

Neutral Citation No. - 2025:AHC-LKO:48774

Court No. - 11**Case :-** CRIMINAL REVISION No. - 501 of 2024**Revisionist :-** Saurabh Srivastava**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Lko. And 2 Others**Counsel for Revisionist :-** Tilak Raj Singh, Brijendra Singh**Counsel for Opposite Party :-** G.A., Ram Kumar Singh, Vishwas Shukla**Hon'ble Saurabh Lavania, J.**

1. Supplementary affidavit filed today is taken on record.
2. Heard Shri Brijendra Singh and Shri Tilak Raj Singh, learned counsel for the revisionist, Shri Ram Kumar Singh and Shri Vishwas Shukla, learned counsel for opposite party nos.2 and 3 and learned A.G.A. for the State.
3. By means of the present revision, the revisionist has assailed the final order dated 18.03.2024 passed by Principal Judge, Family Court, Lucknow (in short "Family Court") in Criminal Misc. Case No.803 of 2023, C.N.R. No. UPLKO20028912023 (Yashi Saxena & another Vs. Saurabh Srivastava) under Section 125 Cr.P.C. The operative portion of order dated 18.03.2024 reads as under.

"धारा-125 दं०प्र०सं० के अन्तर्गत श्रीमती यशी सक्सेना व मास्टर यथर्व का भरण-पोषण का दावा आंशिक रूप से स्वीकार करते हुए विपक्षी सौरभ श्रीवास्तव को निर्देशित किया जाता है कि प्रार्थना-पत्र प्रस्तुत करने की तिथि दिनांक 06.05.2023 से अपनी पत्नी श्रीमती यशी सक्सेना को अंकन 15,000/- रुपये प्रतिमाह एवं याची संख्या-2 मास्टर यथर्व को 25,000/- रुपये प्रतिमाह भरण-पोषण हेतु प्रत्येक अंग्रेजी माह की 10 तारीख तक नियमित रूप से अदा करेगा।

एरियर की धनराशि का भुगतान विपक्षी निर्णय की तिथि से तीन माह के अंदर तीन समान किस्तों में अदा करेगा। यह भी स्पष्ट किया जाता है कि याचीगण द्वारा विपक्षी से यदि पूर्व में कोई भरण-पोषण धनराशि प्राप्त की गयी है, तो उक्त धनराशि एरियर की धनराशि में समायोजित की जायेगी।"

4. Considered the submissions advanced by the learned counsel for the parties and perused the records.
5. For coming to the conclusion this Court took note of following facts.

(i) The marriage of revisionist with opposite party no.2 was solemnized on 14.12.2014 according to Hindu rites and rituals at Lucknow and out of the wedlock of the revisionist and opposite party no.2, the minor was born in November, 2021.

(ii) The revisionist is a Software Engineer and was earning about Rs.1,70,000/- per month when the final order in issue was passed. Learned counsel for the revisionist, on his own, stated that at present the revisionist is earning Rs.1,75,000/- per month.

(iii) The opposite party no.2 is also a Software Engineer and is employed with Tata Consultancy Services (in short 'TCS') and is earning about Rs.73,000/- per month, as stated fairly by learned counsel for opposite party no.2, who along with minor is living separately on account of matrimonial discord since February, 2023.

(iv) In affidavit dated 06.05.2023 filed in terms of the judgment of the Hon'ble Apex Court passed in the case of **Rajnish Vs. Neha and Ors.** reported in **(2021) 2 SCC 324 : (2021) 2 SCC (Civ) 220 : 2020 SCC OnLine SC 903**, the opposite party no.2 has indicated her income of Rs.50,000/- per month approx.

(v) Opposite party no.2 has purchased a flat of Rs.80,43,409/- in Eldeco Twin Towers, Bakshi Ka Talab, Lucknow, through registered sale deed dated 23.05.2025, which was booked in the month of January, 2023 by providing cheque of Rs.47,670/- dated 11.01.2023 to the builder/promoter. Copy of this deed is annexed as Annexure No.S.A.2 to the supplementary affidavit dated 18.08.2025.

(vi) The Family Court vide impugned final order dated 18.03.2024 has directed the revisionist to pay Rs.15,000/- per month to the opposite party no.2 and Rs.25,000/- per month to opposite party no.3 (minor son of revisionist and opposite party no.2).

6. This Court also took note of the judgment in the case of **Rajnish vs. Neha, (2021) 2 SCC 324 : (2021) 2 SCC (Civ) 220 : 2020 SCC OnLine SC 903 at page 347**, wherein the Hon'ble Apex Court observed as under.

"(c) Where the wife is earning some income

90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:

90.1. In *Shailja v. Khobbanna* [*Shailja v. Khobbanna*, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the Karnataka High Court in *P. Suresh v. S. Deepa*, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)], this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [*Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] Sustenance does not mean, and cannot be allowed to mean mere survival. [*Vipul Lakhanpal v. Pooja Sharma*, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451]

90.2. In *Sunita Kachwaha v. Anil Kachwah* [*Sunita Kachwaha v. Anil Kachwaha*, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. The Bombay High Court in *Sanjay Damodar Kale v. Kalyani Sanjay Kale* [*Sanjay Damodar Kale v. Kalyani Sanjay Kale*, 2020 SCC OnLine Bom 694] while relying upon the judgment in *Sunita Kachwaha* [*Sunita Kachwaha v. Anil Kachwaha*, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589], held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Parkash v. Shila Rani* [*Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : AIR 1968 Del 174]. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

90.5. This Court in *Shamima Farooqui v. Shahid Khan* [*Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785] cited the judgment in *Chander*

Parkash [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife."

7. Considering the aforesaid including undisputed facts according to which the opposite party no.2 (wife of revisionist) is a Software Engineer and is employed with TCS and presently earning Rs.73,000/- per month, which to the view of this Court is sufficient to enable her to maintain herself, as also that she has purchased a flat of Rs.80,43,409/-, booked in the month of January, 2023, by providing a cheque of Rs.47,670/- dated 11.01.2023 to the builder/promoter, and in affidavit dated 06.05.2023 she indicated her income Rs.50,000/- per month approx., this Court is of the view that in granting maintenance to opposite party no.2, i.e. Rs.15,000/- per month, the Family Court committed error and direction of Family Court to provide Rs.25,000/- per month to opposite party no.3 (minor child of revisionist and opposite party no.2) is justified.

8. Accordingly, the instant revision is **partly allowed**. The revisionist is directed to pay Rs.25,000/- per month to opposite party no.3, i.e. his minor child, and need not to pay the amount of Rs.15,000/- to opposite party no.2 as ordered by Family Court.

9. The copy of the order be sent to the court concerned forthwith.

Order date: - 20.08.2025

Anand/-