



2025:AHC:174341

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 55 of 2024

Abhishek Singh Yadav

.....Revisionist(s)

Versus

State Of Up And Others

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	S.M. Iqbal Hasan
Counsel for Opposite Party(s)	:	G.A., Purushottam Pandey

A.F.R.

Court No. - 91**HON'BLE MADAN PAL SINGH, J.**

1. Rejoinder affidavit filed on behalf of the revisionist and the supplementary counter affidavit filed on behalf of opposite party nos. 2 and 3 in the Court today are taken on record.

2. Heard Mr. S.M. Iqbal Hasan, learned counsel for the revisionist, Mr. Ravindra Kumar, Advocate holding brief of Mr. Purushottam Pandey, learned counsel for opposite party nos.2 and 3 and the learned A.G.A. for the State.

3. This criminal revision has been filed by the revisionist under Section 397/401 Cr.P.C. with a prayer to set aside the judgment and order dated 22nd November, 2023 passed by the Additional Principal Judge, Family Court No.1, Bareilly in Criminal Misc. Case No. 1546 of 2019 (Smt. Sheela Devi & Another Vs. Abhishek Yadav) under Section 125 Cr.P.C., Police Station-Visharatganj, District-Bareilly, whereby the trial court while allowing the instant application of the opposite party nos. 2 and 3 has directed the revisionist to pay Rs. 5,000/- per month to opposite party no.2 and Rs. 4,000/- per month to opposite party no.3 towards monthly maintenance allowance from the date of filing of the instant application.

4. Learned counsel for the revisionist submits that it is no doubt true that the marriage of the revisionist has been solemnized with opposite party no.2 on 10th July, 2016 and from the aforesaid wedlock opposite party no.3 was born on 21st September, 2018. At the time of marriage the revisionist was about 13 years old. It is further submitted that at the time of filing of instant application under Section 125 Cr.P.C. by opposite party nos. 2 and 3 i.e. 10th February, 2019, the age of the revisionist was about 16 years, which is evident from his high school examination mark-sheet-cum certificate in which his date of birth

is mentioned as "1st January, 2003", a copy of which has been brought on record at page 69 of the paper book. He submits that since the revisionist was minor, no maintenance case could be filed or maintainable against a minor, inasmuch as the same could only be filed through his/her guardian according to the provisions of Code of Civil Procedure read with Sections 10 and 18 of the Family Court Act, 1984. Qua the issue raised above, the provisions of Criminal Procedure Code is constant, the provisions of Code of Civil Procedure shall be applicable. Since the instant application filed by opposite party no.2 against the revisionist when he was minor without impleading his guardian, the execution proceedings under Section 128 Cr.P.C. pursuant to the judgment passed in the proceedings under Section 125 Cr.P.C. can also not be executed. As such, the instant application under Section 125 Cr.P.C. is maintainable against the revisionist as who was minor at the relevant time and also the execution proceedings initiated against the revisionist cannot be legally sustained is liable to be set aside.

5. Learned counsel for the revisionist again submits that since the opposite party no.2 has refused to live with her husband i.e. the revisionist without any sufficient cause, therefore, as per Section 125 (4) Cr.P.C. she is not entitled to get any maintenance allowance from him.

6. The learned counsel for the revisionist next submits that the revisionist is a student and he has no source of income, he is dependent upon his parents, whereas the trial court without appreciating evidence available on record with regard to his income, has wrongly assessed the monthly income of the revisionist as Rs.25,000/- per month to Rs. 30,000/- per month. Learned counsel for the revisionist then submits that even if it is assumed that the revisionist is an able bodied person, he may somehow earn Rs. 10,000/- per. Under such circumstances, amount of total maintenance allowance i.e. Rs. 9,000/-per month (Rs. 5,000/-+Rs.4,000/-) as awarded by the trial court under the impugned judgment is too excessive and exorbitant and against the settled law by the Hon'ble Supreme Court of India in the case of **Rajnish Vs. Neha** reported in (2021) 2 SCC 324.

