

A.F.R.

Reserved on: 28.09.2026

Delivered on:13.10.2026



2026:AHC:214569

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 3039 of 2025



.....Revisionist(s)

Versus

State of U.P. and 2 others

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Kalyan Sundram Srivastava, Raghunandan Singh
Counsel for Opposite Party(s)	:	G.A., Santosh Kumar Singh

Court No. - 84**HON'BLE LAKSHMI KANT SHUKLA, J.**

*“He who shall decide anything without the other side having
been heard, although he may have said what is right, will not
have done what is right.”¹*

The wisdom underlying the aforesaid observation finds resonance in the ancient Indian tradition of adjudication. ***The Katyayana Smriti***, while prescribing the procedure for the determination of disputes, enjoins:

“पूर्वपक्षश्रुतार्थस्तु प्रत्यर्थी तदनन्तरम् ।

पूर्वपक्षार्थसम्बन्धं प्रतिपक्षं निवेशयेत् ॥”²

1. Boswell's Case, (1606) 6 Co Rep 48b, 52a.
2. Katyayana Smriti, Verse 159.

The verse embodies a simple yet profound principle, i.e., after the case of one party has been heard, the opposite party must thereafter be afforded an opportunity to place its own case before the adjudicator.

This principle finds expression in the maxim *audi alteram partem* (to hear the other side). The rule is not a mere technicality of procedure, nor is the right of hearing dependent upon the ultimate merits of the case. Its essence lies in fairness: no person ought to be condemned unheard. A decision may ultimately remain unchanged even after the affected person has been heard; nevertheless, the legitimacy of the decision-making process demands that the person concerned be given an opportunity to place his version before the decision-maker. Ultimately, **justice is not merely in the decision that is reached, but also in the fairness with which it is reached.**

The aforesaid principle is confined solely to the aspect of affording an opportunity of hearing to a person against whom a specific allegation is made and whose conduct may become the subject of an adverse judicial finding, notwithstanding the absence of any express statutory provision prescribing such notice. It does not concern the merits of the revision, the entitlement of the claimant to maintenance or the determination of any substantive right of the parties.

1. Heard Mr. Kalyan Sundram Srivastava, learned counsel for the revisionist, Mr. Santosh Kumar Singh, learned counsel for opposite party nos. 2&3 and learned A.G.A. appearing on behalf of the State.
2. Perused the record.
3. The revisionist, [REDACTED], has approached this Court by means of present Criminal Revision, challenging the impugned judgment and order dated 19.03.2025, passed by the learned Additional Principal Judge, Family Court, Court No. 3, Kanpur Nagar (hereinafter

referred to as the “Trial Court”) in Case No. 172 of 2021, Smt. [REDACTED] and another v. [REDACTED], under Section 125 Cr.P.C., whereby the Trial Court directed the revisionist to pay maintenance of Rs.20,000/- per month to opposite party no. 2 and Rs.10,000/- per month to opposite party no. 3 (parties’ minor son) from the date of application.

4. Feeling aggrieved by the aforesaid order, the present criminal revision has been filed on the grounds that the impugned order has been passed arbitrarily without duly considering the material available on record. It has been passed in a cursory and mechanical manner. The impugned order is against the principles of natural justice.

5. It is contended that the Trial Court failed to determine the actual income and financial status of the revisionist and wrongly fixed the maintenance amount which is disproportionate to his income. It is also contended that the evidence adduced by the revisionist to establish that opposite party no. 2 was living separately from him without sufficient reason has not been duly considered. It is submitted that the final written submissions filed on behalf of the revisionist were not taken into consideration by the Trial Court. It is next contended that the Trial Court erred in rejecting the revisionist’s allegation that opposite party no. 2 was living in adultery. According to the learned counsel for revisionist, the impugned order is contrary to Section 125(4) Cr.P.C. and the law laid down by the Supreme Court in **Rajnish v. Neha and another**³. It is also submitted that the affidavit relating to disclosure of assets and liabilities, in the prescribed format as directed by the Supreme Court, was not properly furnished by opposite party no. 2.

6. In view of above, it is contended that the impugned order is unsustainable in the eyes of law and a prayer has, accordingly, been made for allowing the present criminal revision and setting aside the impugned judgment and order.

3. (2021) 2 SCC 324

7. In support of his contentions, learned counsel for the revisionist has further submitted that opposite party no. 2 is living in adultery and that sufficient evidence in support of the said allegation was adduced before the Trial Court. The photographs filed before the Trial Court in support of the allegation regarding the adulterous conduct of opposite party no. 2 are on record as Paper Nos. 24/7, 24/8, 24/9, 24/10, 24/11, 24/12, 24/13, 24/14 and Paper Nos. 41/109, 41/110, 41/111, 41/112, 41/113, 41/114, 41/115 and 41/116.

