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2026:AHC:123920

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 4251 of 2024



.....Revisionist(s)

Versus

State of U.P. and 2 others

.....Opposite Party(s)

Counsel for Revisionist(s) : Shreyas Srivastava
Counsel for Opposite Party(s) : G.A., Tanisha Jahangir Monir

Along with :

Criminal Revision No. 5177 of 2024:

1.

State of UP and another

Court No. - 88

HON'BLE ACHAL SACHDEV, J.

1. Heard Sri Shreyas Srivastava, learned counsel for the revisionist, learned A.G.A. for the State and Ms. Tanisha Jahangir Monir, learned counsel for the opposite party no. 2.

2. The aforesaid Criminal Revision Nos. 4251 of 2024 and 5177 of 2024 have been preferred against the common judgment and order dated 16.07.2024 passed by the Additional Principal Judge, Family Court, Etawah in Case No. 380 of 2022 (), under Section 125 Cr.P.C., Police Station Kotwali, District Etawah. Since both revisions arise out of the same judgment, they are being decided by this common order to obviate the possibility of inconsistent findings.

3. Criminal Revision No. 4251 of 2024 has been preferred by the revisionist (opposite party before the trial court), being aggrieved by the order dated 16.07.2024, whereby the application under Section 125 Cr.P.C. filed by applicant no. 1 (opposite party no. 2 in Criminal Revision No. 4251/2025) was allowed and the trial court directed the revisionist to pay maintenance at the rate of Rs. 8,000/- per month to applicant no. 1 () and Rs. 5,000/- per month to applicant no. 2 (), with effect from the date of filing of the application under Section 125 Cr.P.C.

4. Criminal Revision No. 5177 of 2024 has been preferred by the revisionist (applicant no. 1 before the trial court), being aggrieved by the order dated 16.07.2024, whereby the trial court awarded maintenance of Rs. 8,000/- per month to applicant no. 1 () and Rs. 5,000/- per month to applicant no. 2 (), with effect from the date of filing of the application under Section 125 Cr.P.C. By way of the present revision, the revisionist seeks modification of the impugned order dated 16.07.2024 by enhancement of the maintenance awarded to applicant nos. 1 and 2 only, without assailing the legality of the order passed by the trial court.

5. The brief facts necessary for disposal of both the aforesaid revisions are that an application seeking maintenance was filed by applicant no. 1, Smt. () for herself and her minor son under Section 125 Cr.P.C. against her husband, Gaurav Sharma. It was alleged that her marriage with the opposite party was solemnized on 08.12.2010 according to Hindu rites and ceremonies, and that her parents had given a four-wheeler, cash, jewellery and other articles as gifts and dowry, incurring an expenditure of about Rs. 30,00,000/- towards the marriage. It was further alleged that jewellery given to her for personal use was taken away by her in-laws, and from the very inception of the marriage, her in-laws pressurized her to ask her father to transfer property in the name of her husband. At the time of marriage, her husband was residing at Delhi and employed in a private company. She resided with him at

Delhi for about three years, during which he disclosed his meagre salary and insisted that she speak to her father for financial support. Her father accordingly provided amenities at the Delhi residence and also gave monthly expenditure on her husband's insistence, yet her in-laws continued to demand transfer of property. It was alleged that due to such pressure and harassment, her husband left his job at Delhi and started living at her parental house. She was sent to her parents' house at the time of delivery of her two children, and her in-laws expressed displeasure at the birth of the second child in 2021. She was allegedly threatened with life and turned out of her matrimonial home along with her two children. Her father had been paying her husband Rs. 20,000/- per month. In 2021, her husband again turned her out, whereupon she took shelter at her parental home. A panchayat was convened, and after payment of Rs. 20,00,000/-, she was taken back to the matrimonial house, but thereafter she continued to be subjected to cruelty and persistent demands to persuade her father to transfer property in the name of her husband.

