



2026:AHC:127674

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 1370 of 2024



.....Revisionist(s)

Versus

State of UP and another

.....Opposite Party(s)

Counsel for Revisionist(s) : Dhirendra Kumar Agrahari
Counsel for Opposite Party(s) : Ambleshwar Pandey, Anuj
Srivastava, G.A.

Reserved on 21.04.2026
Delivered on 17.06.2026

Court No. - 46

HON'BLE GARIMA PRASHAD, J.

1. Heard Sri Dhirendra Kumar Agrahari, learned counsel for the revisionists, Ms. Javeriya Kazmi, learned counsel holding brief of Sri Ambleshwar Pandey, learned counsel for the respondent No.2 and learned A.G.A. for the State.

2. The present criminal revision has been preferred by the revisionists, namely  and her two minor children 
, challenging the judgment and order dated 14.12.2023 passed by the learned Family Court, Bulandshahr in proceedings under Section 125 Cr.P.C., Police Station Jahangirabad, District Bulandshahr. By the impugned judgment, the learned Family Court has rejected the claim of maintenance of revisionist no.1, the wife, and has awarded maintenance of only Rs.3,000/- per month each to revisionist nos.2 and 3, the minor children, from the date of institution of the petition.

3. The learned counsel for the revisionists contend that the impugned judgment suffers from serious illegality and perversity. According to

them, the learned Family Court has adopted an approach which is contrary to the very object of Section 125 Cr.P.C. It is submitted that the Court below has virtually decided the proceedings as if it were a full-fledged matrimonial trial on cruelty and adultery, whereas proceedings under Section 125 Cr.P.C. are summary in nature and are intended to prevent destitution and to ensure basic financial security and sustenance for neglected dependents.

4. It is further submitted that the learned Family Court has itself recorded that the opposite party no.2 has not paid any maintenance to the wife and children after November, 2020, yet it has erroneously concluded that the wife was not neglected and that she had no sufficient reason to reside separately. It is also urged that the maintenance awarded to the minor children is wholly inadequate, unrealistic and contrary to the principles laid down by the Supreme Court in *Rajnish v. Neha*, (2021) 2 SCC 324.

5. *Per contra*, learned counsel appearing for opposite party no.2 supported the impugned judgment and submitted that the learned Family Court has recorded findings of fact upon appreciation of the oral and documentary evidence available on record and no interference is warranted in exercise of revisional jurisdiction.

6. It is submitted that revisionist no.1 failed to establish the alleged second marriage of opposite party no.2 or any specific instance of cruelty, dowry demand or assault which could furnish sufficient cause for residing separately. Learned counsel submits that the Family Court has rightly noticed that the allegations levelled by both sides remained unsubstantiated and, therefore, no fault can be found with the conclusion that revisionist no.1 failed to establish a legally sustainable ground for claiming maintenance.

7. It is further submitted that opposite party no.2 had, during his service in the Indian Army, ensured payment of maintenance to revisionist no.1 and the children through deductions from his salary and that he is presently a retired Army personnel surviving primarily on pension. According to learned counsel, the quantum awarded by the learned

Family Court is reasonable having regard to the financial capacity of opposite party no.2 and does not call for enhancement.

8. I have considered the rival submissions advanced by learned counsel for the parties and perused the record.

9. The admitted facts are that revisionist no.1 was married to the opposite party Pankaj Kumar on 08.02.2007 according to Hindu rites and customs. It is also admitted that revisionist no.2 Kanha Singh and revisionist no.3 Vansh Chaudhary were born out of the said wedlock. The paternity of both children has never been disputed by the opposite party. It is further admitted that the wife and children are residing separately from the opposite party and that the opposite party is a retired Army personnel receiving pension.

10. The case set up by revisionist no.1 before the Family Court was that after marriage she was subjected to harassment, taunts and cruelty by the opposite party and his family members. It was alleged that the opposite party stopped maintaining marital relations with her and later informed her that he had married another woman, namely Pragati Yadav. It was further alleged that on 10.01.2020 she was assaulted and expelled from the matrimonial home along with the children and since then she has been residing at her parental home. She pleaded that she has no independent source of income and is dependent upon her parents, whereas the opposite party is a retired Army personnel receiving pension and having other sources of income.

