

HIGH COURT OF ALLAHABAD
Bench: Hon'ble Justice Surendra Singh-I
Date of Decision: 10th April 2024

Case Number: CRIMINAL REVISION No. – 1516 of 2023

Revisionist(s): Smt. Shaily Mittal And 2 Others

VS

Opposite Party: State Of U.P And Another

Legislation:

Section 125 of the Criminal Procedure Code, 1973 (Cr.P.C.)

Section 19 of the Family Court Act, 1984

Section 127 Cr.P.C.

Subject: Criminal revision petition challenging the quantum of interim maintenance awarded, with a request for enhancement based on the respondent's financial capacity and income sources.

Headnotes:

Maintenance Allowance Dispute – Revisionists challenge interim maintenance order granted by Principal Judge, Family Court, Muzaffarnagar, which awarded Rs.7,000/- to revisionist No.1 and Rs.2,000/- each to revisionist Nos.2 and 3 – Petition for enhancement of maintenance based on unconsidered income sources of opposite party No.2 (husband) – Opposite party's income from business and other investments cited as evidence – Trial court's findings on quantum of maintenance held to be based on incomplete assessment of husband's income. [Para 2-4]

Legal Proceedings – Jurisdiction and maintainability of criminal revision against orders under Section 125 Cr.P.C. discussed – Objections regarding the appropriateness of the forum (single judge versus division bench) under Section 19 of the Family Court Act, 1984, addressed – High Court holds jurisdiction under Section 127 Cr.P.C. to modify maintenance on changed circumstances or erroneous assessment initially unchallenged by the husband. [Para 10-15]

Assessment and Enhancement – Based on evidence, husband's income estimated at a monthly Rs.60,000/- from business involvements – Maintenance recalculated at 25% of husband's income for wife and 20% for each child – Maintenance for wife set at Rs.15,000/- per month and Rs.6,000/- each per month for two children, effective from the date of the original application, adjusted for arrears and regular monthly payments

thereafter. [Para 25-35]

Decision – Enhancement of Maintenance – Held – The original maintenance amounts were modified to reflect a fair share of the opposite party’s proven income, ensuring adequate support for the revisionists. The judgment underscores the court’s role in assessing financial disclosures critically to protect dependent family members’ rights under maintenance provisions [Para 36].

Referred Cases:

- Shailja And Another vs. Khobbanna (2018) 12 SCC 199
- Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy (2017) 14 SCC 200
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Representing Advocates:

For Revisionist(s): Sumit Daga

For Opposite Party: G.A., Rajesh Yadav; assisted by Rajavtar Singh, Advocate with Pankaj Kumar

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Hon'ble Surendra Singh-I,J.

Heard Sri Sumit Daga, learned counsel for the revisionists and Sri Rajavtar Singh, Advocate assisted by Sri Pankaj Kumar, learned counsel for the opposite party No.2.

2. By means of the instant criminal revision, revisionists have assailed the judgement and order dated 25.01.2023 passed by the Principal Judge, Family Court, Muzaffarnagar in Case No.269 of 2014 (Computerized No.UPMZ020018462014) (Smt. Shaily Mittal & others vs. Brijesh Kumar), under Section 125 Cr.P.C.

3. By the impugned order, the trial Court has granted interim maintenance of Rs.7,000/- to the revisionist No.1 and Rs.2,000/- to the revisionist Nos.2 and 3 per month each, under Section 125 Cr.P.C. The revisionists have prayed in the revision for enhancement of maintenance allowance granted by the trial Court in their favour.

4. It has been submitted by the learned counsel for the revisionists that before calculating the quantum of maintenance, the trial court has not taken into consideration the income of the opposite party No.2 (husband). It has also been submitted that opposite party No.2, in his cross-examination, has admitted that he has National Saving Certificates (N.S.C.), Rs.45,000/- in his

PPF Account and F.D.R. of Rs.11,00,000/- but without considering the same, trial Court granted meagre amount of maintenance allowance to the revisionists.

