



2026:AHC:43026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 6391 of 2025

Pallavi Srivastava

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Kamlesh Kumar Tiwari
Counsel for Opposite Party(s)	:	Tausif Ahmad, Vijai Kumar Rai, G.A.

A.F.R.

Court No. - 85

HON'BLE MADAN PAL SINGH, J.

1. Supplementary affidavit on behalf of the revisionist and the counter affidavit filed on behalf of opposite party no.2 in the Court today are taken on record.
2. Heard learned counsel for the revisionist, learned counsel for opposite party no.2 and the learned A.G.A. for the State.
3. The instant criminal revision under Section 397/401 Cr.P.C. has been preferred by the revisionist with a prayer to quash/set aside the judgment and order dated 16th September, 2025 passed by the Additional Principal Judge, Family Court-II, Gorakhpur in Case No. Criminal Misc. Case No. 1165 of 2023 (Pallavi Srivastava VS. Tarun Prakash Srivastava), under Section 125 Cr.P.C., whereby the trial court has rejected the application of the revisionist under Section 125 Cr.P.C. for grant of monthly maintenance allowance from the opposite party no.2 on the ground of jurisdiction.
4. It is the case of the revisionist that the marriage of the revisionist was solemnized with opposite party no.2 on 9th December, 2020 in accordance with the Hindu Rites and Rituals in which Rs. 10 lakhs cash and other ornaments were given to the family of the opposite party no.2 by her father as dowry. Total approximately, Rs. 30 lakhs of father of the revisionist were spent. After marriage the revisionist went to her in-laws place at Lucknow and lived there. On 24th December, 2020, revisionist's mother-in-law and sister-in-law took away all her jewellery in the name of keeping it safe in a bank locker and when she went out with her husband, i.e., the opposite party no.2, they accused her of losing the said jewellery. The brother-in-laws of the revisionist, namely, Satish Srivastava and Prabhat Srivastava has bad intention against her. The family members of opposite party no.2 are habitual

drinker and after drink they used to abuse the revisionist. Opposite party no.2 is doing job in Merchant Navy and he always came with wines. One day, the opposite party no.2 offered the revisionist to take drink but she refused, then he pushed her due to which she sustained injuries. When opposite party no.2 went to his duty, his family members used to harass her for loss of jewellery. The revisionist was suffering from abdomen illness and she has got operated on 22nd December, 2022 and second operation was scheduled to held in the month of February-March, 2023, the opposite party no.2 and his family members left her in the hospital and thereafter her parents had taken her care of. After getting her second operation undertaken, she discharged from hospital on 15th March, 2023, the parents of the revisionist called the elder brother of opposite party no.2 to take back to the revisionist at her matrimonial home but he has not responded, therefore, she has come at her parental house at Gorakhpur.

6. The contention of the learned counsel for the revisionist is that the father of the revisionist, namely, Krishna Kumar Srivastava was earlier working in Railway Department and during service, he lived at Lucknow and also purchased and constructed a house but after retirement he resides at Gorakhpur at his native place being Amit Aditya Tent House, Bichhiya, Jungle Tulsiram, Shahpur, Gorakhpur, U.P. In Gorakhpur, father of the revisionist has also ancestral property and he also use to withdraw his pension from the treasury office at Gorakhpur. He further submits that on 15th March, 2023, due to non-fulfillment of additional demand of dowry, opposite party no.2 has left the revisionist at her parental house i.e. Gorakhpur, where she has lodged first information report against her husband and her in-laws (total 7 in number) on 20th October, 2023 at Police Station-Mahila Thana, District-Gorakhpur which was registered as Case Crime No. 0057 of 2023 under Sections 498-A, 323, 504, 506, 406 I.P.C. and Section 3/4 of the D.P. Act, a copy of the said first information report has been enclosed at page no.24 onwards of the supplementary affidavit. Since 15th March, 2023, when her husband left i.e. opposite party no.2 has left the revisionist at her parental house at Gorakhpur, she had no other option but to reside there and since then she is living there.

7. In support of his case, learned counsel for the revisionist has drawn the attention of the Court to Voter List-2022 of Nagar Nigam, Gorakhpur which has been enclosed as Annexure No. S.A.-1 to the supplementary affidavit wherein the names of father of the revisionist and his family members have been mentioned. He has also referred to Kisan Bahi enclosed as Annexure No.S.A.-2 to the supplementary affidavit, issued by the revenue authorities of the district administration of Gorakhpur, wherein the name of father of the revisionist has been shown as permanent resident of District Gorakhpur.