11. The opposite party, in his written statement, admitted the marriage and the birth of the two children. His defence, however, was that revisionist no.1 had left the matrimonial home without sufficient cause and that she was allegedly maintaining illicit relations with certain persons. He also pleaded that he had earlier filed a petition for divorce and that the marriage had been dissolved. He further stated that during his service in the Army an amount of Rs.11,303/- per month was being deducted from his salary and paid to the wife and children till his retirement on 30.11.2020. He claimed that after retirement he receives a

pension of about Rs.21,025/- per month and has no other source of income.

12. The learned Family Court framed issues for determination, including whether revisionist no.1 was the legally wedded wife, whether she was residing separately without sufficient cause, whether the opposite party had neglected to maintain the revisionists, whether the wife had any independent income, whether the opposite party had sufficient means, and the relief to which the parties were entitled.

13. On the issue no.1, the learned Family Court has correctly held that revisionist no.1 is the legally wedded wife of the opposite party and that revisionist nos.2 and 3 are their legitimate minor children. The Court also noticed that though the opposite party had relied upon an ex parte decree of divorce, the same had subsequently been set aside by the Family Court at Aligarh. The said finding does not call for interference.

14. The principal infirmity in the impugned judgment emerges while determining issues no.2 and 3. The learned Family Court disbelieved the wife's case on the ground that she could not prove specific incidents of dowry demand, assault or second marriage. The Court further observed that the allegations made by both sides were unproved and that the wife had failed to establish cruelty. On this basis, it concluded that she was residing separately without sufficient cause and was therefore not entitled to maintenance.

15. This reasoning is unsustainable. In proceedings under Section 125 Cr.P.C., the Court is not required to insist upon strict proof of cruelty as would be necessary in a criminal prosecution or in a contested matrimonial cause. The scope of enquiry is limited. The Court has to see whether the wife has a reasonable ground to live separately and whether the husband, despite having means, has neglected or refused to maintain her. The standard is not proof beyond reasonable doubt. Nor can the Court convert proceedings under Section 125 Cr.P.C. into a trial of each allegation and counter-allegation relating to matrimonial misconduct.

16. The material on record clearly showed serious matrimonial discord between the parties. The opposite party had admittedly filed a divorce petition against the wife. He had also admittedly obtained an ex parte divorce decree, which was later set aside. The wife and children were admittedly living separately. The opposite party himself admitted in cross-examination that after November 2020, he had not paid any maintenance to the wife and children. These facts, taken together, were sufficient to show that the wife was not residing separately without cause.

17. The learned Family Court has also erred in treating the earlier deduction of maintenance from the Army salary of the opposite party as a circumstance against the wife. On the contrary, the said fact supports the case of the revisionists. If maintenance was being deducted from the salary of the opposite party and paid to the wife and children during his Army service, it shows that the wife and children required maintenance and that an arrangement had already been made for their sustenance. Once the opposite party retired and the said deduction stopped, his obligation did not come to an end. His liability to maintain his wife and minor children continued.

18. The Family Court further failed to appreciate that neglect under Section 125 Cr.P.C. may be inferred from the conduct of the husband. The opposite party admitted that after November, 2020 he did not pay maintenance to the wife or children. Such admission, by itself, was sufficient to hold that the opposite party had neglected to maintain the revisionists. The Court below therefore committed a manifest error in holding that there was no neglect.

19. The finding that revisionist no.1 was residing separately without sufficient cause is also contrary to the evidence. Where the husband has initiated divorce proceedings, where the parties are admittedly living separately due to serious matrimonial discord, and where the wife has the custody of two minor children, it cannot be lightly concluded that she is living separately without sufficient cause. The Family Court has

placed an unduly heavy burden upon the wife and has failed to apply the beneficial object of Section 125 Cr.P.C.

20. The allegations of adultery levelled by the opposite party no.2 against the wife were also not proved. No independent witness, document or reliable material was produced to establish that the wife was living in adultery. The bar under Section 125(4) Cr.P.C. is attracted only when the wife is proved to be living in adultery. Mere allegations, suspicion or character assassination cannot deprive a wife of maintenance. The Family Court itself found that the opposite party no.2 had failed to prove the allegations of illicit relationship. Having recorded such a finding, the Court could not have used the matrimonial allegations against the wife to deny maintenance.

