was observed that the the revisionist had obtained interim order on 04.04.2023 and, in spite of mediation proceedings having been failed, is not turning up to argue this matter on merits.

12. On the last date i.e. 17.10.2025 also, none appeared on behalf of the revisionist. On 24.01.2025, it was observed by this Court that if the learned counsel appearing on behalf of the revisionist does not appear, this Court will proceed to hear and decide the matter finally, even in his absence. Even today, nobody appears on behalf for the revisionist to press this revision, as such, learned AGA and learned counsel for opposite party no.2 are heard and this revision is decided on merits in the absence of learned counsel for the revisionist.

13. With regard to scope of exercise of revisional jurisdiction, the Hon'ble Supreme Court in *Sanjaysinh Ramrao Chavan vs Dattatray Gulabrao Phalke & Another, (2015) 3 SCC 123*, held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate, unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material. The order cannot be set aside merely on the ground that another view is possible.

14. In the case of State of *Kerala v. Puttumana Illath Jathavedan Namboodiri (1999) 2 SCC 452*, while considering the scope of the revisional jurisdiction of the High Court, the Hon'ble Supreme Court held that the jurisdiction is one of supervisory, exercised for correcting the miscarriage of justice, but the said revisional power cannot be equated with the power of an appellate Court, nor can it be treated even as a second appellate jurisdiction ordinarily, therefore, it may not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same, when the evidence has already been appreciated by the Magistrate as well as by the Sessions Judge.

15. This criminal revision has been preferred by the revisionist against the order passed under Section 125 Cr.P.C., whereby maintenance application of opposite party no.2/Dhirjesh was allowed.

16. The Hon'ble Supreme Court has reiterated the principle of law as to how the proceedings under Section 125 Cr.P.C. have to be dealt with by the Court. In ***Dukhtar Jahan v. Mohd. Farooq (1987) 1 SCC 624***, the Hon'ble Supreme Court held that proceedings under Section 125 Cr.P.C. of the Code, it must be remembered, are of summary nature and intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.

17. A three Judge Bench in ***Vimla (K.) v. Veeraswamy (K.), (1991) 2 SCC 375***, while discussing about the basic purpose under Section 125 of the Code, opined that Section 125 of the Cr.P.C. is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wives.

18. In ***Chaturbhuj v. Sita Bai, (2008) 2 SCC 316***, it has been held that the object of maintenance proceedings is not to punish the husband for his past neglect, but to prevent vagrancy and destitution by providing a speedy remedy for food, clothing, and shelter.

19. The provisions of Section 125 Cr.P.C. is reproduced hereunder for ready reference:

Section 125 Cr.P.C.-Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate¹ * * as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:*

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.--For the purposes of this Chapter,

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each months⁴[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the

warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.--If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an ⁵[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.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

20. Further in ***Bhuwan Mohan Singh Vs. Meena, (2015) 6 SCC 353***, the Hon'ble Supreme Court held that Section 125 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 can be made by the Court and she can sustain herself and also her children, if they are with her. 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.

21. In ***Manish Jain Vs. Akansha Jain, (2017) 15 SCC 801***, the Hon'ble Supreme Court held that the financial position of the parents of the applicant wife would not be material while determining the quantum of

maintenance. It is not an answer to a maintenance application that his wife is educated and can support herself. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve of him to main his wife, if he is able bodied and has educational qualification (***Reema Salkan Vs. Sumer Singh Salkan (2019) 12 SCC 303***).

22. In view of the above legal position, the impugned order is to be examined to determine whether it suffers from any perversity or illegality.

23. The revisionist/husband has raised three points, assailing the impugned order. Firstly, he has raised the point that opposite party no.2/ Smt. Dhirjesh voluntarily deserted the revisionist and, therefore, is not entitled for maintenance. Secondly, the revisionist submits that opposite party no.2 has sufficient means to maintain herself. Thirdly, he contends that he has no source of income to maintain his wife.

24. So far as the first point is concerned, it is not in dispute that the revisionist/Brijmohan and opposite party no.2/Smt. Dhirjesh are legally wedded husband and wife. According to opposite party no.2, after the marriage, she was thrown away from her matrimonial home and, on account of torture committed upon her, she sustained injuries and was medically examined. Her father had lodged an FIR registered vide Case Crime No. 606 of 2013, under Section 498A, 323, 504, 506 IPC and Section 3/4 of the Dowry Prohibition Act, 1961, against the revisionist and his family members. The Police, after investigation, have filed charge-sheet in the said crime, which is pending at the stage of trial. Opposite party no.2 has stated that due to the torture of her husband and in-laws, she is now residing at her parental house. In support of this, she has given her statement on oath and has filed copy of charge-sheet.