6. Submissions of learned counsel for the revisionist in Criminal Revision No. 4251 of 2024

Learned counsel for the revisionist submits that the impugned order dated 16.07.2024 has been obtained by opposite party no. 2 by suppressing material facts from the trial court, both in her application seeking maintenance and in the affidavit of disclosure of assets and liabilities filed in compliance with the directions of the Hon'ble Supreme Court in **Rajnesh v. Neha [(2021) 2 SCC 324]**.

It is urged that the applicant, by way of her application under Section 125 Cr.P.C., prayed for grant of maintenance of Rs. 20,000/- per month for herself and Rs. 6,000/- per month for her minor son from the date of filing of the application. The marriage of the applicant with the revisionist/opposite party has not been denied, nor the fact that opposite party no. 3 is his son. The revisionist has expressed his willingness to

pay the maintenance awarded in favour of his son, but has raised strong objection to the sum granted to opposite party no. 2.

Learned counsel submits that the trial court ignored documentary evidence filed before it, which demonstrated that opposite party no. 2 had sufficient independent income to support herself. It is pointed out that in a Habeas Corpus petition before this Court, she admitted on affidavit her annual income and also filed certified extracts of her income tax returns for five years. These documents were placed before the trial court but were disregarded while passing the impugned order.

7. Reference to Documentary Evidence

During the course of arguments, learned counsel for the revisionist drew the attention of the Court to page no. 505, being the net worth certificate issued by Navin Vikas & Co., Chartered Accountants, certifying the income tax returns of [REDACTED], Etawah, for the period 2018–19 to 2022–23. For the year 2022–23, her assessed income was Rs. 4,81,310/-. In contrast, the revisionist runs a restaurant from premises owned by his father and earns only Rs. 30,000/- per month, as stated in his affidavit filed before the trial court. His income for the year 2021–22 was Rs. 3,58,710/-.

8. Reference to Application under Section 340 Cr.P.C.

Learned counsel further referred to paragraph no. 6 of the application under Section 340 Cr.P.C. filed by the applicant before the trial court, wherein in Habeas Corpus Special Appeal No. 658 of 2022 ([REDACTED]), the applicant in her affidavit dated 20.02.2023 (annexed as S.A.6) disclosed her income tax return for the Assessment Year 2022–23, showing her annual income as Rs. 4,58,570/-. Despite this, the trial court passed the impugned order without considering these facts brought on record through the application under Section 340 Cr.P.C., and no order was passed thereupon.

It is thus submitted that the trial court failed to apply judicial mind and ignored material evidence demonstrating that opposite party no. 2 had sufficient means to maintain herself, thereby rendering the impugned order unsustainable.

9. Submissions of learned Counsel for opposite party no. 2

Learned counsel for opposite party no. 2 submits that the maintenance application was preferred by applicant no. 1/opposite party no. 2 on behalf of herself and her minor son against the revisionist on the ground of neglect in maintaining them. It is stated that applicant no. 1 was married to the revisionist on 08.12.2010 and two sons were born out of the wedlock.

It is further submitted that the parents of opposite party no. 2 had given dowry and gifts at the time of marriage commensurate with their status, but her in-laws and husband were dissatisfied and pressurized her to persuade her father to transfer property in the name of the revisionist. After the birth of the second son in 2021, she was allegedly turned out of her matrimonial home and has since been residing at her parental house.

Learned counsel submits that due to ill-treatment and cruelty meted out to her, a case under Section 307 I.P.C. was lodged by her father against the revisionist and his family in 2021. Thereafter, she has been residing with her children at her parental home. On 02.06.2022, the revisionist allegedly took away her elder son forcibly from her parents' house, and since then he has been residing with his father.