21. Similarly, the wife's allegation regarding the alleged second marriage of the opposite party may not have been proved in the strict sense, but failure to prove that allegation could not automatically lead to the conclusion that she had no reason to reside separately. The Court below has wrongly treated the non-proof of one allegation as destructive of the entire case of the wife.

22. On the question of income of the wife also, the findings of the Family Court are self-contradictory. The opposite party no.2 alleged that the wife was capable of maintaining herself and was assisting her father in agriculture and dairy business. However, no reliable evidence was led in support of this plea. The income of the father of the wife, even if assumed, cannot be treated as the income of the wife. A wife cannot be denied maintenance merely because her parents are supporting her during distress. Maintenance by parents is not a substitute for the legal obligation of the husband.

23. The Family Court, while deciding point no.4, itself observed that there was no evidence to prove that revisionist no.1 had sufficient means to maintain the children. Once the Court accepted that there was no evidence of sufficient independent income of the wife, there was no justification to deny maintenance to her.

24. The financial position of the opposite party was also not properly appreciated. The opposite party admitted that he is a retired Army personnel and receives pension. The Family Court recorded his pension to be approximately Rs.21,025/- per month. The wife had pleaded that he also had agricultural and dairy income. Even if the additional income was not fully proved, the admitted pension established that the opposite party had regular means. Further, he is the father of two minor children and the husband of revisionist no.1. His obligation under Section 125 Cr.P.C. cannot be defeated merely by stating that he has limited pension or that he has to maintain his mother.

25. The Supreme Court in *Rajnish (supra)* has held that maintenance must be determined in a realistic manner, having regard to the status of the parties, reasonable needs of the wife and children, income of the husband, liabilities of the parties and the object of preventing destitution. Maintenance cannot be merely symbolic. The amount awarded must allow the claimant to live with dignity.

26. In the present case, the award of Rs.3,000/- per month each to the minor children is clearly inadequate. The children are of school-going age. Their expenses would include food, clothing, education, books, transport, medical needs and other day-to-day requirements. An amount of Rs.3,000/- per month per child does not meet even the minimum reasonable expenditure of school-going children. The learned Family Court failed to consider the actual needs of the children and awarded an amount which is too low and unrealistic.

27. It is also significant that the maintenance was awarded from the date of filing of the petition, namely 02.02.2021. The proceedings remained pending and the judgment was delivered on 14.12.2023. The wife and children cannot be made to suffer merely because of the time taken in disposal of the proceedings. The direction to pay maintenance from the date of application is consistent with the law laid down in *Rajnish (supra)*.

28. Upon an overall consideration of the material on record, this Court finds that the impugned judgment suffers from the several errors. First, the Family Court wrongly applied a strict standard of proof while considering the wife's reasons for residing separately. Secondly, the Court failed to appreciate that serious matrimonial discord, divorce proceedings, separate residence and non-payment of maintenance after November, 2020 were sufficient circumstances to establish justifiable separate residence and neglect.

29. Thirdly, the Court erred in denying maintenance to the wife despite absence of any proof of independent income. Fourthly, the Court wrongly treated the earlier Army deduction as proof against neglect, whereas it actually showed that the wife and children were dependent upon maintenance. Fifthly, the maintenance awarded to the minor children is wholly inadequate and contrary to the object of Section 125 Cr.P.C.

30. For the reasons aforesaid, the finding of the learned Family Court that revisionist no.1 is residing separately without sufficient cause is set aside. The finding that the opposite party has not neglected to maintain revisionist no.1 is also set aside. It is held that revisionist no.1 is entitled to maintenance from the opposite party.

31. The question which now arises is with regard to determination of a just and reasonable quantum of maintenance.

32. The learned Family Court has proceeded on the footing that the opposite party is receiving pension of approximately Rs.21,025/- per month and, in absence of strict proof regarding agricultural and dairy income, has treated the pension amount as the sole established income of the opposite party. However, the approach adopted by the learned Family Court in this regard is incomplete and does not fully accord with the material available on record.

33. Revisionist no.1 consistently pleaded that apart from Army pension, the opposite party possesses agricultural income and income from dairy activities. In her evidence, she specifically stated that during the period

when she resided in the matrimonial home, four buffaloes were being maintained in the household and dairy work was being carried on. Though she stated that the dairy work was looked after by the mother and brother of the opposite party, the existence of agricultural and dairy activities connected with the family stood reflected from the evidence itself.