8. It is submitted by the learned counsel for the revisionist that according to the case set up by the revisionist in paragraph 10 of his written statement/objection, he had not committed any act of assault or physical violence against opposite party no. 2 and that opposite party no. 2 herself without sufficient reason was unwilling to reside with the revisionist. In paragraph 8 of the said written statement, the revisionist stated that during the period when he and opposite party no. 2 were residing in America, opposite party no. 2 used to ask him to divorce her and expressed that she neither wanted a son from their wedlock nor any amount from him.

9. It is further submitted that opposite party no. 2 had an illicit relationship with one [REDACTED], resident of Kanpur Nagar. During the course of hearing, this Court inquired as to whether any notice had been issued to the aforesaid [REDACTED], who was specifically named by the revisionist to be the person with whom opposite party no. 2 was alleged to be having an illicit relationship. Learned counsel for the revisionist submitted that there was no requirement to issue any notice to the said [REDACTED], as he was alleged to be the co-adulterer of opposite party no. 2. Learned counsel for the revisionist has further submitted that certain documentary evidence has been filed along with the present criminal revision and that the same deserves to be taken into consideration by this Court while examining the correctness of the impugned order.

10. Learned counsel for the revisionist further submitted that the electronic records had already been filed before the Trial Court; however, the Trial Court declined to take the same into consideration on the ground that the requisite certificate under Section 65-B of the Indian Evidence Act had not been filed along with the said electronic records. It is submitted that the aforesaid finding of the Trial Court is contrary to law, inasmuch as the provisions applicable to proceedings before the Family Court stand on a different footing under the Family Courts Act.

11. Learned counsel for the revisionist submitted that no certificate under Section 65-B of the Indian Evidence Act is required in respect of electronic records filed in proceedings before the family Court, as the proceedings before the Family Courts are summary in nature and the technical modes of proof applicable to regular suits ought not to be insisted upon. In this regard, reliance has been placed upon the judgement of the Supreme Court in **Himanshu Chordia v. State of Rajasthan and another**⁴. In paragraph 22 of **Himanshu Chordia** (*supra*), it has been held as under:

“22.On the aspect of admissibility of the evidence, if we for a moment keep aside the non-recognition, then the three-fold- test as laid down in R.M. Malkani v. State of Maharashtra,⁵ which, while being concerned with the admissibility of a tape-recorded conversation, held:

“23. Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and, thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under Section 8 of the Evidence Act. It is res gestae. It is also comparable to a photograph of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible under Section 7 of the Evidence Act. ...”

(emphasis supplied)

4. 2026 SCC OnLine SC 1461

5. (1973) 1 SCC 471

This was recently referred to in Naresh Kumar Garg (Dr.) v. State of Haryana,⁶ ‘Identification of the voice’ in current terms can be read as verifying the source of the information or in this case, photographs/videos.

*When dealing with this nature of evidence, it needs to be examined at the anvil of Section 65-B of the [Indian Evidence Act, 1872](#). A three-judge bench in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*⁷, explained the position as thus:*

V. Ramasubraminan J:

“84. But Section 65-B(1) starts with a non obstante clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B, for the purpose of proving the contents of electronic records, but Section 65-B speaks entirely about the preconditions for admissibility. As a result, Section 65-B places admissibility as the first or the outermost checkpoint, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.

85. The placement by Section 65-B, of admissibility as the first or the border checkpoint, coupled with the fact that a number of “computer systems” [as defined in Section 2(1) of the [Information Technology Act, 2000](#)] owned by different individuals, may get involved in the production of an electronic record, with the “originator” [as defined in Section 2(za) of the [Information Technology Act, 2000](#)] being different from the recipients or the sharers, has created lot of acrimony behind Section 65-B, which is evident from the judicial opinion swinging like a pendulum.”

RF Nariman J:

*“61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anvar P.V. v. P.K. Basheer*,⁸ and incorrectly “clarified” in *Shafhi Mohammad v. State of H.P.*,⁹ Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor v. Taylor*¹⁰ which has been followed in a number of the*

6. 2026 SCC OnLine SC 295

7. (2020) 7 SCC 1

8. (2014) 10 SCC 473

9. (2018) 2 SCC 801

10. [L.R.] 1 Ch. 426

judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.”

For the aspect of accuracy too, the certificate under section 65-B IEA could perhaps go a long way.

