

HIGH COURT OF ALLAHABAD**Date of Decision: 25.01.2024**

CRIMINAL REVISION No. - 461 of 2023

Kamal**VS****State Of U.P Thru. Secy. Home, Lko. And Another****Legislation:**

Section 125 Cr.P.C.

Section 19(4) of the Family Court Act

Sections 498-A, 323, 504, 506, IPC

Section 3/4 D.P. Act

Section 9 of the Hindu Marriage Act

Section 127 Cr.P.C.

Subject: Criminal revision challenging the order of maintenance awarded to the wife under Section 125 Cr.P.C., considering the husband's capacity to earn and absence of evidence of the wife's adultery or sufficient self-income.

Headnotes:

Criminal Revision – Maintenance under Section 125 Cr.P.C. – Challenge against the order of Family Court granting maintenance to wife – Revisionist contends wife capable of self-maintenance and alleges adultery – Trial court's decision upheld due to lack of evidence supporting revisionist's claims. [Paras 1, 2, 8, 10]

Family Law – Maintenance of Wife – Consideration of earning capacity of husband and wife – Husband's duty to provide maintenance irrespective of his alleged low income – No substantial evidence of wife's adultery or self-maintenance capacity. [Paras 5, 6, 7, 9]

Judgment – Dismissal of Revision – Upholding Family Court's order for maintenance – Emphasis on husband's responsibility to maintain wife – Direction for coercive action for recovery of maintenance. [Paras 10, 11, 12]

Referred Cases:

Anju Garg Vs. Deepak Kumar Garg, 2022 SC 805

Representing Advocates:

Arjun Singh Somvanshi for the revisionist

G.A., Salma Bano, Shresth Agarwal for the opposite party

Hon'ble Mrs. Renu Agarwal,J.

1. Instant criminal revision under Section 19(4) of the Family Court Act has been preferred against the order dated 21.02.2023 passed by Principal Judge, Family Court, Court No.2, Unnao, in Case No.686 of 2016 (Smt. Sunaina Vs. Kamal), under section 125 Cr.P.C., whereby the application under section 125 Cr.P.C. moved by opposite party no.2 was partly allowed and revisionist was directed to pay Rs.2,000/- per month to opposite party nos.2 from the date of application as maintenance. The arrears of maintenance are directed to be paid in five easy quarterly equal installments from the date of order.

2. It is submitted by learned counsel for the revisionist that marriage of revisionist with opposite party no.2 was solemnized on 07.05.2015 without any dowry. After marriage the opposite party no.2 lived in her matrimonial house with revisionist only for four days and gone to her parental home. The opposite party no.2 again returned to her matrimonial house and lived there only for ten days and went to her parental house and filed complaint against the revisionist in which revisionist was summoned under sections 498-A, 323, 504, 506, IPC and section 3/4 D.P. Act. In the said case the revisionist has moved bail and he was released on bail by the court concerned. Despite several efforts made by the revisionist to bring back to his wife the opposite party no.2, however, she did not returned. Thereafter the revisionist filed a suit under section 9 of Hindu Marriage Act for restitution of conjugal right on 17.02.2016 in which the respondent no.2 has put her appearance on 11.03.2016, which is still pending. It is submitted that during pendency of application under section 9 of Hindu Marriage Act of the revisionist, the

opposite party no.2 has filed application under section 125 Cr.P.C., which was allowed by the court below without considering the facts that application under section 9 of Hindu Marriage Act moved by the revisionist is still pending. The trial court failed to consider the fact that respondent no.2 herself left her in-laws house without any valid reason and was residing her parental house since 28.01.2016. The respondent no.2 is graduate lady and is teaching in a school and she is earning sufficient money, thus she is capable to maintain herself. The revisionist and his family members i.e. father, mother, two sisters are dependent on the agriculture income and revisionist is doing work as labour and except that he has no source of income. The counsel for the revisionist has placed reliance under section 125(4) Cr.P.C., which provides that the wife is not entitled for any allowance from her husband if she is living adultery or living separately without any sufficient reason. The impugned order is based on surmises and conjuncture and therefore, liable to be set-aside.