5. It has been submitted by learned counsel for the revisionist that the trial Court illegally came to the conclusion that revisionist No.1 did not prove the income of the opposite party No.2, in fact the revisionist No.1 by her oral and documentary evidence has very well proved that opposite party No.2 has huge source of income and also many properties. Therefore, the trial Court had committed illegality in allowing maintenance allowance to the revisionists. It has also been submitted that opposite party No.2 is a co-partner in his family business of Saree and he is earning half of the total income arising out of aforesaid family business, but trial Court has wrongly considered that the owner of the aforesaid business was his brother, namely, Rajesh Kumar Mittal and opposite party No.2 was working there as salesman drawing salary of Rs.7000/- per month only. It has also been submitted that opposite party No.2 has not filed any criminal revision against the impugned judgment and order, therefore, finding of the trial Court regarding the matter other than quantum of maintenance allowance to be payable to the revisionists has become final.

6. Learned counsel for the revisionists has placed reliance on the following judgments of the Hon'ble Apex Court as well as this Court:-

(i) Urvashi Aggarwal and Others vs. Inderpaul Aggarwal; (2021) SCC OnLine Del 4641.

(ii) Liaqat Hussain vs. Jainab Parveen and Another; (2020) (12) ADJ 638 (DB).

7. Per contra, learned counsel for the opposite party No.2 while opposing the criminal revision has submitted that under the provision of Section 19 of the Family Court Act, 1984, the revision should have been filed before the Division Bench of the High Court. He also raised objection that revisionists could have obtained the aforesaid relief for enhancement of monthly allowance from the trial Court, therefore, the present revision for the aforesaid relief is not maintainable and same is liable to be dismissed. It has also been submitted that revisionist No.1 is doing job and earning monthly salary and has filed income tax return. The opposite party No.2 had filed copy of income tax return since 2006 and credited of salary into her accounts, but trial Court has not taken into consideration to provide the maintenance allowance to the revisionist No.1 against the provisions of law.

8. It has been submitted by learned counsel for the opposite party No.2 that opposite party No.2 is ready to pay educational and living expenses of his

children provided it is directly paid into their accounts and he has already incurred expenses of Rs. 2,81,755/- towards Laptop, coaching fee, tuition fee, admission fee and other expenses of both the children and has made payment of Rs.24,000/- to the revisionist No.1 towards interim maintenance. It has also been submitted that revisionist No.1 is professionally qualified and had been gainfully employed, which is evident from the Bank statement of revisionist No.1. Apart from this, opposite party No.2 has submitted statement showing Rs.20,000/- as balance and copy of NSC of Rs.20 lakhs in the family Court proceedings, therefore, revisionist No.1 can maintain herself as well as her children from the interest accruing from the aforesaid accounts.

9. Learned counsel for the revisionist and learned counsel for the opposite party No.2 have been heard. Perused the evidence available on the record of the revision as well as the impugned order.

10. The opposite party No.2 has raised objection that under the provision of Section 19 of the Family Court Act, 1984 (hereinafter referred to as 'Act of 1984'), the criminal revision is not maintainable against the impugned judgment and order passed by trial Court, the aggrieved person can only file appeal in High Court and the same be heard by Division Bench. The provision regarding appeal is given in Section 19 of the Act, which is as follows:-

(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974): Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order,

and, as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

11. Sub Section (1) of the Section 19 of the Act provides for appeal to High Court against every judgment and order passed by the Family Court. Sub Section (6) of Section 19 of the Act also provides that an appeal preferred under Sub Section (1) of the Act shall be heard by a Bench consisting of two or more judges. Sub Section (2) of Section 19 of the Act provides an explanation to sub Section (1) of this Act. Accordingly, sub Section (2) of Section 19 of the Act provides no appeal shall lie from a decree and order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974). The proceeding for maintenance under section 125 Cr.P.C. is included in Chapter IX of the Criminal Procedure Code, 1973. Thus, the provisions of Sub Section (1) of Section 19 of the Act which provides that judgment and order passed by Family Court shall be appealable to the High Court and heard by Division Bench of that Court is not applicable to the order passed by Family Court in case filed under Section 125 Cr.P.C. Sub Section (4) of Section 19 of the Family Courts Act, 1985 clearly provides that criminal revision shall be maintainable to the High Court against order passed under Chapter IX of Cr.P.C. i.e. Sections 125 to 128 Cr.P.C. Thus, objection raised by the opposite party No.2 in this regard has no merit and is liable to be rejected.