12. Learned counsel for the revisionist has further relied upon the judgment in **Bhagwan Swaroop v. State of U.P. and another**¹¹, wherein paragraphs 7, 8 and 9 held as under:

“7. This section deals with the power of the Sessions Judge in revision and clearly provides that power of Sessions Court in revision may be the same as High Court and the Sessions Court can exercise the same powers as the High Court while disposing of the revision.

8. Section 401 (1). Cr.P.C. defines the revisional power of the High Court and it runs as under:

“401. High Court’s Powers of revisions.-(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) to (5).....”

“Section 391, Cr.P.C. reads as follows:

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) to (4).....”

9. *This Court in the case of **Vinod Kumar vs. Mohrawai**, 1990 CrLJ 2068(LB) has held that Court of Sessions has similar power as of High Court in revision and as the High Court is authorized to take additional evidence in revision, therefore, the Sessions Court has also jurisdiction to take additional evidence.”*

11. 2014 SCC OnLine All 16067

13. Further, in support of his aforesaid submissions, learned counsel for the revisionist has placed reliance upon the following judgments:

*(i) Praveen Kumar Singh v. State of U.P. and another,*¹²

*(ii) Lumeshwari alias Pinky v. Rajesh Dubey,*¹³

*(iii) Radhika Devi v. Abhishekh Kumar Gupta and another,*¹⁴

*(iv) Shivi Bansal v. Gaurav Bansal,*¹⁵

14. It is submitted that another coordinate Bench of this Court in **Praveen Kumar Singh** (*supra*) had set aside the order passed by the Family Court and remitted the matter to the court concerned for fresh consideration, permitting the parties to adduce such evidence as may assist in effectively adjudicating the dispute, in light of Section 14 of the Family Courts Act. The said case, *inter alia*, involved electronic evidence in the form of WhatsApp chats and the question of consideration of such material by the Family Court. Reliance in this regard has been placed in paragraph 7 of **Praveen Kumar Singh** (*supra*) which reads as under:

“7. On considering the facts and circumstances of the case, the submissions advanced by learned counsel for revisionist and learned A.G.A., as well as perusal of the record and the order passed by the trial court, it appears that the WhatsApp chats annexed by the revisionist were not accepted solely on the ground that a certificate under Section 65-B of the Indian Evidence Act had not been submitted. However, Section 14 of the Family Courts Act provides that a Family Court may receive as evidence any report, statement, document, information, or matter that may, in its opinion, assist it in effectively dealing with a dispute, whether or not such evidence would otherwise be relevant or admissible under the Indian Evidence Act, 1872. Moreover, while adjudicating matrimonial disputes, the Family Court may lay down its own procedure.”

15. It is further submitted that in **Lumeshwari @ Pinky** (*supra*) decided by the Madhya Pradesh High Court on 11 November 2025, the

12. Criminal Revision No. 6409 of 2025, Neutral Citation No. 2026:AHC:34917

13. First Appeal No. 866 of 2021, Neutral Citation No. 2025:MPHC-JBP:56736

14. C.M.P. No. 727 of 2024, Neutral Citation No. 2025: JHHC:18442

15. 2024 LawSuit (Del) 2376

issue also concerned the admissibility of photographs relied upon before the Family Court and the requirement of a certificate under Section 65-B of the Indian Evidence Act. The Madhya Pradesh High Court, while noticing the requirement of compliance with Section 65-B in respect of electronic evidence, considered the scope of Section 14 of the Family Courts Act and held that the Family Court may receive such material as may assist it in effectively dealing with the dispute, notwithstanding that such material may not otherwise be relevant or admissible under the Indian Evidence Act.

16. *Per contra*, learned A.G.A. representing the State as well as learned counsel appearing for opposite party nos. 2&3 vehemently opposed the aforesaid submissions of the learned counsel for the revisionist. It is submitted that the judgments relied upon by the learned counsel for the revisionist in the cases of **Himanshu Chordia**, **Lumeshwari @ Pinky**, **Bhagwan Swaroop** and **Praveen Kumar Singh**, nowhere lay down any proposition of law dispensing with the requirement of issuing notice to the alleged co-adulterer.

17. It is further submitted that the photographs filed as Paper Nos. 24/8 to 24/14 are similar to the photographs filed as Paper Nos. 41/110 to 41/116. However, the aforesaid photographs have not been duly proved before the Trial Court in accordance with law so as to render them admissible in evidence. Further, Paper No. 24/7 and Paper No. 41/109 appear to be identical and no inference regarding the alleged adulterous conduct of Opposite Party no.2 can be drawn merely on that basis.