7. On the above premise, learned counsel for the revisionist submits that since the trial court while allowing the instant application filed by opposite party nos. 2 and 3 under Section 125 Cr.P.C. has committed gross error, the same is liable to be set aside.

8. On the other-hand, the learned counsel for opposite party no. 2 and the learned A.G.A. for the State have opposed the submissions made by the learned counsel for the revisionist by submitting that the appellate court has not committed any illegality or infirmity in passing the impugned judgment and

awarding Rs. 5,000/- per month to opposite party no.2 (wife) and Rs. 4,000/- per month to opposite party no.3 (minor daughter) towards maintenance allowance from the date of filing of the instant application, so as to warrant any interference by this Court in exercise of revisional jurisdiction.

9. Besides the above, learned counsel for opposite party no.2 submits that the submission of the learned counsel for the revisionist that at the time of filing of instant application under Section 125 Cr.P.C. i.e. 10th February, 2019, the age of the revisionist was 25 years and he was not minor at that time, as is evident from the written statements filed by the revisionist before the trial court, which has been brought on record at page 44 onwards of the paper book. He, however, submits that the date of birth mentioned in high school examination mark-sheet-cum-certificate as 1st January, 2003 is not disputed.

10. Learned counsel for opposite party no.2 further submits that since the opposite party no.2 is legally wedded wife and the opposite party no.3 is real minor daughter of the revisionist, on account of the fact that at the time of filing of instant application under Section 125 Cr.P.C. he was minor, he cannot shirk upon his pious responsibility to maintain his wife and daughter. There is no bar in the Code of Criminal Procedure which prohibits a wife to initiate proceedings under Section 125 Cr.P.C. against her minor husband and also no recovery proceedings can be executed against such husband. Even otherwise, learned counsel for opposite party no.2 submits that the aforesaid issues have not been raised before the trial court, where the same can be adjudicated upon by the trial court through oral as well as documentary evidence and for the first time such issues have been raised before the revisional court. As such, this Court may not examine the same at this stage in exercise of its powers under Section 397/401 Cr.P.C.

11. Learned counsel for opposite party no.2 then submits that the revisionist is living in a joint Hindu family and 55 bighas of agricultural land, one XYLO Car and a tractor are in the name of his father. Keeping in mind the total income of the joint family and his share in the same, the total amount of monthly maintenance allowance i.e. total Rs. 9,000/- per month in favour of opposite party nos. 2 and 3 under the impugned judgment is reasonable, realistic and justifiable and the same cannot be interfered with by this Court in exercise of revisional jurisdiction and also there is no bar that pursuant looking to the present scenario and inflation, the amount of maintenance allowance as awarded by the appellate court under the impugned judgment cannot be said to be excessive or exorbitant.

12. On the above premise, learned counsel for opposite party no.2 submits that since the appellate court while passing the impugned judgment has not

committed any error in the eyes of law, therefore, present criminal revision is liable to be dismissed.

13. I have considered the facts and circumstances of the case, submissions made by learned counsel for the parties as well as perused of record including the impugned judgment.

14. So far as the first submission of the learned counsel for the revisionist that since the revisionist at the time of filing of instant application was minor, therefore, such application could not be maintainable and also the recovery proceeding so initiated pursuant to any order passed therein could also not be executed, is concerned, this Court may record that as per Sections 10 and 18 of the Family Court Act, Chapter-IX of the Code of Criminal Procedure, wherein Section 125 Cr.P.C. is contained, is not applicable. For ready reference, Section 10 and 18 of the Family Court Act read as under:

"Section 10. Procedure General:

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

18. Execution of decrees and orders.-

(1). A decree or an order, other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.

(2) An order passed by a Family Court under Chapter IX of the Code of

Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution."

15. Perusal of the aforesaid provisions, only Chapter IX of the Code of Criminal Procedure shall be applicable to the case filed under Section 125 Cr.P.C. and the application filed under Section 128 Cr.P.C. The Court has to see only the provisions enshrined in Chapter-IX of the Code of Criminal Procedure and in the provisions/sections contained in Chapter-IX Cr.P.C., it has nowhere mentioned that proceedings under Sections 125 and 128 Cr.P.C. cannot be initiated against a minor but can be initiated through his guardian.