12. Learned counsel for the opposite party No.2 has also raised preliminary objection to the jurisdiction of this Court for enhancement of maintenance allowance in view of the specific provision given in Section 127 Cr.P.C.

13. 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.

14. 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.

15. 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 has jurisdiction to decide it. Thus, plea of opposite party No.2 against the jurisdiction of this Court viz-a-viz Section 127 Cr.P.C. is misconceived and is hereby rejected.

16. Admittedly, revisionist No.1 is the wife of opposite party No.2 and revisionist Nos.2 and 3 are their children, who are aged about 8 and 9 years on the date of filing of application under Section 125 Cr.P.C.. Both are carrying on their education and are residing with their mother at her parental house since 2013. From the pleadings/written statement of the opposite party No.2, it is clear that during this period, revisionist No.1 was residing away from him. Opposite party no.2 has provided lump sum amount of Rs.2,81,755/- towards expenses of Laptop, coaching fee, tuition fee, etc of revisionist Nos.2 and 3. He also provided a sum of Rs.24,000/- as interim maintenance to the revisionist No.1. Thus, it transpires that for more than 9 years revisionists are living separately from the opposite party No.2.

17. Revisionist No.1 has pleaded, in her application filed under Section 125 Cr.P.C., that though she is well educated but she does not have any job and also has no source of income for maintaining herself as well as her children. She further pleaded that some amount was deposited in her account i.e SBI and PNB, but passbook and other documents relating to it has been retained by the opposite party No.2, therefore, she is not able to operate those accounts. She further pleaded that opposite party No.2 has 400 square yard area (plot), which is situated in the main market of the city. She also pleaded that her children are studying in Muzaffarnagar and she has taken rented accommodation of Rs.4000/- per month near by her parental home where she residing with her children. The revisionist No.1 requires about 40,000/- per month as maintenance allowance regarding rent of accommodation, routine expenses, medical expenses of herself and her children including educational expenses of her both children.

18. The opposite party No.2 has pleaded, in his objection/written statement, that he has no business or other source of income, he is simply working as a salesman in the business established by his elder brother. He also admitted that his brother has wholesale and retail business of Sarees and merely he is getting salary of Rs.7000/- as a salesman in the shop of his brother.

19. The revisionist No.1 has deposed, in her cross-examination, that although she has done MA and BEd and is only house wife and she has denied that she was working in S.D. Management College, Muzaffarnagar before her marriage. She also stated that earlier she used to reside in House No.76 Gher Khatti, Muzaffarnagar now she is residing in house No.75 in the same Mohalla and the house rent of her present accommodation is Rs.6000/- per month. The revisionist No.1 has shown her ignorance about income tax return and NSCs of total value of Rs.18 lakhs in her name. She has also expressed her ignorance about her purchasing of 225 square yard plot jointly with her husband. She has deposed that documents, if any, relating to her NSCs and plot of land is in the possession of her husband.

20. The opposite party No.2 has stated, in his cross-examination, that before 06.06.2013, he used to work in the shop of Mittal Sons, which is owned by his real brother, namely, Rajesh Kumar Mittal in 2013 and his salary was Rs.7000 to 8000/- per month. In the said shop including him there were four other employees and there was no deduction from his salary for credit in PPF accounts. The opposite party No.2 has admitted that he used to file income tax return for the period of 2003 to 2013. He also stated that he has filed income tax return for the year 2020, but he has no knowledge about income mentioned in it. He also admitted that he has saving bank account at PNB and PPF Account having balance of Rs.45 lakhs. In the year 2006, there was a balance of only Rs.2 to 3 lakhs in his PPF account. He has admitted that his parental house no.147 Naya Bazar Shamli is double storied, one shop is situated in ground floor and residential house situated in first and second floor. He also admitted, in his cross-examination, that his wife is not doing regular job and she is only taking tuition.