3. Learned counsel for opposite party no.2 has made oral submissions that marriage of opposite party no.2 was solemnized on 07.5.2015 as per Hindu Right and Rituals. The in-laws of opposite party no.2 started torturing her for demand of dowry. She is not scale in any activity. The revisionist has agricultural land as well as he works in a factory and his salary is Rs.10,000/- . The monthly income of revisionist is about Rs.50,000/- per months from his salary, the business of milk and milk products and from agricultural land. It is also submitted that impugned judgement passed by the trial court is in accordance with law, as she has been banished from her matrimonial house on account of demand of dowry. Learned trial court has directed the revisionist to pay the meager amount of Rs.2,000/- per month to opposite party no.2 as maintenance from the date of application and the arrears are directed to be deposited in five easy quarterly installments.

4. I have heard learned counsel for revisionist, learned counsel for opposite party no.2, learned AGA for the State and perused the material brought on record.

5. The marriage is admitted between the parties. It is also admitted that opposite party no.2 is living in her parental house since after marriage and it is contended that the parents of opposite party no.2 refused to send their daughter finally on 28.01.2016. Therefore, the opposite party no.2 is living in her parental home since the year 2015. It is submitted by learned counsel for the revisionist during trial that opposite party no.2 is graduate and she was earning Rs.10,000/- per month from teaching profession, but revisionist failed to file any documentary evidence regarding the income of opposite party no.2 from teaching. It is submitted on behalf of the revisionist that he is a labour

and lives in a rented house near salt factory crossing, Kanpur. He is seriously ill and is under treatment of doctor, but learned trial court after perusal of documentary evidence regarding medical treatment found that revisionist is not suffering from any serious illness. It is admitted on behalf of the revisionist that he is only son of his father, therefore, the land which in the name of his father belongs to revisionist and he has agricultural income also.

6. It is also evident from the record that opposite party no.2 did not adduced any evidence that revisionist was working in salt factory or he runs Maruti Van for rent, but there is clear evidence on the record that revisionist is healthy man and is capable of earning money and is liable to maintain his wife/opposite party no.2.

7. For the sake of argument, if the court presumed that revisionist has no income from his job or from rent of Maruti Van, even then revisionist is duty bound to provide maintenance to his wife, as is held Apex Court in the case of **Anju Garg Vs. Deepak Kumar Garg, 2022 SC 805** and if he engaged himself in labour work also too then also he may earned as a un-skilled labour about Rs.350/- to Rs.400/- per day as a minimum wages.

8. Learned counsel for the revisionist submitted that opposite party no.2 is living in adultery, but no evidence is produced during trial that opposite party no.2 is living in adultery. Even the slightest indication is not made in his objection regarding adultery, nor any evidence is produced before the trial court to the effect that with whom the opposite party no.2 is living in adultery. Moreover, if the revisionist wants to show that opposite party no.2 is living in adultery he has an opportunity to move application under section 127 Cr.P.C. for adequate relief.

9. Learned trial court, while going through all the liabilities towards his sisters and parents and looking to the assets of the revisionist awarded very meager amount of Rs.2000/- per month from the date of application and the arrears of maintenance are directed to be paid in five easy quarterly equal installments.

10. In the aforesaid discussions, it transpires that the learned counsel for the revisionist could not mention any irregularity or illegality in the impugned judgment. On the contrary the revisionist is not paying any amount towards the maintenance of his wife/opposite party no.2, which further goes to show

the conduct of revisionist and his negligence to maintain his wife. Hence the revision is liable to be dismissed.

11. Accordingly, the present revision is dismissed and the order dated 21.02.2023 passed by Principal Judge, Family Court, Court No.2, Unnao is upheld.

12. Let the copy of this order be send to the trial court concerned to take all coercive action against the revisionist for the recovery of maintenance.

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