16. Section 125 Cr.P.C. provides that if any person having sufficient means neglects or refuses to maintain (a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

17. On the basis of the aforesaid provisions, this Court is inclined to refused the submission of the learned counsel for the revisionist qua the minority of the revisionist at the time of filing of instant application, as there is no bar in entertainment of application under Section 125 Cr.P.C. and Section 128 Cr.P.C. filed against a minor.

18. Now this Court comes to the submission of the learned counsel for opposite party no.2 that the issue regarding the minority of the revisionist at the time of filing of instant application has not been raised before the trial court and also the high school examination mark-sheet-cum-certificate has not been testified before the trial court and the same has only been raised and produced before this Court for the first time, therefore, the same cannot be examined by this Court in exercise of revisional jurisdiction.

19. Since the issue raised by the learned counsel for the revisionist that since at the time of filing of instant application under Section 125 Cr.P.C. the revisionist was minor, therefore, the same could not be maintainable relates to

question of substantial law, therefore, this Court may consider the same as this Court sits in a revisional jurisdiction.

20. So far as the submission made by the learned counsel for the revisionist that since the opposite party no.2 has refused to live with her husband with sufficient cause, she is not entitled to get any maintenance allowance, is concerned, this Court may record that the trial court while deciding issue no.2 has recorded categorical finding that the opposite party no.2 has sufficient cause to live separately from the revisionist as since marriage, the opposite party no.2 was subjected to harassment and cruelty for demand of additional dowry. It has also been recorded that the revisionist has himself admitted in his cross-examination that in the marriage he has taken dowry. It has also been recorded that after compromise the opposite party no.2 returned to her matrimonial house but after some time, she was again subjected to harassment and cruelty for demand of additional dowry.

21. This Court cannot embark upon a re-appreciation of evidence as suggested by the learned counsel for the revisionist. The evidence led before the trial court has been dealt with by the trial court while passing the impugned judgment. Therefore, this Court is of the view that this Court cannot substitute its own finding while exercising its powers under Section 397/401 Cr.P.C. Even otherwise, if the opposite party no.2 has refused to live with her husband i.e. revisionist during the course of trial, it cannot be presumed that she did not want to live with her husband since the date of marriage. On account of facing harassment and cruelty time and again on the part of the revisionist, now she has refused to live with her husband. As such, the opposite party no.2 has sufficient and cogent reason to live separately from her husband.

22. It is pertinent to notice here that high school examination mark-sheet-cum-certificate on the basis of which the minority of the revisionist at the time of filing of instant application under Section 125 Cr.P.C. has been claimed, has been produced before this Court for the first time and the same has not been produced before the trial court due to which the authenticity or veracity or otherwise of the same has not been examined by summary proceedings i.e. trial proceedings. However, looking to the fact that purely legal question is involved in the same, the fact that there is huge pendency before the trial court and for saving the precious time of the trial court as well as keeping in mind the fact that if the case is remanded back to the trial court, the opposite party nos. 2 and 3 will have forced to run from pillar to post to get maintenance allowance, this Court may examine the said legal issue considering the said certificate produced by the revisionist before this Court treating it to be genuine, as the learned counsel for the opposite party no.2 has also not disputed the correctness or otherwise of the same.

23. To find out the correct age of any person, every court first considers the high school examination mark-sheet or certificate because as per settled law, for verifying the correct age, the high school examination certificate or mark-sheet is given first preference. In such circumstances, this Court has to consider the age of the revisionist mentioned in his high school examination mark-sheet-cum-certificate in which the date of birth of the revisionist is mentioned as "1st January, 2023", meaning thereby that on 1st January, 2021, the revisionist has attained the age of majority i.e. 18 years. This Court has also room to doubt that a minor person himself dependent upon his parents and in any case it cannot be presumed that he has sufficient means to maintain himself. In any view of the matter he cannot able to maintain his wife and daughter. However, as and when he attains the age of majority i.e. 18 years of age, he has to bear his responsibly in order to maintain his legally wedded wife and his real minor daughter.