Besides the above, learned counsel for the revisionist has also enclosed the S.I.R. forms which have been filed by the father of the revisionist and his family members at Gorakhpur as Annexure No.S.A.-3 to the supplementary affidavit. A copy of the order issued by the Tehsildar Sadar, Gorakhpur dated 19th January, 1987 has also been brought on record as Annexure No.4 to the supplementary affidavit, whereby the name of the father of the revisionist has been mutated in the relevant revenue record after the death of his mother i.e. grand-mother of the revisionist.

8. On the basis of the aforesaid documentary evidence, learned counsel for the revisionist submits that the trial court has not considered the documentary as well as oral evidence adduced by the revisionist during the course of trial with regard to her living place i.e. at her parental house i.e. Gorakhpur. The trial court has also misinterpreted the provisions of Section 126 (1) Cr.P.C. in the case of the revisionist, while the said provision is fully applicable in her case. The trial court passed by the judgment impugned rejecting the claim of the revisionist for grant of maintenance allowance is without application of mind and incorrect in appreciation of evidence.

9. On the above premise, learned counsel for the revisionist submits that without examining the aforesaid facts about the living place of the revisionist, the trial court has rejected the application of the revisionist under Section 125 Cr.P.C. on the ground of jurisdiction, which cannot be legally sustained and is liable to be set aside.

10. On the other-hand, the learned counsel for opposite party no.2 and the learned A.G.A. for the State have opposed the submissions made by the learned counsel for the revisionist by submitting that the trial court has not committed any illegality or infirmity in passing the impugned judgment and rejecting the claim of the revisionist, so as to warrant any interference by this Court in exercise of revisional jurisdiction.

11. Besides the above, learned counsel for opposite party no.2 submits that after leaving her matrimonial house i.e. house of the opposite party no.2, the revisionist stays with her parents at Hydil Colony, Jairajpuri, Near Hanuman Mandir, Sarojani Nagar, Amausi, Lucknow as is evident from her Adharcard, a copy of which has been brought on record at page no. 45 of the counter affidavit. Apart from that, for showing the present address of the residence of the revisionist at Lucknow learned counsel for opposite party no.2 has also enclosed the copy of the marriage card of the brother of the revisionist, namely, Amit Srivastava, registration paper of four wheeler of father of revisionist, medical papers qua treatment of father of revisionist, marriage card of the revisionist voter I.D. card of the family of the parents of the revisionist of

the year 2022 and 2024, bank pass-book and driving licence of the revisionist, SIR list and declaration of the revisionist and sale-deed dated 21st January, 2024, which has been purchased by the father of the revisionist in the name of her mother, have also been enclosed.

12. On the basis of the aforesaid documents, learned counsel for the opposite party no.2 submits that since after leaving her matrimonial house, the revisionist is residing at her parental house at Lucknow, therefore, the trial court has not committed any error in rejecting the application of the revisionist under Section 125 Cr.P.C. on the ground of jurisdiction. In support of his case, learned counsel for the opposite party no.2 has relied upon the judgment of the Apex Court in the case of **Amit Kapoor Vs. Ramesh Chander & Another** reported in (2012) 9 SCC 460.

13. On the premise, learned counsel for opposite party no.2 submits that since there is no illegality in the judgment impugned, the present criminal revision is liable to be dismissed.

14. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties as well as perusal of record including the impugned judgment, this Court finds that it is an admitted case that the revisionist is legally wedded wife of the opposite party no.2.

15. From the perusal of the documents as relied upon by the learned counsel for the revisionist and learned counsel for opposite party no.2 qua the present living place of the revisionist, this Court finds that the father of the revisionist has two places of stay, one his native place i.e. Gorakhpur and second his work place i.e. Lucknow from where he has retired from service, meaning thereby that the father of the revisionist has his constructed house at Lucknow as well as his native place i.e. Gorakhpur. As and when, as per his wishes and requirement, father of the revisionist stays at his own house either at Lucknow or at Gorakhpur. It is also but natural that after leaving her matrimonial house, she has no other option but to reside with her parents, wherever they reside. It is cropped up from the first information report dated 20th October, 2023 lodged by the revisionist against her husband and her in-laws (total 7 in number) at Police Station-Mahila Thana, District-Gorakhpur which was registered as Case Crime No. 0057 of 2023 under Sections 498-A, 323, 504, 506, 406 I.P.C. and Section 3/4 of the D.P. Act and also from the perusal of the impugned judgment, after discharge from hospital on 13th March, 2023, she went to her matrimonial house and thereafter on 15th March, 2023, she went to her parental house i.e. Bichhiya, Jungle Tulsiram, Aditya Tent House, Gorakhpur and since then she is living there.

