



2026:AHC:13863

A.F.R.**HIGH COURT OF JUDICATURE AT ALLAHABAD****CRIMINAL REVISION No. - 8658 of 2025**

[REDACTED]

.....Revisionist(s)

Versus

[REDACTED]

.....Opposite
Party(s)

Counsel for Revisionist(s) : Dinesh Kumar Singh, Gaurav
Suryavanshi

Counsel for Opposite Party(s) :

Court No. - 69**HON'BLE LAKSHMI KANT SHUKLA, J.**

1. Heard Mr. Gaurav Suryavanshi, learned counsel for the revisionist and perused the record.
2. The instant criminal revision has been preferred by the revisionist challenging the validity of the impugned order dated 07.05.2025 passed by the Additional Principal Judge, Family Court, Kushinagar at Padrauna in Case No. 600 of 2019 [REDACTED]. [REDACTED] hereby the Trial Court rejected the revisionist's application seeking interim maintenance .
3. Learned counsel for the revisionist submits that the impugned order is illegal, arbitrary, and has been passed without due application of mind. It is further contended that the Trial Court, while passing the impugned order, has committed material irregularity.
4. A perusal of the impugned order reveals that the decision of the Trial Court is based on the fact that the opposite party became incapable of earning his livelihood due to a firing incident in which an attempt to kill him was made by the real brother of the revisionist and his associates.
5. It is pertinent to note that the revisionist had filed an application under Section 125 Cr.P.C. seeking maintenance from the opposite party, claiming to be his legally wedded wife.

6. Section 125(1) of the Cr.P.C. provides as under:

"125. Order for maintenance of wives, children and parents.

(1) 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

(d) 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 [* *] [The words "not exceeding five hundred rupees in the whole" omitted by Act 50 of 2001, w.e.f. 24.9.2001.], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :*

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the

date of the service of notice of the application to such person.] [Inserted by Act 50 of 2001, Section 2 (w.e.f. 24-9-2001).]

Explanation. - For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married."

7. Justice Krishna Iyer in his judgment in **Captain Ramesh Chander Kaushal v Mrs. Veena Kaushal & Ors. (1978)4 SCC 70** held that the object of maintenance laws is :

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts."

8. The following essential ingredients must be satisfied for grant of maintenance to a wife under Section 125 Cr.P.C :

(i) the person against whom relief is sought must have sufficient means;

(ii) the applicant-wife must be unable to maintain herself;

(iii) the wife must be living separately from the opposite party (husband); and

(iv) such separate residence must be for reasonable and justifiable grounds.

9. In **Jasbir Kaur Sehgal (SMT) v. District Judge, Dehradun and others,**

(1997) 7 SCC 7, the Apex Court held as under:

"8.No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

10. From a bare perusal of the impugned order, it is evident that the Trial Court recorded that as per the objections filed by the opposite party, he (opposite party) was a Homeopathy doctor running his own clinic. However, on 13.04.2019, while he was engaged in his routine professional work, the real brother and father of the revisionist along with four other persons arrived at his clinic, hurled filthy abuses, and extended threats to his life. Upon resistance, the brother of the revisionist opened fire at the opposite party, causing firearm injury. The pellet is still lodged in the bone of his spinal cord, and as per medical advice, any attempt to remove the same may result in paralysis. Due to the said injury, the opposite party is unable to sit comfortably even for a short duration and, consequently, has become unemployed and incapable of earning any income. In view of these circumstances, the Trial Court rejected the revisionist's application for interim maintenance.

11. When confronted with above, the learned counsel for the revisionist could not overcome the aforesaid factual findings and throughout the course of arguments merely emphasized that the opposite party is a doctor and, therefore, possesses sufficient means. It was argued that despite having sufficient means, the opposite party has failed to maintain the revisionist and that the Trial Court has committed material irregularity.

12. Considering the facts and circumstances of the case, this Court is of the

view that it is a pious duty of a husband to maintain his wife, and ordinarily, a husband having sufficient means who neglects or refuses to maintain his wife cannot seek protection of law. In Indian society, it is well recognized that a husband, even in the absence of regular employment, is expected to undertake suitable work according to his capacity to maintain himself and his family. However, the present case stands on a different footing. At an earlier stage, the opposite party was capable of maintaining his wife and had sufficient means, but his earning capacity was completely destroyed due to the criminal act committed by the brother and father of the revisionist. Thus, it was the conduct of the revisionist's side which rendered the opposite party incapable of earning and left him without sufficient means.

12A. It is well settled that though it is the pious obligation of a husband to maintain his wife, however, there is no such explicit legal duty has been cast upon the wife by any Court of law. In the facts of the present case, *prima facie*, it appears that the conduct of the wife and her family members has rendered the opposite party incapable of earning his livelihood. If a wife by her own acts or omissions, causes or contributes to the incapacity of her husband to earn, she cannot be permitted to take advantage of such a situation and claim maintenance. Granting maintenance in such circumstances would result in grave injustice to the husband, and the Court cannot shut its eyes from the reality emerging from the record.

13. It was held in the case of **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy, (2017) 14 SCC 200** that the amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors.

14. In **Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705**, the Hon'ble Supreme Court held that it is the obligation of a husband to maintain his wife and that he cannot be permitted to plead financial constraints **so long as he is capable of earning**. The Court thus made the husband's liability to maintain contingent upon his actual capacity to earn.

14A. In the present case, the material on record clearly establishes that the

opposite party has suffered a grievous firearm injury, with a pellet entangled in his spinal cord, and medical advice indicates that any surgical intervention carries a serious risk of paralysis. Owing to such physical incapacity, the opposite party has been rendered incapable of earning his livelihood. It is apparent from the record that the said physical incapacity was caused by the revisionist's side.

15. In view of the aforesaid circumstances, this Court finds that the learned Trial Court has not committed any manifest illegality or material irregularity while passing the impugned order. The Trial Court neither failed to exercise its jurisdiction nor exceeded the same. Consequently, the revision lacks merit and is liable to be dismissed.

16. It is, accordingly, **dismissed**.

(Lakshmi Kant Shukla,J.)

January 19, 2026
Brijesh Maurya