

**HIGH COURT OF JUDICATURE AT ALLAHABAD****CRIMINAL REVISION No. - 3305 of 2025**

[REDACTED]

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Basharat Ali Khan, Zawwar Haider Naqvi

Counsel for Opposite Party(s) : Afzal Ahmad Khan Durrani, G.A., Jamal Ahmad Khan

Court No. - 85**HON'BLE MADAN PAL SINGH, J.**

1. Heard Sri B.A. Khan, learned Senior Advocate assisted by Sri Zawwar Haider Naqvi, learned counsel for the revisionist, Sri Rahul Mishra, learned Senior Advocate assisted by Sri Afzal Ahmad Khan Durrani, learned counsel appearing for the opposite party no.2, and the learned A.G.A. for the State, and perused the record.
2. The present criminal revision has been filed challenging the order dated 27.05.2025 passed by the learned Principal Judge, Family Court, Prayagraj in Maintenance Case No. 604 of 2020 (Smt. Humaira Riyaz and others vs. Mohammad Daud) under Section 125 Cr.P.C., whereby the application for maintenance filed by the revisionist/wife has been rejected while maintenance has been awarded to the two minor sons.
3. Learned counsel for the revisionist submits that the marriage of the revisionist with her first husband, namely Abdul Waheed Ansari, was solemnized on 03.02.2002. It is contended that the said husband had already pronounced talaq on 27.02.2005. Thereafter, a declaratory suit was filed before the Family Court and, by decree dated 08.01.2013 passed in Marriage Petition No. 06 of 2007, the aforesaid talaq dated 27.02.2005 was declared valid. It is further submitted that the validity of the said divorce has also been noticed by this Court in proceedings under Section 482 Cr.P.C. vide order dated 11.05.2023, and the Special Leave Petition filed against the said order was dismissed by the Hon'ble Supreme Court on 25.08.2023.
4. It is further contended that after observing the period of iddat, the revisionist solemnized her marriage with the opposite party no.2 on 27.05.2012 with full knowledge of the earlier divorce. Out of the said wedlock two sons were born. It is submitted that the parties lived together as husband and wife for several years and the opposite party no.2 has himself admitted the marriage as well as the paternity of the

two sons. Therefore, the learned Family Court committed a manifest error in treating the marriage between the parties as void.

5. Learned counsel further submits that the opposite party no.2 is a Central Government employee earning a substantial salary; however, he has neglected and refused to maintain the revisionist and their minor sons, which compelled the revisionist to initiate proceedings under Section 125 Cr.P.C. It is contended that although interim maintenance was granted earlier and the same was upheld by this Court as well as by the Hon'ble Supreme Court, the learned Family Court, while passing the final order dated 27.05.2025, has wrongly denied maintenance to the revisionist on a hyper-technical ground.
6. Learned counsel for the revisionist further submits that the learned Family Court has rejected the claim of maintenance of the revisionist mainly on the ground that on the date of Nikah between the revisionist and opposite party no.2, the marriage of the revisionist with her first husband had not been legally dissolved and, therefore, the second marriage was void. It is argued that the said finding is contrary to the material available on record. It is submitted that the first husband of the revisionist had already pronounced talaq earlier and thereafter a declaratory suit was filed before the Family Court seeking a declaration regarding the said talaq, which was decided by a decree declaring the talaq to be valid. It is further submitted that the decree passed by the Family Court was merely declaratory in nature and only recognized the earlier talaq which had already taken place.
7. It is lastly submitted that the impugned order is contrary to the settled principles governing maintenance under Section 125 Cr.P.C., which is a beneficial provision intended to prevent vagrancy and destitution. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in *N. Usha Rani vs. Moodudula Srinivas arising out of SLP (Crl.) No. 7660 of 2017* to contend that a woman cannot be denied maintenance merely on technical objections regarding the validity of the marriage, particularly when the husband knowingly entered into the marriage and the parties lived together as husband and wife. Accordingly, it is prayed that the impugned order be set aside to the extent it denies maintenance to the revisionist.
8. Learned counsel for the opposite party no.2 submits that the revisionist, Smt. Humaira Riyaz, was earlier married to Abdul Waheed Ansari on 03.02.2002 and their marriage continued until the decree of divorce was passed by the Family Court, Prayagraj on 08.01.2013 in Divorce Petition No. 6 of 2007 on the basis of compromise. It is contended that during the subsistence of the said marriage, the revisionist had also filed proceedings under Section 125 Cr.P.C. against her earlier husband and was granted maintenance of Rs. 2,000/- per month, for which an execution case was also filed. However, concealing this material fact and without obtaining a valid divorce

from her earlier husband, the revisionist solemnized Nikah with the opposite party no.2 on 27.05.2012. Since the decree of divorce from her earlier husband was granted only on 08.01.2013 and the mandatory requirement of observing the iddat period was also not fulfilled, the alleged marriage with the opposite party no.2 was void under Mohammedan Law. It is further submitted that the Family Court, after considering the oral as well as documentary evidence and the fact that the dissolution of her earlier marriage took place only through the decree dated 08.01.2013, rightly held that the revisionist was not the legally wedded wife of the opposite party no.2 and was therefore not entitled to maintenance.

9. Having considered the submissions of the learned counsel for the parties and upon perusal of the record, this Court finds that under Mohammedan Law, when a husband pronounces talaq, the divorce takes effect from the date on which the talaq is pronounced, subject to its validity in accordance with law.
10. It is further settled that where a husband pronounces talaq and subsequently approaches the court seeking a decree regarding the same, the decree passed by the court is ordinarily declaratory in nature, which merely recognizes or confirms the status of divorce that had already taken place.
11. In such circumstances, the decree of the court does not create a fresh divorce from the date of the judgment but only declares whether the talaq had already been validly pronounced earlier.
12. However, where the validity of the talaq is disputed between the parties, the court is required to examine the evidence and determine whether the talaq was validly given in accordance with law.
13. In the present case, it appears that the learned Family Court has rejected the claim of maintenance of the revisionist mainly on the premise that the decree declaring the divorce was passed subsequently and, therefore, the second marriage was void. The approach adopted by the learned Family Court does not appear to be in consonance with the settled legal position that a decree in such cases is merely declaratory and relates back to the date of pronouncement of talaq.
14. In view of the aforesaid legal position, this Court is of the opinion that the matter requires reconsideration by the learned Family Court after properly examining the effect of the talaq allegedly pronounced earlier and the nature of the decree passed in the declaratory proceedings, as well as the other evidence available on record.
15. Accordingly, the impugned order dated 27.05.2025 passed by the learned Principal Judge, Family Court, Prayagraj in Maintenance Case No. 604 of 2020 is set aside to the extent it relates to revisionist/wife).

16. The matter is remanded back to the learned Principal Judge, Family Court, Prayagraj to decide the claim of maintenance of the revisionist afresh on merits, in accordance with law, after affording an opportunity of hearing to both the parties and keeping in view the observations made hereinabove.
17. It is expected that the learned Family Court shall make an endeavour to decide the matter expeditiously, preferably within a period of six months from the date of production of a certified copy of this order.
18. With the aforesaid observations and directions, the present criminal revision stands partly allowed.

(Madan Pal Singh,J.)

March 10, 2026

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