

HIGH COURT OF ALLAHABAD**Bench : Hon'ble Surendra Singh-I,J.****Date of Decision: April 10, 2024**

Case :- CRIMINAL REVISION No. – 402 of 2023

Revisionist :- Smt. Aparna Kushwaha And Another**Versus****Opposite Party :- State of U.P. and Another****Legislation:**

Section 125 Cr.P.C., Section 127 Cr.P.C.

Sections 498A, 323, 504, 506 IPC, Section ¾ D.P. Act

Subject: Criminal revision against the order of maintenance under Section 125 Cr.P.C., contested on grounds of adequacy based on the husband's income and circumstances, seeking enhancement of awarded maintenance.

Headnotes:

Background and Lower Court's Decision – Maintenance of Rs. 5,000/- to wife and Rs. 3,000/- to daughter per month granted by Family Court under Section 125 Cr.P.C. despite husband's reported income of Rs. 1,50,000/- per month – Revisionists contend underestimation of husband's income and improper consideration of evidence – Opposite party refutes harassment and dowry allegations and claims financial incapacity post-resignation from directorship [Paras 1-7].

Judicial Assessment of Income and Maintenance Requirement – High Court examines company revenue and shareholding details, husband's role, and profit attribution – Determination of husband's approximate annual income at Rs. 7,50,000/- - Maintenance revised considering husband's capacity and child's educational expenses [Paras 11-15, 19-20].

Legal Framework on Maintenance – Review of relevant precedents and statutory provisions by the High Court emphasizes purpose of Section 125 Cr.P.C. to prevent vagrancy and ensure justice through maintenance, irrespective of the wife's potential earning capacity [Paras 10, 16-18].

Final Decision and Order – Maintenance for wife increased to Rs. 18,500/- per month and for daughter to Rs. 10,000/- per month effective from date of application – Total monthly maintenance set at Rs. 28,500/- with provisions for payment schedule and set-off of already paid amounts – Trial court's order modified accordingly [Paras 20-22].

Referred Cases:

- Anju Garg and Another vs. Deepak Kumar Garg: (2022) SCC OnLine SC 1314
- Shailja And Another vs. Khobbanna: (2018) 12 SCC 199
- Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy: (2017) 14 SCC 200

Representing Advocates:

Counsel for Revisionist: Shashank Maurya

Counsel for Opposite Party: G.A., Jitendra Prasad Mishra, Prakhar Kumar Kushwaha, Pramod Kumar

Order Date: 10.04.2024

ORDER

Hon'ble

Surendra

Singh-I,J.

1. By means of the instant criminal revision, revisionists have assailed the judgement and order dated 22.03.2022 passed by Additional Principal Judge, Family Judge Court, Court No.2, Kanpur Nagar in Case No.591 of 2015 (Smt. Aparna Kushwaha and another vs. Ashish Singh Kushwaha), under Section 125 Cr.P.C. viz a viz amount of maintenance allowance granted to them and has prayed for enhancement of the same.

2. By the impugned order, the trial Court has granted interim maintenance of Rs.5,000/- per month to the revisionist No.1 and of Rs.3,000/- per month to the revisionist No.2 per month, under Section 125 Cr.P.C. The revisionists have prayed for enhancement of maintenance allowance granted by the trial Court in their favour.

3. Learned counsel for the revisionists has submitted that marriage of revisionist No.1-Smt. Aparna Kushwaha was solemnized according to Hindu Rites and Rituals with opposite party No.2-Ashish Singh

Kushwaha on 17.02.2012. Parents of the revisionist No.1 provided sufficient dowry to the opposite party No.2 in the aforesaid marriage. It has also been submitted that opposite party No.2 (husband) and his family members were physically and mentally tortured the revisionist No.1 for bringing of one Swift Car as additional dowry. The opposite party No.2 is a Director and Manager of the Koester Pharmaceuticals Private Limited Company and is earning Rs. 1,50,000/- per month. Revisionist No.2 (daughter) is studying in SKD Academy, 2D/HS-1, Vrindavan Yojna, Raibareilly Road, Lucknow, her tuition fees is about Rs.6000/- per month, but trial Court without considering the income of opposite party No.2 passed the impugned order for granting meager amount of maintenance allowance. It has also been submitted that trial Court had passed the impugned order without considering the evidence on record and without application of judicial mind.