18. It is next contended that the photographs filed as Paper No. 24/9 and Paper No. 41/110 *prima facie* appear to have been created or manipulated using Photoshop, whereby two separate photographs appear to have been combined to create a composite photograph of two persons, accompanied by the caption, “I am nothing without you, my love”,

along with symbols depicting love on either side of the said caption. Even if the aforesaid photographs are taken into consideration, they do not establish any adulterous relationship. At the most, the photographs may indicate some form of association or intimacy between the persons depicted therein, but such material, in the absence of other cogent and legally admissible evidence, cannot by itself establish the allegation of adultery.

19. So far as the prayer for taking additional evidence on record at the revisional stage is concerned, it is submitted that Section 391 Cr.P.C. empowers the appellate court, in appropriate circumstances, to take further evidence or direct such evidence to be taken. It is further submitted that the revisional jurisdiction of this Court under Section 401 Cr.P.C. is circumscribed by the statutory limitations contained therein.

20. Section 401 Cr.P.C. provides as under:

“(1). In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.(2). No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3). Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4). Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5). Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

21. Upon hearing the learned counsel for parties, considering the valuable submissions advanced on their behalf and perusing the material available on record, the following issues arise for consideration in the present Criminal Revision:

(i). Whether the electronic material relied upon by the revisionist could be considered by the Family Court in view of Section 14 of Family Courts Act, and the objection regarding the certificate under Section 65B of the Indian Evidence Act?

(ii). Whether an opportunity of hearing is required to be afforded to a specifically named alleged co-adulterer before adjudicating the proceedings under Section 125 Cr.P.C.?

(iii). Whether the additional evidence may be received at the revisional stage in exercise of the powers under Sections 391 and 401 Cr.P.C.?

(iv). Whether the grounds raised by the revisionist, as borne out from the record, disclose any ground for interference with the impugned order granting maintenance?

22. The issues framed hereinabove are now examined in the sequence indicated, in light of the submissions advanced by the learned counsel for the parties and the material available on record.

Issue No. (i)

23. Learned counsel for the revisionist has placed reliance upon the judgments of **Himanshu Chordia**, **Praveen Kumar Singh** and **Lumeshwari alias Pinky**, in support of the submission that the electronic material relied upon by the revisionist ought not to have been rejected solely on the ground that a certificate under Section 65-B of the Indian Evidence Act had not been furnished.

24. Section 14 of the Family Courts Act, 1984, empowers a Family Court to receive any report, statement, document, information or other matter which, in its opinion, may assist it in effectively dealing with a dispute, irrespective of whether the same would otherwise be relevant or admissible under the Indian Evidence Act, 1872. The provision, therefore, confers upon the Family Court a degree of flexibility in receiving material for the effective adjudication of disputes before it. However, the power to receive material cannot be treated as a declaration that every document or electronic record so received is authentic, reliable or sufficient to establish the fact sought to be proved through it.

25. In **Himanshu Chordia**, the Supreme Court discussed the principles governing electronic records, including the requirement of verification of their source and accuracy and the statutory framework under Section 65-B of the Indian Evidence Act. The said judgment does not establish that every electronic record placed before a Family Court must be accepted as proof of the facts asserted therein, nor does it dispense with the need to assess the authenticity and reliability of such material.

26. The judgment in **Praveen Kumar Singh** considered the scope of Section 14 of the Family Courts Act in the context of electronic material which had not been accepted by the Family Court solely on account of the absence of a certificate under Section 65-B of the Indian Evidence Act. Similarly, **Lumeshwari alias Pinky** considered the power of a Family Court to receive material which may assist it in effectively dealing with a dispute. These decisions have to be understood in the context of the statutory power conferred upon Family Courts and do not obviate the requirement of judicial scrutiny of the material received.

27. In the present case, the photographs relied upon by the revisionist are stated to have been filed before the Trial Court as Paper Nos. 24/7 to 24/14 and 41/109 to 41/116. The objection raised on behalf of opposite parties is that the photographs have not been duly proved and that some

of them appear to be identical or similar. It has also been contended that certain photographs appear to be composite images. The material placed before this Court does not establish the source, manner of creation or authenticity of these photographs. No witness has been identified in the present proceedings as having taken or recorded the photographs and being able to verify that they are original and unaltered.

28. Accordingly, even if the submission regarding the power of the Family Court to receive material under Section 14 of the Family Courts Act is considered, the mere reception of such material would not automatically establish the truth of its contents. The question of admissibility or reception of electronic material is distinct from the question of its authenticity, reliability and evidentiary value. The material relied upon by the revisionist, in the circumstances of the present case, cannot be treated as conclusive proof of the allegation of adultery.