25. The revisionist has not denied the fact that the above criminal case was lodged against him and his family members, but has submitted that it was lodged on false and concocted facts.

26. In *Sirajmohmedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan and Another, AIR (1981) SC 1982*, it has been held that if the wife is being tortured for want of dowry or due to the conduct of husband, there is apprehension to the wife that she may suffer injury, then it is valid ground for the wife to live separately from her husband.

27. In the instant case, the learned Trial Court, after considering the evidence on record and the legal position, held that there are valid grounds for the wife to live separately from her husband. The revisionist has not filed any concrete evidence to prove that opposite party no.2 had voluntarily deserted him of her own freewill. Therefore, the finding recorded by the Trial Court does not suffer from any perversity or infirmity.

28. With regard to the second point, it is argued on behalf of the revisionist that opposite party no.2 is a post-graduate, having passed M.A. It is further argued that she makes bangles and *kada* moreover, she gives tuition and also performs tailor work, from which she earns Rs.10,000/- per month and therefore, she is in no need of maintenance from the revisionist. Opposite party no.2 has denied this fact and said that she has no income to maintain herself. The revisionist has not filed any evidence with regard to alleged income of opposite party no.2.

29. In view of the above, the learned Trial Court held that opposite party no.2 has no source of income to maintain herself, and this view of the Trial Court also does not suffer from any infirmity.

30. Lastly, it is argued on behalf of the revisionist that he has no income to maintain opposite party no.2. On the other hand, it is alleged on behalf of opposite party no.2 that the revisionist is graduate having passed B.Sc. His father has thirty *bigha* of land, besides this, the revisionist has four liquor shops and his monthly income is about Rs.1,00,000/- per month.

31. The revisionist has denied these facts, but has admitted that he has four *bigha* of land, upon which he does agricultural work. He has also admitted that he sits at his brothers shop and earns Rs.100-150 per day. He has also admitted that he has ancestral property in his name along with three other co-sharers. The revisionist before the Trial Court has not claimed himself as disabled to maintain himself and his wife, however, it is before this Court that the revisionist has filed some prescriptions and claimed that he is ill and thus, unable to earn. From the perusal of these prescriptions, it appears that the revisionist was suffering from headache and given some prescription. These medical papers do not show that the revisionist suffers from any such disease, which prevents him in doing any physical labour work. Thus, the revisionist is able bodied person and, being so, he is liable to maintain his wife.

32. Opposite party no.2, in her counter affidavit, has alleged that during the pendency of this criminal revision, the revisionist had gifted some of his property to her to avoid paying maintenance and also stated that during the pendency of this criminal revision, the revisionist had purchased a commercial property along with his brother. Opposite party no.2 has filed a copy of the sale deed. The sale deed is annexed as Annexure No.3 to her counter affidavit. In support of her claim, the revisionist has filed a rejoinder affidavit, but has not denied this fact in it.

33. Opposite party no.2 has claimed that, in view of the order of the interim maintenance of this Court, the revisionist has paid maintenance amount to the opposite party no.2, which further substantiates the claim of opposite party no.2 that the revisionist has sufficient means to pay maintenance to opposite party no.2.

34. In view of the above, the revisionist has sufficient source of income and he is liable to maintain his wife/opposite party no.2 and the finding of the learned trial Court in this regard is perfectly justified and does not suffer from any infirmity or illegality.

35. A perusal of the impugned order shows that opposite party no.2 was ordered maintenance of Rs.3000/- per months from the date of application up to the date of order and Rs.5000/- per month from the date of order.

36. Looking into the status of both the parties, the above maintenance amount awarded by Trial Court is not excessive. Thus, in view of the above discussion, the impugned order does not suffer from any perversity or illegality or infirmity. Hence, no interference is warranted by this Court. As a result, this revision, being devoid of merits, is **dismissed** and the impugned order dated 06.09.2022 is hereby affirmed. Accordingly, the interim order passed by this Court on 04.04.2023 is vacated.

(Sanjiv Kumar,J.)

January 21, 2026

Subham