It is further submitted that applicant no. 1/opposite party no. 2 has no independent source of income and is wholly dependent upon her father for sustenance, whereas the revisionist runs a restaurant and earns around Rs. 1,50,000/- per month. It is also pointed out that earlier she had filed a case under Section 125 Cr.P.C. for herself and her two children, but on intervention of respectable persons, a compromise was entered into. However, the revisionist failed to honour the terms of the compromise and did not take her and the children back to the matrimonial home.

10. Submissions of learned counsel for the revisionist before the Trial Court

Learned counsel for the revisionist, in reply to the maintenance application, denied the allegations of cruelty and neglect. It was submitted that the applicant had voluntarily abandoned the matrimonial home and was residing at her parental house of her own free will. It was further contended that false criminal cases were lodged by her father against the revisionist and his parents to exert pressure upon him to live separately from his family.

Learned counsel submitted that the marriage was solemnized without any dowry and the applicant was never subjected to cruelty. It was argued that undue pressure was exerted upon the revisionist to reside at Etawah in her father's house, which soured relations between them. On his refusal, a criminal case was lodged against him and his parents in 2021.

It was further submitted that during this period, both sons were residing with their mother, and since their residences were in the same locality, the children moved between the two houses. The elder son eventually chose to reside with the revisionist due to alleged ill-treatment by his maternal grandparents.

Learned counsel lastly submitted that the application under Section 125 Cr.P.C. was filed by suppressing the fact that the applicant had filed income tax returns showing an annual income of Rs. 4,58,570/- for the assessment year 2022–23, thereby demonstrating sufficient means to support herself and her son. In contrast, the revisionist's income from his restaurant business is only about Rs. 35,000/- per month, which is comparatively less than that of the applicant.

11. The Hon'ble Supreme Court, in the case of **Rajnesh (supra)**, has laid down mandatory guidelines as to the filing of an affidavit in every maintenance proceeding in regard to assets and liabilities of the contesting applicant and respondent. The guidelines, as contained in

paragraph 72, are being reproduced for the sake of convenience which is as follows :

72.1. (a) *The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;*

72.2. (b) *The applicant making the claim for maintenance will be required to file a concise application accompanied by the Affidavit of Disclosure of Assets.*

72.3. (c) *The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent if the conduct is found to be wilful and contumacious in delaying the proceedings. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance based on the affidavit filed by the applicant and the pleadings on record;*

72.4. (d) *The above format may be modified by the court concerned if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.*

72.5. (e) *If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.*

72.6. (f) *If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.*

72.7. (g) *If, during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.*

72.8. (h) *The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and*

misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

12. Learned counsel for opposite party no. 2 has not denied the filing of the affidavit dated 20.02.2023 in Habeas Corpus Special Appeal No. 658 of 2022, nor the fact that she filed income tax returns for the assessment year 2022–23 showing her income to be Rs. 4,58,570/-. She has also not denied the income disclosed in respect of opposite party no. 2 before this Court. However, the net worth certificate filed before the High Court was not reflected in her affidavit of assets and liabilities before the trial court. The trial court, while passing the impugned order, overlooked the documentary evidence filed by the revisionist to demonstrate that the applicant had sufficient means and was not entitled to maintenance.

13. A perusal of the impugned judgment clearly shows that the trial court ignored the documentary evidence placed before it and failed to give due consideration to the fact that, while the applicant/opposite party no. 2 claimed before the trial court that she had no source of income, she had, before the High Court, filed an affidavit along with her net worth certificate and income tax returns showing assessed income above Rs. 4,50,000/-.

14. Learned counsel for the revisionist has assailed the order of maintenance primarily on the ground of deliberate suppression of material facts by opposite party no. 2. It is submitted that while filing the affidavit of disclosure of assets and liabilities before the trial court, as mandated by the Hon'ble Supreme Court in **Rajnesh v. Neha [(2021) 2 SCC 324]**, opposite party no. 2 falsely declared her income as “nil.” However, during the same period, in a Habeas Corpus petition filed before this Court, she disclosed on oath her annual income to be about Rs. 4,50,000/-, supported by certified documents.