Issue No. (ii)

29. Section 125 Cr.P.C. is a measure of social justice intended to provide a speedy and efficacious remedy against destitution and vagrancy. In **Chaturbhuji v. Sita Bai**¹⁶, the Supreme Court held that the object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The said principle has been reiterated in **Rajnish v. Neha and another** (*supra*) wherein the Supreme Court described Section 125 Cr.P.C. as a provision intended to provide speedy remedy in a summary proceeding. At the same time, Section 125(4) Cr.P.C. expressly stipulates that a wife who is “living in adultery” is not entitled to maintenance under the said provision. Thus, although the proceedings are summary and their primary object is social justice, the Court, while determining the statutory entitlement under Section 125(4),

16. (2008) 2 SCC 316

may necessarily be required to examine an allegation of adultery where the same has been specifically pleaded and relied upon.

30. The summary nature of a proceeding does not exclude the application of the fundamental principles of natural justice. The rule of *audi alteram partem* embodies the elementary requirement that a person should not be adversely affected or condemned without being afforded a reasonable opportunity of meeting the case against him. In **Maneka Gandhi v. Union of India and another**,¹⁷ the Supreme Court recognised the principle that natural justice is intended to secure fairness in decision-making and that the rule of *audi alteram partem* requires a reasonable opportunity of hearing. The Supreme Court has also recognized that where adverse observations are proposed to be made against an identifiable person, such person ought to have an opportunity to explain or defend himself. In **Neeraj Garg v. Sarita Rani**¹⁸, the Supreme Court held that recording adverse remarks against a person without giving him an opportunity to explain or defend himself would amount to a negation of *audi alteram partem*.

31. The principle assumes particular significance in the present context because the allegation is not merely against an unknown or unidentified person. Where the name and identity of the alleged co-adulterer are specifically disclosed and the Court proposes to record a finding that such person was maintaining an adulterous relationship with the wife, the finding directly attributes sexual misconduct to an identifiable individual. The Karnataka High Court in **Arun Kumar Agrawal v. Radha Arun and anr.**¹⁹, while considering the question in matrimonial proceedings, recognised the adverse impact which such a finding may have upon the reputation of the alleged adulterer and the necessity of affording him an opportunity to defend himself. The same principle was subsequently followed in **Bhaktvatsal Singh Rajput v. Vandana Rajput**,²⁰ wherein the

17. (1978) 1 SCC 248

18. (2021) 9 SCC 92

19. AIR 2003 Karnataka 508

20. 2018 AIR (Chh) 190

alleged adulterer was held to be at least a proper party for effective adjudication of the issue of adultery.

32. The aforesaid principle receives constitutional reinforcement from Article 21 of the Constitution of India. The right to reputation has consistently been recognised by the Hon'ble Supreme Court as an integral facet of the right to life and personal liberty. In **Subramanian Swamy v. Union of India, Ministry of Law and others**,²¹ the Supreme Court recognised reputation as an inherent right protected under Article 21 and observed that reputation and dignity constitute important components of the right to life. The Court has emphasised that an individual's reputation is not a mere abstract or commercial interest but forms part of his dignity and personality.

33. Although the provisions of the Code of Civil Procedure do not, in their strict technical sense, govern proceedings under Section 125 Cr.P.C., the underlying principle embodied in Order I Rule 10(2) CPC furnishes useful guidance. The said provision empowers the Court to add a person whose presence may be necessary to enable it to effectually and completely adjudicate upon and settle the questions involved in the proceeding. The distinction between a “necessary party” and a “proper party” is well recognized: a proper party is one whose presence enables the Court to completely and effectively adjudicate the controversy, even though no relief may ultimately be claimed against such person.

34. In the present context, therefore, the question is not whether the alleged co-adulterer is, in every Section 125 proceeding, a necessary party whose impleadment is indispensable for determination of the wife's entitlement to maintenance. Rather, the narrower question is whether the Court, having before it the specific name and identity of a third person and proposing to record an adverse finding of adulterous conduct against him, can do so without affording him any opportunity whatsoever to explain, controvert or rebut the allegation.