16. In order to judge the correctness or otherwise of the judgment impugned in the present criminal revision, it would be worth to notice sub-section (1) of Section 126 Cr.P.C., which provides for venue of proceedings under Section 125 Cr.P.C. For ready reference, sub-section (1) of Section 126 Cr.P.C. is being quoted herein-below:

“126. Procedure.-(1) Proceedings under section 125 may be taken against any person in any district- (a) where he is, or (b) where he or his wife resides, or (c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.”

17, A studied perusal of the above quoted provision would go to show that proceedings under Section 125 of the Cr.P.C. to be taken against a person in any district where the husband resides or where he is, or his wife resides, or where husband last resided with his wife or as the case may be, with the mother of illegitimate child.

18. In the matter of **Smt. Jeewanti Pandey Vs. Kishan Chandra Pandey** reported in (1981) 4 SCC 517, the Hon'ble Supreme Court of India has defined the word "Resides", which is as under:-

“12.....The expression "resides" means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, for example, for health or business or for a change. If a person lives with his wife and children in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses of others, his actual and physical habitation is the place where he actually or personally resides.”

19. Similar principle of law has been laid down by the Hon'ble Supreme Court of India in the matter of **Darshan Kumari (Smt) Vs. Surinder Kumar** reported in 1995 Suppl. (4) SCC 137, wherein it has clearly been held that the temporary residence of wife if not casual is sufficient to confer jurisdiction on the magistrate at that place or district concerned to try the maintenance petition. The Relevant portion whereof is extracted here-under:

“3.....we find that Section 126 of the Code requires that the proceedings under Section 125 may be taken against any person in any district where he or his wife resides. The section does not require permanent residence at the said place. Even a temporary residence, so long as it is not casual, is sufficient to confer jurisdiction on the Magistrate at that place or of the district concerned. In this view of the matter, we are of the view that the High Court's finding was incorrect. The appellant was entitled to prosecute the application

in the Court of the learned Magistrate at Nuh where as per her averment in the application, she was residing and still resides. We, therefore, set aside the impugned decision of the High Court.....”

20. In view of the facts as born out from the records, it is clear that at the time of filing of instant application under Section 125 Cr.P.C. the revisionist resided at her parental house i.e. Gorakhpur which is the native place of her father. Thus, applying the principles of law laid down in the above judgments of the Hon'ble Supreme Court of India and the simple reading of Section 126 (1) (b) Cr.P.C. to the facts of the case, this Court is of the considered opinion that after leaving her matrimonial house at Lucknow she is residing at her parental house at Gorakhpur, where she has also lodged first information report against her husband and his family members. As such, Section 126 (1) (b) Cr.P.C. is fully applicable in the case of the revisionist. The revisionist has not stayed at her parental house at Gorakhpur casually. Thus, this Court is of the considered view that the application made by the revisionist under Section 125 Cr.P.C. at Gorakhpur is maintainable and the trial court at Gorakhpur as per Section 126 (1) (b) Cr.P.C. has jurisdiction to hear and decide the said application.

21. In view of the above deliberation and discussion, this Court finds that the trial court has not considered such facts as observed above and has passed the impugned judgment while rejecting the claim of the revisionist under Section 125 Cr.P.C. on the ground of jurisdiction. The findings recorded by the trial court cannot be said to be legal and correct in the eyes of law. The judgment relied upon by the learned counsel for opposite party no.2 in the case of **Amit Kapoor** (Supra) is not applicable in the facts of the present case.

22. Consequently, the judgment and order dated 16th September, 2025 passed by the Additional Principal Judge, Family Court-II, Gorakhpur in Case No. Criminal Misc. Case No. 1165 of 2023 (Pallavi Srivastava VS. Tarun Prakash Srivastava), under Section 125 Cr.P.C. is quashed.

23. In order to achieve the real intent of the legislation, the trial court is directed to consider and decide the application of the revisionist under Section 125 Cr.P.C., which has been registered as Criminal Misc. Case No. 1165 of 2023 (Pallavi Srivastava VS. Tarun Prakash Srivastava), under Section 125, on merits, in accordance with law, by means of a reasoned speaking order, without raising any objection with regard to jurisdiction or maintainability of the instant application, preferably within two months from the date of production of a certified copy of this order after affording opportunity of hearing to both the parties without granting any unnecessary adjournment to either of the parties, if there is no other legal impediment.

24. The present criminal revision is **allowed** subject to the directions/observations made above.

25. There shall be no order as to costs.

February 25, 2026
Sushil/-

(Madan Pal Singh,J.)