15. Learned counsel for the revisionist contends that applicant no. 1 intentionally withheld the true disclosure of her income before the trial court solely to secure an order of maintenance in her favour. The

revisionist had duly brought this fact to the notice of the trial court by filing copies of relevant documents and confronting Opposite Party No. 2 with her own sworn statements made before the High Court. Despite this, the trial court ignored the documentary evidence and granted maintenance in favour of Opposite Party No. 2. It is further submitted that the revisionist earns Rs. 30,000/- per month from his restaurant business and has no objection to the maintenance awarded in favour of his son (Opposite Party No. 3). However, since Opposite Party No. 2 has sufficient independent income, she ought not to have been granted maintenance. The impugned order, therefore, suffers from perversity and non-consideration of material evidence, warranting interference in revision.

16. Learned counsel for opposite party no. 2 submits that there has been no suppression of facts in the application seeking maintenance or in the affidavit of disclosure of assets and liabilities filed before the trial court. It is contended that opposite party no. 2 has no independent source of income and has never concealed the fact that her father had deposited a sum of money in fixed deposits, from which she receives only meagre interest. Such income is wholly insufficient to sustain herself and her minor son. Learned counsel further submits that opposite party no. 2 has already sought enhancement of the maintenance amount by way of revision before this Court, as the sum granted by the trial court is inadequate to meet even the basic expenses of her son, particularly towards medical treatment, education, and other essential needs.

17. The revisionist has challenged the order of maintenance primarily on the ground that it was secured by suppression of material facts and by making a false declaration in the affidavit regarding income before the trial court. Learned counsel for the revisionist has drawn the attention of this Court to Paper No. 14-Ka, wherein it is stated that his monthly income is Rs. 30,000/-, with Rs. 3,58,710/- shown for the assessment year 2022–23 and Rs. 3,75,890/- for the assessment year 2021–22. He has also referred to the cross-examination of opposite party no. 2 before the trial court.

18. A perusal of the record clearly reveals that applicant no. 1 made inconsistent statements regarding her income before the trial court, which stand in contradiction to the income disclosed in her affidavit filed before the High Court. The documents produced by the revisionist demonstrating such inconsistency were neither considered nor discussed in the impugned order.

19. The prevailing judicial guidelines particularly those crystallized in **Rajnesh (supra)** make it mandatory for both the applicant and the opposite party in maintenance proceedings to file a truthful affidavit of disclosure regarding their assets, income, and liabilities. This requirement was introduced to curb concealment, inflated claims, and speculative litigation. If a party suppresses material facts or furnishes false information, courts may draw an adverse inference against them, and conduct may also invite contempt proceedings or prosecution for perjury under Sections 191-193 I.P.C. The affidavit is not a mere formality; it is the foundation for determining fair maintenance. Any breach whether by omission or commission carries both procedural consequences (adverse inference, denial of relief) and penal consequences (perjury, contempt).

20. Having considered the rival submissions of learned counsel for the parties and perused the record, it is evident that the controversy centres around the true disclosure of income by applicant no. 1/opposite party no. 2 and the extent of her entitlement to maintenance under Section 125 Cr.P.C.

21. The law on maintenance is well settled. Section 125 Cr.P.C. is a measure of social justice intended to prevent destitution and vagrancy. The provision is not punitive but remedial, ensuring that a wife, child or parent unable to maintain themselves is not left to penury. At the same time, the entitlement is subject to proof of neglect or refusal to maintain and absence of sufficient independent means.

22. The Hon'ble Supreme Court in **Rajnesh v. Neha [(2021) 2 SCC 324]** has laid down comprehensive guidelines mandating disclosure of

assets and liabilities by both parties to enable the court to assess the financial capacity and needs in a transparent manner. Suppression or misstatement in such affidavits undermines the very purpose of the guidelines and may amount to abuse of process.