21. (2016) 7 SCC 221,

35. So far as the judgments in **Shivi Bansal** (*supra*) and **Radhika Devi** (*supra*) are concerned, the former was decided by a Division Bench of the Delhi High Court, whereas the latter was decided by the Jharkhand High Court. At the outset, it is relevant to note that both the aforesaid matters arose in the context of matrimonial proceedings relating to divorce. In the case of **Shivi Bansal**, the observations contained in paragraphs 11&12 are relevant for the purposes of the present case. Likewise, paragraph 5 of the judgment in the case of **Radhika Devi**, which is based upon the findings recorded by a Division Bench of the Delhi High Court, is also relied upon. However, the findings recorded in the aforesaid judgments of the Delhi High Court and the Jharkhand High Court cannot be applied in the present case in view of the provisions contained in Rule 6 of the Hindu Marriage and Divorce Rules, 1956, framed by the High Court of Judicature at Allahabad, which specifically provides as under:

“6. Necessary Parties. – (a) In every petition for divorce or judicial separation on the ground that the respondent is living in adultery or has committed adultery with any person, the petitioner shall make the alleged adulterer or adulteress a co-respondent to the petition unless he or she is excused by the Court from doing so on any of the following grounds:

(I) that the name of such person is unknown to the petitioner although he has made due efforts for discovery;

(ii) that such person is dead;

(iii) that the respondent if a woman is leading the life of a prostitute and that the petitioner knows of no person with whom adultery has been committed; or

(iv) any other reason that the Court considers sufficient.

(b) In every petition under Section 13(1) and (2) of the Act, the petitioner shall make ‘the other wife’ mentioned in that section a co-respondent.

(c) In every petition under Section 11 of the Act on the ground that the condition in Section 5(1) is contravened the petitioner shall make the spouse alleged to be living at the time of the marriage a co-respondent.

(d) If a petitioner does not make the alleged adulterer or adulteress a co-respondent he shall at the time of presenting the petition file a separate application supported by an affidavit giving the reasons.

36. Meaning thereby, even in a divorce petition, where a party alleges adulterous conduct against his or her spouse and discloses the name and address of the alleged co-adulterer, such person would be a necessary party to the proceedings if the allegation of adultery is pleaded as a ground for divorce. Likewise, where such allegation is raised by way of defence to a divorce petition, the party raising the allegation is required to seek impleadment of the alleged co-adulterer as a necessary party. Upon such application being allowed and the necessary amendment being incorporated in the pleadings, issuance of notice to the alleged co-adulterer becomes a necessary part of the proceedings.

37. The Delhi High Court Hindu Marriage Rules, 1979 provides that co-adulterer in divorce petition is a necessary party. Rule 12 of the Delhi High Court Hindu Marriage Rules, 1979 provides as under:

“R. 12. Necessary parties.—(a) In every petition for divorce/judicial separation on the ground that the respondent has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the petitioner shall make the alleged adulterer or adulteress a co-respondent to the petition. The petitioner may, however, apply to the Court, on application supported by an affidavit, for leave to dispense with the joinder of such person as a co-respondent on any of the following grounds:-

(i) that the name of such person is unknown to the petitioner although he/she has made due efforts for discovery;

(ii) that such person is dead;

(iii) that the respondent being the wife is leading a life of a prostitute and that the petitioner knows of no person with whom voluntary sexual intercourse has been committed; or

(iv) any other reason that the Court considers sufficient.

(b) In every petition under Section 13(2)(i) of the Act the petitioner shall make the “other wife” mentioned in that section a co-respondent.

(c) In every petition under Section 11 of the Act on the ground that the condition in Section 5(i) is contravened the petitioner shall make the spouse alleged to be living at the time of the marriage a co-respondent.

38. Similarly, Rules 16, 17 & 18 of the Hindu Marriage Rules, 1956 framed under the Patna High Court Rules, provides as under:

“R. 16. Co-respondent in husband’s petition.- In any petition presented by a husband for divorce on the ground that the wife is living in adultery or judicial separation on the ground that the wife has, since the solemnisation of the marriage, been guilty of adultery, the petitioner shall make the alleged adulterer, if alive, a co-respondent in the said petition, unless he is excused from so doing by an order of the Court which may be made on any or more of the following grounds which shall be supported by an affidavit in respect of the relevant facts:-

(i) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;

(ii) that the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts for its discovery;

(iii) that the alleged adulterer is dead;

(iv) for any other sufficient reason that the Court may deem fit to consider.

R. 17. Respondent in wife’s petition.- Unless otherwise directed, where a wife’s petition allege adultery with a woman named and contains a claim for costs against her, she shall be made a respondent in the case.

R. 18. Intervention.- (i) Any person other than a party to the proceeding including person charged with adultery or sodomy not made a respondent or co-respondent, shall be entitled to appear and intervene in the proceedings. The application shall be supported by an affidavit setting forth the facts on the basis on which the intervention is sought for.

(ii) Notice for the application together with a copy of the affidavit shall be served on all parties who shall be at liberty to the counter affidavit.