21. The opposite party No.2 deposed, in his evidence, that there is a 225 square yard plot in C.B. Gupta Colony in the joint ownership of himself as well as his wife and one half of the price of the plot was paid from his account and remaining half from the account of his wife. He further admitted, in cross-examination, that entry in his passbook (35 ka/18) shows deduction of Rs.90,000/- which is transferred to his five years R.D. He also admitted that on 18.01.2021, the amount of Rs.1,50,000/- and 7,00,000/- has been

withdrawn from his account, but he could not explain for which purpose that amount has been withdrawn. He also admitted that on 19.01.2022, he had credited Rs.11 lakhs in F.D. in his name. He also deposed, in his cross-examination, that his daughter Km. Iha has passed 12th and she is interested in taking admission in Engineering course, he is ready to give expenses for completing engineering course of his daughter. He further admitted that after his wife separated from him, he has not made any payment of maintenance allowance to her. He further admitted that his family is a reputed family of district Shamli.

22. Opposite party No.2, in his cross-examination, stated that in his marriage with revisionist No.1, his parents have given ornaments of about 20 tola gold and father of the revisionist no.1 has also given ornaments about 10-12 tola gold. Opposite party No.2 has deposed that revisionist No.1 has NSC and PPF Accounts, but she has not given details of their value.

23. Admittedly, revisionist No.1 has one half share to the plot owned by the opposite party No.2, but from this plot, she is not earning any running income which she could utilise for maintenance of herself and her children.

24. From appreciation of the above mentioned oral evidence of revisionist No.1 and opposite party No.2, it transpires that revisionist No.1 is a well educated women but she is not doing any regular job and has no income of her own.

25. 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.”

26. From the deposition of opposite party No.2, it transpires that he belongs to a reputed business family of Shamli District and his father and brother are the proprietor of Raj Cutpiece Centre and have a Saree shop. From his deposition, it is also obvious that he is continuously depositing money in his PPF Account, F.D. and R.D.s and Saving Bank Account. The PPF account has been increased from 20 lakhs to 45 lakhs and he has also purchased plot of 240 square yard in the city of the value of Rs.20 lakhs. From the aforesaid discription of the parental property as well as business transctions of his shop

relating to wholesale business of cutpiece and Saree of his father and brother respectively and regular deposits and investment by him in various accounts, it appears that he has a regular income and his monthly income is fairly good.

27. From the above description, it is not believable that he is simply working as a salesman in his brother's shop and earning Rs.7000/- to 8000/- per month.

28. The Court has to do some guess work to determine the income of the husband and wife. From the above discussion, it can be safely concluded that his monthly income is not less than Rs.60,000/- per month. It is well settled law that income of the husband or wife cannot be calculated in mathematical terms because actual income cannot be brought on record as both the parties are interested in concealing their incomes.

29. 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.

30. The 25% of net earning of the husband should be granted as maintenance allowance to the wife. The revisionist No.2 (daughter) of the opposite party No.2 is doing engineering course and revisionist No.3 (son) completed 12th and is preparing for admission in professional course.

31. Under these circumstances, it will be fair and just to provide 25 % of the gross income of the opposite party No.2 to the revisionist No.1 (wife) and 20 % of his gross income as maintenance allowance to the revisionist No.2 and

32. Considering the law propounded by the following decisions and facts and circumstances of the case, there is sufficient ground to allow the present criminal revision and enhance the amount of maintenance allowance to be paid to the revisionist Nos.1, 2 and 3.

33. In view of the aforesaid factual and legal aspect, I am of the view that the maintenance allowance granted by the impugned order dated 25.01.2023 is unjust and inadequate and should be modified and enhanced. The maintenance allowance granted by the impugned order is modified accordingly.

34. It is provided that revisionist no.1 shall be entitled for Rs.15,000/- per month as maintenance allowance. Revisionist Nos.2 and 3 (daughter and son of the opposite party No.2) each shall be paid Rs.6,000/--6,000/- per month as maintenance allowance.

35. Thus, opposite party No.2 shall be bound to provide maintenance allowance @ of Rs.15,000/- per month to his wife (revisionist No.1) and

Rs.6,000/- - Rs.6,000/- to revisionist Nos.2 and 3 each till they attain the age of majority. This modified amount of maintenance allowance shall be paid to the revisionists from the date of application. The arrears of maintenance allowance shall be paid in four equal instalments at the gap of four months. The monthly maintenance allowance shall be paid regularly till 7th day of each month.

36. The present criminal revision is partly allowed in terms of above mentioned conditions. The order impugned dated 25.01.2023 is set aside in part and it is modified according to the observation made above.

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

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