23. In the present case, the record reveals that applicant no. 1/opposite party no. 2 filed an affidavit before the trial court declaring her income as nil. However, contemporaneously, in Habeas Corpus Special Appeal No. 658 of 2022, she filed an affidavit dated 20.02.2023 disclosing her annual income of about Rs. 4,58,570/-, supported by certified extracts of her income tax returns. This inconsistency is apparent on the face of the record.

24. The trial court, while passing the impugned order, did not advert to or discuss the documentary evidence produced by the revisionist, including the net worth certificate and income tax returns of applicant no. 1. The omission to consider such material evidence amounts to non-application of judicial mind.

25. At the same time, it is equally settled that mere possession of some income does not *ipso facto* disentitle a wife from claiming maintenance, if such income is insufficient to sustain herself and her minor child in accordance with the standard of living enjoyed during the subsistence of marriage. The adequacy of income must be assessed in light of prevailing costs of living, medical needs, and educational expenses of the child.

26. The revisionist has admitted his liability to maintain his minor son and has not objected to the quantum awarded in favour of opposite party no. 3. His objection is confined to the maintenance awarded to opposite party no. 2. His own income, as per affidavit, is about Rs. 30,000/- per month from his restaurant business.

27. In view of the contradictory statements made by applicant no. 1 regarding her income, the trial court ought to have undertaken a deeper scrutiny of the evidence and reconciled the disclosures made before

different forums. The failure to do so renders the impugned order vulnerable.

28. Accordingly, while the entitlement of Opposite Party No. 3 (minor son) to maintenance is affirmed, the award of maintenance in favour of Opposite Party No. 2 requires reconsideration in light of her admitted income and the guidelines laid down in **Rajnish v. Neha (supra)**. The matter, therefore, warrants remand to the trial court for fresh determination of the quantum of maintenance payable to Opposite Party No. 2, after proper appraisal of her income and assets.

29. So far as **Criminal Revision No. 5177 of 2024** is concerned, the revisionist seeks modification of the impugned order dated 16.07.2024 only to the extent of enhancement of the quantum of maintenance awarded to applicant no.1 and applicant no.2.

30. It is a settled principle that when a party seeks enhancement of maintenance in revision, the High Court is bound by the statutory limits of revisional jurisdiction. Such jurisdiction is confined to examining legality, propriety, or jurisdictional correctness. The revisional court may quash, remit, or set aside an order if it is perverse or illegal, but it cannot substitute its own factual determination. Revisional power is supervisory, not appellate.

31. The revisional court cannot ordinarily increase or reduce the quantum of maintenance. The determination of quantum is a substantive adjudication based on evidence. Even if the trial court awarded a meager amount, the High Court in revision cannot enhance it.

32. Relief in revision is generally limited to : (i) setting aside the order; (ii) correcting procedural defects; or (iii) remanding the matter for fresh consideration.

33. Interference is warranted only where:

(i) the Magistrate acted without jurisdiction or failed to exercise jurisdiction vested in him;

(ii) the order is contrary to law or violates statutory provisions;

- (iii) there is serious procedural irregularity affecting fairness;
- (iv) findings are perverse, i.e., based on no evidence;
- (v) material evidence has been ignored or settled principles misapplied, resulting in grave injustice or hardship.

34. In **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy, (2017) 14 SCC 200**, the Hon'ble Supreme Court held that, as a general guideline, 25% of the husband's net monthly salary may be treated as a just and proper figure for spousal maintenance, subject to variation depending on circumstances. However, where the applicant has made only oral submissions without leading evidence of net income, the trial court cannot assess maintenance with certainty. Affidavits of income, assets, and liabilities are essential, and failure to file them must be taken adversely.

35. In para 128.3 of **Rajnesh (supra)**, the Supreme Court directed that if an order passed in a previous proceeding requires modification or variation, it must be done in the same proceeding in which the order was passed.