(iii) If, after hearing all the parties, the Court grants leave, the intervener may take part in the trial subject to such terms and conditions as the Court may deem fit to impose.

(iv) If the Court is satisfied that the intervention was made without sufficient cause it may order the applicant to pay the whole or part of the costs occasioned the intervention. If on the other hand, the Court finds that the intervention is justified it may pass suitable orders for payment to the applicant the whole or any part of the costs of intervention.

(v) A person to whom leave to intervene has been granted may file in the Court an answer to the petition or written statement containing the charges, or allegation against such intervener.”

39. Accordingly, the judgments relied upon by the revisionist do not advance his case. The principle laid down in **Shivi Bansal** by the Division Bench of the Delhi High Court is contrary to Rule 12 of the Delhi High Court Hindu Marriage Rules, 1979. Similarly, the law laid down in **Radhika Devi** by the Jharkhand High Court is also in contravention of Rules 16, 17 and 18 of the Hindu Marriage Rules, 1956 framed under the Patna High Court Rules.

40. The aforesaid Rule proceeds on the fundamental recognition that where an allegation of adultery is specifically made against an identifiable third person, the adjudication of such allegation may directly affect the character, reputation and dignity of that person. Therefore, before recording an adverse finding of adultery against such person, an opportunity of hearing is considered necessary so that he or she may have an opportunity to defend and controvert the allegation.

41. The rationale underlying the aforesaid requirement has been authoritatively explained by the Allahabad High Court in **Udai Narain Bajpai v. Smt. Kusum Bajpai**²², wherein the Court observed:

“When divorce is sought on imputation of adultery by the respondent spouse with persons named and known evidence is bound to be led to establish such adultery. In such an event the court will be called upon to decide and hold as to whether the contesting respondent has or has not been guilty of adulterous relations with persons mentioned in the petition. It would be contrary to all rules of natural justice that a Court deciding a petition under Section 13 of the Act should record a finding destroying the character and reputation of those alleged to have adulterous relations with the respondent spouse without their being provided an opportunity to defend themselves. It is to prevent such injustice that Rule 6(a) provides that the alleged adulterer shall be impleaded as a co-respondent unless the petitioner is excused by the court for doing so on the grounds mentioned in that rule itself.”

42. It is true that proceedings under the Hindu Marriage Act and proceedings under Section 125 Cr.P.C. operate in different statutory fields but if the law, in the context of matrimonial adjudication between spouses, has considered it necessary to protect the reputation of an

22. AIR 1975 Allahabad 94

alleged adulterer by requiring his impleadment and opportunity of hearing under Rule 6(a), the same underlying principle of fairness, natural justice and protection of reputation cannot be regarded as wholly irrelevant when the very same allegation of adultery is sought to be adjudicated in proceedings under Section 125 Cr.P.C.

43. A judicial finding attributing an adulterous relationship to a specifically identified person cannot be regarded as an inconsequential observation. Such a finding may have consequences extending beyond the determination of the maintenance claim and may cause prejudice to the reputation and dignity of the person concerned. The fact that the finding is recorded in a summary maintenance proceeding does not alter the nature of the prejudice which may be caused to the person against whom such finding is recorded.

44. In view of the aforesaid conspectus, the submissions advanced by learned counsel for the revisionist that opposite party no. 2 is leading an adulterous life cannot be accepted, particularly when the revisionist, despite specifically naming the alleged co-adulterer, namely, [REDACTED], resident of Kanpur Nagar, has made no effort to have notice issued to him or to otherwise bring him before the Court in support of the said allegation.

Issue No. (iii)

45. So far as the prayer for taking additional evidence at the revisional stage is concerned, Section 401(1) Cr.P.C. empowers the High Court, in its discretion, to exercise certain powers conferred upon a Court of Appeal, including the power under Section 391 Cr.P.C. Such power is discretionary and is to be exercised where the additional evidence is considered necessary for an effective adjudication. The provision does not confer an automatic or unrestricted right upon a party to introduce further evidence at the revisional stage.

46. In **Bhagwan Swaroop** (*supra*), this Court considered the scope of the revisional court's power to receive additional evidence with reference to Sections 391 and 401 Cr.P.C. The exercise of such power, however, remains subject to the requirements of the case and the statutory limitations governing revisional jurisdiction. The mere filing of additional documents along with a revision does not make those documents evidence on record or establish that their reception is necessary for deciding the revision.