4. Per contra, learned counsel for the opposite party No.2 submitted that opposite party No.2 and his family members did not physically or mentally harass the revisionist No.1 for dowry and they have never demanded any kind of additional dowry. The opposite party No.2 had resigned in the year 2018 from the aforesaid company and he could not join his duty due to numerous cases filed against him by the revisionist No.1. The opposite party No.2 is only the founder of the aforesaid company and there are four other members, who owned the company. The trial Court has only considered the profit of the company. It has also been submitted that revisionist no.1 is well educated and has done B.Ed, B.com and T.E.T. and she can earn the money for the maintenance herself as well as her daughter. The revisionist No.1 is not prepared to live with the opposite party No.2. On 21.04.2015, she left her in-laws house and living in her parental home alongwith her daughter, since then she has not returned to her matrimonial home. Revisionist No.1 has also lodged an FIR against the opposite party No.2, under Sections 498A, 323, 504 and 506 I.P.C. and Section 3/4 D.P. Act. Lastly it has been submitted that trial Court had granted enough amount of maintenance allowance and there is no ground to enhance it.

5. Heard Sri Umesh Chandra Prajapati, learned counsel for the revisionists and Sri Prakhar Kumar Kushwaha, learned counsel for opposite party no.2.

6. The opposite party No.2 has not instituted any criminal revision against the impugned order, thus the finding recorded by the trial Court regarding other issues i.e. revisionist Nos.1 and 2 being wife and daughter respectively of the opposite party No.2 and due to sufficient reason, she is living separately from her husband. Revisionist No.1 has no source of income for their livelihood. Opposite party No.2 being capable of maintaining the revisionists and he is negligent in providing maintenance to the revisionists has become final.

7. Learned counsel for the opposite party No.2 has raised preliminary objection to the jurisdiction of this Court in view of the provision given in Section 127 Cr.P.C. submitting that case can be filed in the Court of Principal Judge, Family Court for enhancement of maintenance allowance and criminal revision against impugned order is not maintainable in this Court. Section 127 Cr.P.C. provides for alteration of maintenance allowance or interim maintenance allowance on the ground that circumstances have been changed since the order was passed.

8. Section 127 Cr.P.C., provides for alteration of maintenance allowance in the following circumstances:-

(i) The Magistrate finds that competent civil court has passed any order due to which maintenance allowance granted has to be cancelled or modified;

(ii) The woman in whose favour maintenance allowance has been provided, has remarried after obtaining divorce such order of maintenance can be cancelled from the date of her remarriage;

(iii) Such woman has received whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce;

(iv) The woman has obtained divorce from her husband and she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.

9. The alteration of maintenance allowance under Section 127 Cr.P.C. can be done by the trial Court on the ground of change of circumstances

as mentioned in that section. In case, the person in whose favour maintenance allowance is passed, wants to assail the amount of maintenance allowance on the ground that it was fixed against the evidence on record, he/she can file criminal revision to this Court and Court shall have jurisdiction to decide it.

10. The Hon'ble Apex Court in paragraph No.9 and 10 of the judgement in Anju Garg and Another vs. Deepak Kumar Garg: (2022) SCC OnLine SC 1314, has explained the scope of Section 125 Cr.P.C. which is as follows:

“9., it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, as observed by this Court in Bhuwan Mohan Singh v. Meena¹. This Court in the said case, after referring to the earlier decisions, 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. It held as under: “In Dukhtar Jahan v. Mohd. Farooq [(1987) 1 SCC 624 : 1987 SCC (Cri) 237] the Court opined that : (SCC p. 631, para 16) 16. “... Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.” 8. A three-Judge Bench in Vimala (K.) v. Veeraswamy (K.) [(1991) 2 SCC 375 : 1991 SCC (Cri) 442], while discussing about the basic purpose under Section 125 of the Code, opined that : (SCC p. 378, para 3)

3. “Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

9. A two-Judge Bench in Kirtikant D. Vadodaria v. State of Gujarat [(1996) 4 SCC 479 : 1996 SCC (Cri) 762], while adverting to the dominant purpose behind Section 125 of the Code, ruled that : (SCC p. 489, para 15)

15. "... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."

10. In *Chaturbhuji v. Sita Bai* [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356], reiterating the legal position the Court held : (SCC p. 320, para 6) 6. "... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal* [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* [(2005) 3 SCC 636 : 2005 SCC (Cri) 787]."

11. Recently in *Nagendrappa Natikar v. Neelamma* [(2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346], it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children".

10. This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without

being alive to the objects and reasons, and the spirit of the provisions under Section 125 of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In *Chaturbhuji v. Sita Bai*², it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.”