36. Enhancement necessarily requires proof of changed circumstances, involving adducing and evaluating fresh evidence.

37. Revisional courts lack the power to conduct such an evaluation. Where the applicant before the trial court has made only an oral submission without leading any cogent or clear evidence regarding the net income of the opposite party, it becomes virtually impossible for the trial court to assess the maintenance amount with reasonable certainty so as to award just maintenance. In such a situation, affidavits of income, assets, and liabilities filed by the applicant and the opposite party assume crucial importance. The trial court is under an obligation to direct the contesting parties to file their respective affidavits of income, assets, and liabilities, and failure to comply must be taken adversely against the defaulting party.

38. Even when both sides have furnished their affidavits, the court, while deciding the quantum of maintenance, must take into consideration the statements made therein and documentary evidence, if any, filed in support thereof. Absence of such consideration clearly indicates that the decision has been taken in haste, ignoring binding guidelines. Where the court has ignored admitted income and reached its own conclusion unsupported by the record, the revisional court may interfere, upset the finding on quantum, and correct the error.

39. The Hon'ble Supreme Court, in **Rajnish (supra)**, expressly held that there is **no straitjacket formula** for fixing maintenance, and courts must consider: status of parties, actual income, liabilities, needs of wife and children, earning capacity of wife, standard of living, dependents, etc.

40. Thus, the present legal position is that 25% is only a broad guideline or benchmark. It is not mandatory. Courts can award more or less depending on facts. "Net income" generally means income after mandatory deductions/taxes, not gross salary.

41. As has been held above, this Court finds that there is no perversity or illegality in the impugned order dated 16.07.2024 passed by the trial court in regard to the entitlement of Opposite Party No. 3 (minor son) to maintenance and the same is affirmed, whereas the award of maintenance in favour of Opposite Party No. 2 requires reconsideration in light of her admitted income and the guidelines laid down in **Rajnish v. Neha (supra)**. Since Criminal Revision No. 5177 of 2024 seeks enhancement of the quantum of maintenance by way of modification of the impugned order only, and the merits of the impugned order are not under challenge in the revision petition.

42. However, the revisionists have an alternative remedy available before the trial court for redressal of their grievance by filing an application under Section 127 Cr.P.C./Section 146 BNSS on proof of changed circumstances.

Order

In view of the foregoing discussion, the Court passes the following order :

(I) Criminal Revision No. 4251 of 2024 is partly allowed.

The order of maintenance granted in favour of Opposite Party No. 3 (minor son) at the rate of Rs. 5,000/- per month from the date of application under Section 125 Cr.P.C. is affirmed.

The award of maintenance in favour of Opposite Party No. 2 (wife) at the rate of Rs. 8,000/- per month is set aside.

The matter is remanded to the trial court for fresh determination of the quantum of maintenance payable to Opposite Party No. 2, after proper appraisal of her income, assets, and liabilities in accordance with the guidelines laid down in *Rajnesh v. Neha* [(2021) 2 SCC 324].

Till such fresh determination, the revisionist shall continue to pay maintenance at the rate of Rs. 5,000/- per month to Opposite Party No. 3 (minor son), as directed by the trial court. The interim arrangement regarding Opposite Party No. 2 shall abide by the final order to be passed by the trial court.

(II) Criminal Revision No. 5177 of 2024 is disposed of with the observation that the prayer for enhancement of maintenance in favour of Applicant/Revisionist No.2 herein shall be considered by the trial court upon remand, along with the revisionist's objections, so that a comprehensive order may be passed afresh. The trial court shall, after affording opportunity of hearing to both parties and considering the documentary evidence already on record as well as any further material that may be produced, pass a reasoned order within a period of three months from the date of production of a certified copy of this order.

Both revisions are accordingly disposed of in the above terms. A copy of the Judgment be placed on record of Criminal Revision No.5177 of 2024.

(Achal Sachdev,J.)

May 29, 2026
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