47. In the present case, the revisionist seeks to rely upon photographs and electronic material in support of the allegation of adultery. As discussed above, the material has not been satisfactorily authenticated, and no supporting witness has been identified to establish its source or genuineness. Further, the alleged co-adulterer, whose identity has been specifically disclosed, has not been afforded an opportunity to respond to the allegation. In these circumstances, the material sought to be introduced at the revisional stage does not establish a sufficient basis for exercising the discretionary power to receive additional evidence. The request for taking such material on record is, therefore, declined.

Issue No. (iv)

48. The revisionist has challenged the impugned order on the grounds that the Trial Court failed to properly assess his actual income and financial status and that the amount of maintenance fixed by the Trial Court is disproportionate to his income. It has also been contended that the evidence regarding the reason for opposite party no. 2 living separately was not duly considered. The revisionist has further contended that the final written submissions filed on his behalf were not taken into consideration and that the affidavit disclosing assets and liabilities was not properly furnished by opposite party no. 2.

49. Upon consideration of the material available on record and the submissions advanced on behalf of the revisionist, this Court finds that

no such error has been demonstrated in the impugned order as may warrant interference in exercise of the revisional jurisdiction of this Court. The grounds raised by the revisionist, including the allegation regarding adultery, do not furnish any legally sustainable basis for setting aside the impugned order granting maintenance. The revisional jurisdiction of this Court cannot be invoked merely because another view of the material on record may be possible. Interference is warranted only where the impugned order suffers from an error calling for exercise of revisional jurisdiction. No such ground has been made out in the present case.

50. In view of the discussions made herein above, this Court finds that the electronic material relied upon by the revisionist, even if received by the Family Court in exercise of the power under Section 14 of the Family Courts Act, cannot, in the facts and circumstances of the present case, be treated as conclusive proof of the allegation of adultery in the absence of satisfactory proof of its source, authenticity and reliability. The allegation of adultery against the specifically named alleged co-adulterer cannot, consistently with the principles of natural justice, be adjudicated to his prejudice without affording him an opportunity of hearing. The prayer for taking additional evidence at the revisional stage is also declined, as the material sought to be introduced has neither been satisfactorily authenticated nor shown to be necessary for effective adjudication of the revision. The other grounds raised by the revisionist also do not disclose any ground warranting interference with the impugned order.

51. Therefore, no ground is made out for interference with the impugned judgment and order dated 19.03.2025. The instant criminal revision is devoid of merit. It is liable to be dismissed.

52. Accordingly, the instant criminal revision is **dismissed**.

53. The impugned judgment and order dated 19.03.2025 passed by the Additional Principal Judge, Family Court, Court No. 3, Kanpur Nagar in Case No. 172 of 2021, Smt. [REDACTED] and another v. [REDACTED], under Section 125 Cr.P.C., is hereby **affirmed**.

54. This Court places on record its appreciation for the valuable assistance rendered by **Ms. Gargee Mishra, Research Associate**. She has undertaken research on the legal issues involved in the present criminal revision and has rendered invaluable assistance to the Court in examining the relevant facets of the matter and bringing the pertinent case laws as well as the legal position to the notice of the Court. Her diligent research, thoughtful assistance and sincere efforts have greatly facilitated the Court in its consideration and adjudication of the issues involved.

55. Before parting with the matter, this Court considers it appropriate to notice a procedural aspect arising from the aforesaid discussion. While the principle of *audi alteram partem* requires that a specifically identified person, against whom an allegation of adultery is made and against whom an adverse finding is proposed to be recorded, ought to be afforded an opportunity of hearing, the provisions of Section 125 Cr.P.C. does not contain any specific procedural provision prescribing the manner in which such person is to be impleaded or notice is to be issued to him. On the other hand, Rule 6(a) of the Hindu Marriage and Divorce Rules, 1956, framed by this Court, specifically provides for impleadment of the alleged adulterer or adulteress as a co-respondent in proceedings for divorce or judicial separation on the ground of adultery, subject to the exceptions contained therein. The aforesaid procedural gap, therefore, merits consideration at the appropriate level so that the Family Courts are not left without a defined procedure while dealing with a specific allegation of adultery in proceedings under Section 125 Cr.P.C.

56. Accordingly, the Registrar General of this Court is directed to place this matter before Hon'ble the Chief Justice for appropriate consideration and directions and for taking necessary steps either to frame appropriate rules prescribing the procedure for impleadment or issuance of notice to a specifically named alleged co-adulterer in proceedings under Section 125 Cr.P.C., or for extending the principle contained in Rule 6(a) of the Hindu Marriage and Divorce Rules, 1956, with such necessary modifications as may be considered appropriate, to proceedings under Section 125 Cr.P.C.

(Lakshmi Kant Shukla,J.)

October 13, 2026
Brijesh Maurya