34. More importantly, despite specifically denying agricultural and dairy income, the opposite party did not disclose complete particulars regarding agricultural holdings of the family, source of livelihood apart from pension, or other assets available to him. No revenue records or other material were produced by him to establish that neither he nor his family possessed agricultural land or ancillary sources of income. In proceedings under Section 125 Cr.P.C., where the husband alone is in possession of the best evidence regarding his financial affairs, adverse inference can legitimately be drawn against withholding of material particulars.

35. It is also pertinent that the opposite party is a retired Army personnel. Though medical papers regarding anxiety and depressive disorder were filed, no material was brought on record to establish complete incapacity or inability to engage in any supplementary gainful activity. The law is well settled that an able-bodied husband cannot avoid his statutory obligation to maintain his wife and children merely by minimizing or suppressing his income.

36. At this stage, it is necessary to consider the settled principles governing determination of maintenance. In *Dr. Kulbhushan Kumar v. Raj Kumari*, (1970) 3 SCC 129, the Hon'ble Supreme Court observed that grant of maintenance has to be commensurate with the income and financial capacity of the husband. Subsequently, in *Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy*, (2017) 14 SCC 200, the Hon'ble Supreme Court, while relying upon the earlier decision in *Dr. Kulbhushan Kumar (supra)*, observed that ordinarily 25% of the husband's net salary may constitute a just and proper benchmark for determining maintenance payable to the wife.

37. However, the aforesaid principle is not an inflexible mathematical formula and depends upon the facts of each case, including the number of dependents, reasonable needs of minor children, liabilities of the husband and overall attending circumstances. Minor children are independently entitled to maintenance commensurate with their educational and living requirements.

38. In the present case, although allegations regarding agricultural and dairy income have been leveled, no reliable documentary evidence has been brought on record to conclusively establish that the opposite party is earning approximately Rs.50,000/- per month, as alleged by the revisionists. At the same time, the material on record clearly establishes that the opposite party receives regular pension of approximately Rs.21,000/- per month and also possesses ancillary family-based agricultural and dairy support structures, though the exact monetary extent thereof has not been conclusively proved.

39. Therefore, while the maintenance cannot be fixed on speculative assessment of income, the Court also cannot ignore the practical realities of sustaining three dependents, including two school-going children, in present economic conditions.

40. Considering (i) the admitted pension income of approximately Rs.21,000/- per month; (ii) the fact that the opposite party is an able-bodied retired Army personnel; (iii) the absence of proof of any independent income of revisionist no.1; (iv) the obligation of the opposite party to maintain two school-going minor children; (v) the rising cost of education, food, clothing, transport and medical expenses; and (vi) the principles laid down in *Rajnish* (supra), this Court is of the opinion that ends of justice would be adequately met by awarding maintenance of Rs.5,000/- per month to revisionist no.1-wife and Rs.4,000/- per month each to revisionist nos.2 and 3.

41. The total maintenance of Rs.13,000/- per month, in the facts of the present case, strikes a balance between the financial capacity of the

opposite party and the legitimate needs of the revisionists. The same cannot be said to be excessive, particularly when the amount is required to sustain three dependents including two minor school-going children.

42. The aforesaid maintenance shall be payable from the date of institution of the application under Section 125 Cr.P.C., namely 02.02.2021. The said monthly maintenance shall be paid by the opposite party no.2 by the 10th day of each calendar month.

43. The arrears accrued from 02.02.2021 till the date of this judgment shall be calculated after adjusting any amount already paid to the revisionists under the impugned order or under any other proceedings. The remaining arrears shall be paid by the opposite party in twelve equal monthly installments, along with the monthly maintenance fixed by this Court.

44. The revision is accordingly allowed. No order as to costs.

45. It is further provided that in the event the opposite party no.2 commits default in payment of the maintenance amount as directed herein, it shall be open to the revisionists to move an appropriate application before the competent court for enforcement of this order and for seeking deduction and recovery of the maintenance amount from the pension and other lawful receivables of the opposite party no.2 in accordance with law. In such an event, the court concerned shall consider and decide such application expeditiously.

(Garima Prashad,J.)

June 17, 2026

Sachin Mishra