24. It is admitted case that opposite party no.2 is legally wedded wife of the revisionist whereas the opposite party no.3 is his real minor daughter. The Hon'ble Supreme Court of India in the case of **Rajnish Vs. Neha** reported in (2021) 2 SCC 324 has opined that since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband is required to earn money even by physical labour, if he is able-bodied, and cannot not avoid his obligation.

25. It is no doubt true that at the time of filing of instant application under Section 125 Cr.P.C. i.e. 10th February, 2019 the revisionist was minor but at the time of passing of the impugned judgment i.e. 22nd November, 2023 he attained the age of majority i.e. approximately 20 years old. In such circumstances, this Court is of the considered view that before the date of attaining the age of majority i.e. when he was minor, it was not obligatory upon him to maintain his legally wedded wife and real minor daughter, but just after attaining the age of majority, he will be become liable not only to maintain himself but it is legally obligatory upon him to maintain his wife and minor daughter.

26. So far as the exact income of the revisionist is concerned, there is nothing on record to ascertain the exact income of the revisionist from the date he attained the age of majority i.e. 1st January, 2021. However, it is cropped up from the testimonies of the witnesses that there is 55 bighas of agricultural land, one XYLO car and one tractor in the joint family of the revisionist. However, unless the revisionist's share is received, his exact income cannot be known.

27. However, considering the fact that the revisionist who has not claimed that

he is not physically deformed, is able bodied person, this Court may record that in that circumstance, if it is considered that he is a labourer, then he would at least earn Rs. 600/- per day, meaning thereby that his total monthly income would be Rs.18,000/- per month.

28. The Hon'ble Supreme Court of India in the cases of **Rajnesh Vs. Neha** reported in (2021) 2 SCC 324 and **Kulbhushan Kumar (Dr) v. Raj Kumari** reported in (1970) 3 SCC 129, has observed that the maintenance allowances can be granted up to the extent of 25% of the net income of the husband. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury.

29. Keeping in view of the income of revisionist as well as guidelines issued by the Hon'ble Apex Court in **Rajnesh v. Neha and Kulbhushan Kumar (Dr) (Supras)**, this court is of the considered opinion that the total amount of maintenance allowance awarded by the trial court i.e. Rs. 5,000/-+Rs.4,000/- per month (total Rs.9,000/- per month) is not commensurate as per the law laid down by the Hon'ble Supreme Court in the aforesaid cases. 25% of the total monthly amount i.e. Rs. 18,000 as quantified by this Court herein-above would be Rs.4,500/-. Therefore, the same is reduced to Rs. 2,500/- per month to opposite party no.2 (wife) and Rs. 2,000/- per month to opposite party no.3 (minor daughter) and the same shall be payable from the date when the revisionist attained the age of majority i.e. 1st January, 2021.

30. Consequently, judgment and order dated 22nd November, 2023 passed by the Additional Principal Judge, Family Court No.1, Bareilly in Criminal Misc. Case No. 1546 of 2019 (Smt. Sheela Devi & Another Vs. Abhishek Yadav) under Section 125 Cr.P.C., Police Station-Visharatganj, District-Bareilly, is modified to the extent that now the revisionist shall pay Rs. 2,500/- per month to opposite party no.2 (wife) and Rs. 2,000/- per month to opposite party no.3 (minor daughter) towards maintenance allowance from 1st January, 2021.

31. It is also clarified that the arrears of amount towards maintenance allowance as awarded by the court below shall be calculated on the basis of amount of maintenance allowance as fixed by this Court herein above and after that if it is found that any amount has been paid in excess, the same shall be adjusted from the amount to be paid.

32. The present criminal revision is, accordingly, **partly allowed**.

33. There shall be no order as to costs.

September 25, 2025
Sushil/-

(Madan Pal Singh,J.)