11. As per the averments made by the revisionist No.1, in her affidavit filed in support of the criminal revision, submitted that earlier opposite party No.2 used to work as senior area manager in Somatic Healthcare Pvt. Ltd. Company and later on, same was named as Koester Pharmaceuticals Private Limited Company and earns about Rs.1,50,000/- per month. Revisionist No.1 has filed certificate of registration of company, which is annexed as Annexure-4 to the revision regarding Incorporation of Somatic Healthcare Pvt. Ltd. as Koester Pharmaceuticals Private Limited Company, which was registered.

12. From the perusal of the Memorandum of Association of aforesaid company, it transpires that although this company has total five shareholders, but opposite party No.2 is main share-holder and Director of the company. The revisionist also filed statements, informations or particulars in respect of profit and loss of the aforesaid company, which is annexed as Annexure-5. The total revenue of the company has shown as Rs.77, 27,640.93/- from 01.04.2020 to 31.03.2021. In this aforesaid statements, profit of the company is shown as Rs.3,38,069.09/- and tax paid on the company as Rs.65,504/-, but in segment-III of the statement, which relates Reporting of Corporate Social Responsibility (CSR), the net worth of the company is shown as Rs.12,97,252.21/-. Thus,

according to the statement relating to CSR, the net annual income of the company is of Rs.12,97, 252.21/-

13. Averments has been made by opposite party No.2, in his counter affidavit, that the actual profit of the aforesaid company for the year 2020 to 2021 is only of Rs.3,38,069/-.

14. Revisionist No.1, in her rejoinder affidavit, pleaded that her husband/opposite party No.2 has also agricultural land, for which, she has attached khatauni of 1378 fasli of seven plots of land total area 1.5020 hec. From the khatauni of the aforesaid land, which is annexed as Annexure-6 to the affidavit filed by the revisionist, it appears that total six co-tenure holders in the aforesaid land, whereas the averments has been made by the opposite party No.2, in his affidavit, that aforesaid land is on the name of his father alongwith other co-tenure holders. Revisionist has also stated, in her affidavit, that her daughter /revisionist No.2 is studying in SKD Academy, 2D/HS-1, Vrindavan Yojna, Raibareilly Road, Lucknow and fees and other expenses of the aforesaid school is bear by father of the revisionist No.1 and opposite party No.2 does not pay any amount for it.

15. From the above discussion, it transpires that opposite party No.2 is a Director of the said company and big shareholder, therefore, 50% of the net profit of the company can be considered as annual income of the opposite party No.2 for the year 2020-2021. Hence, annual income of the opposite party No.2 can be presumed to have been increased and it can be fixed at Rs.7,50,000/- (approx). Although, opposite party No.2 has made averments, in his counter affidavit, that there was decline in his income from his company, but no documentary evidence has been submitted in support of this arguments. Apart from this aforesaid annual income of Rs.7,50,000/-, agricultural land is in the name of his father though presently he has no right or interest in that agricultural land.

16. The Hon'ble Apex Court in the case of Shailja And Another vs. Khobbanna: (2018) 12 SCC 199 has held: "We find that the High Court has proceeded on the basis that Appellant 1/wife was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court. Whether Appellant

1 is capable of earning or whether she is actually earning are two different requirements. Merely because Appellant 1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court.”

17. Considering the above law laid down by the Hon'ble Apex Court merely on the ground that revisionist/wife is B.A. pass and has done some professional course, no presumption can be drawn that she is earning sufficient money to maintain herself and her minor daughter. Thus the plea advanced on behalf of the opposite party No.2 (husband) is without any legal basis.

18. In Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy: (2017) 14 SCC 200 has held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the wife.

19. Taking into consideration the income of the opposite party No.2, it may be just and reasonable that he may provide Rs.10,000/- per month as maintenance allowance to his daughter.

20. From the above discussion, I am of the view that the maintenance allowance fixed by the trial Court in the impugned order should be modified and maintenance allowance provided by the trial Court to the revisionist Nos.1 and 2 should be enhanced. It is provided that revisionist No.1 (wife) shall be granted for Rs.18,500/- per month as maintenance allowance as well as Rs.10,000/- per month for her minor daughter.

21. Thus, opposite party No.2 shall be bound to provide maintenance allowance of Rs.18,500/- per month to his wife (revisionist No.1) and Rs.10,000/- for his minor daughter (revisionist No.2), total Rs.28,500/- per month payable to the revisionists from the date of application. The arrears of maintenance allowance shall be paid by the opposite party No.2 in four equal instalments at the interval of four months. The monthly interim maintenance shall be paid regularly till 10th of each month. The amount of maintenance allowance already paid shall be set-off against this amount. The order impugned dated 22.03.2022 is modified.

22. The present criminal revision is allowed and impugned order is modified as mentioned above.

23. The copy of the order be sent to the trial Court concerned forthwith for necessary compliance.

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