

**HIGH COURT OF JUDICATURE AT ALLAHABAD****CRIMINAL REVISION No. - 3893 of 2017**

Sweta Jaiswal

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Bipin Kumar, Mohd. Naushad Siddiqui
Counsel for Opposite Party(s) : G.A.

Court No. - 79**HON'BLE RAJIV LOCHAN SHUKLA, J.**

1. Heard Learned counsel for the revisionist, learned A.G.A. for the State-respondents and perused the material brought on the record.

2. The present criminal revision has been preferred against the impugned order dated 2.11.2017 passed by the Principal Judge, Family Court, Chandauli in Maintenance Petition No.332 of 2015 (*Sweta Jaiswal and another Vs. Santosh Jaiswal*) under Section 125 Cr.P.C., whereby the claim for maintenance by the revisionist Sweta Jaiswal has been refused. However, the claim for maintenance for her minor daughter has been allowed to the tune of Rs. 2,000/- per month.

3. From the perusal of the records, it transpires that the notices were issued by this Court, which were duly served upon the opposite party No.2 on 25.1.2018, now even thereafter despite passing of several peremptory orders, no one has put in appearance on behalf of the opposite party No.2. Lastly, on 21.05.2025, the Court was constrained to pass the following order:-

"1. List revised. None responded for the opposite party no. 2 to press this revision.

2. At the request of learned A.G.A. for the State, case is adjourned for the day.

3. Matter pertains to the year 2017.

4. List on 08.07.2025 for final hearing.

5. It is made clear that no further adjournment will be granted to the

opposite parties."

4. Learned counsel for the revisionist has apprised the Court of the previous order dated 4.7.2022, wherein, this Court had passed an order for peremptory listing of the case. The aforesaid order dated 4.7.2022 is reproduced hereinunder:-

"Record of the case indicates that as per the report of the CJM, Bhadohi, Gyanpur dated 25.01.2018 notices were duly served upon opposite party no.2 but neither he has engaged any counsel nor any counter affidavit has been filed so far.

This revision is being filed on behalf of Sweta Jaiswal wife of Santosh Jaiswal, opposite party no.2, who claims for maintenance which was rejected in the light of provisions under Section 125(4) Cr.P.C.

Let written information may be given to Santosh Jaiswal son of Ramraj Jaiswal at the address given in memo of revision itself connecting the opposite party no.2 that the matter would be heard and decided ultimately on 1st August 2022 with or without appearance of opposite party no.2.

A last opportunity is afforded to him to put his appearance through counsel to contest the present criminal revision.

List this matter peremptorily on 01.08.2022."

5. Learned counsel for the revisionist then contends that perusal of the order-sheet and the orders quoted above would indicate that opposite party No.2 despite service of notice is not interested to contest the case and has neither engaged any counsel nor has filed any counter affidavit to the claims raised in the criminal revision and the affidavit accompanying thereto.

6. Learned counsel for the revisionist has argued that the sole ground, refusing grant of maintenance to the revisionist, as is reflected from the impugned order, is the provisions contained in Section 125(4) of the Code of Criminal Procedure, whereby, the learned Principal Judge while going through the statements of the P.W.-1(revisionist) and the opposite party No.2 has opined that the reason for the revisionist not staying with the opposite party No.2 on account of the fact that he had concealed the factum of his previous marriage and divorce. Learned counsel for the

revisionist further argued that this finding recorded by the learned Principal Judge is absolutely perverse and no such finding could have been recorded from the statement of the revisionist from the pleadings that have been filed.

7. This Court has had an occasion to go through the application under Section 125 Cr.P.C. moved on behalf of the revisionist and also her statement recorded before the Competent Court, which has been annexed as Annexure Nos.1 & 2 to the affidavit accompanying the criminal revision. Perusal of the same indicates that the revisionist has leveled allegations of cruelty in respect to demand of dowry and a passing reference has been made in her statement and her pleadings highlighting the factum of previous marriage and divorce of the opposite party No.2 which has been concealed from her. The learned Court below taking this passing remark has recorded a finding that the revisionist was living separately from her husband without reasonable cause whereas the stand taken by the opposite party No.2 was that the revisionist's behavior was too atrocious and that she used to behave in a cruel manner with the family members of the opposite party No.2

8. The Principal Judge, Family Court arriving at the conclusion, on the basis of the evidence led by the parties, cannot draw an inference, which is alien to the contentions of the parties. A mere passing reference to the previous marriage and divorce being concealed from the revisionist could not lead to any conclusion that the revisionist was willfully avoiding her duties as a wife and was living separately from her husband without reasonable cause.

9. While recording the findings as to Section 125(4) Cr.P.C., the learned Principal Judge has also referred to Section 12 of The Hindu Marriage Act, 1955 (*hereinafter referred to as the "Act, 1955"*), specifically the Section 12(1)(c) of the Act, 1955 which provides for voidable marriages and has recorded that if a marriage has been effected by concealment of material fact or that the consent for marriage has been obtained by playing fraud, then a party can seek the marriage to be declared as a nullity and has further recorded that in such circumstances, where the marriage may be annulled, the wife would not be entitled for any maintenance. Section

12(1)(c) of the Act, 1955 is being reproduced hereinbelow:-

12. Voidable marriages. - (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

(a)

(b)

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)*], the consent of such guardian was obtained by force [or by fraud as to the nature of ceremony or as to any material fact or circumstance concerning the respondent];
or

(d)"

10. Even though consideration of Section 12(1)(c) of the Act, 1955 is not required to be gone into at this stage, as no such exercise has been undertaken by the revisionist for getting the marriage annulled. However, at the same time, it is necessary to comment upon the error committed by the learned Principal Judge in recording that merely because a marriage could be annulled, the wife loses her right to claim maintenance. Unless and until, a marriage, which is voidable, has been declared a nullity by a decree, the status of the revisionist as the legally wedded wife of the opposite party No.2 persists and all the rights that flow from the same continuous. Merely on a hypothetical consideration that the said marriage could be annulled as there was a concealment of the previous marriage or divorce from the side of the respondent No.2 which may or may not be considered to be in violation of Section 12(1)(c) of the Act, 1955, however, once there was no decree of nullity nor there being any evidence that such a decree has been sought by the revisionist against the respondent No.2, no finding on Section 125(4) Cr.P.C. could be recorded. Relying upon the above-mentioned provision and declaring that the wife loses her right to claim maintenance is perverse and patently illegal being

misdirected and uncalled for.

11. The Hon'ble Supreme Court in the case of **Sukhdev Singh Vs. Sukhbir Kaur** reported in **2025 SCC OnLine SC 299**, while answering questions referred has held as follows:-

26. Even if, prima facie, the matrimonial court finds the marriage between the parties is void or voidable, the court is not precluded from granting maintenance pendente lite provided the conditions mentioned above are satisfied. The grant of relief under Section 24 is discretionary as the Section uses the word 'may'. While deciding the prayer for interim relief under Section 24, the Court will always consider the conduct of the party seeking the relief. It provides for issuing a direction to pay a reasonable amount.

28. Accordingly, we answer the questions as follows:

- a. A spouse whose marriage has been declared void under Section 11 of the 1955 Act is entitled to seek permanent alimony or maintenance from the other spouse by invoking Section 25 of the 1955 Act. Whether such a relief of permanent alimony can be granted or not always depends on the facts of each case and the conduct of the parties. The grant of relief under Section 25 is always discretionary; and*
- b. Even if a court comes to a prima facie conclusion that the marriage between the parties is void or voidable, pending the final disposal of the proceeding under the 1955 Act, the court is not precluded from granting maintenance pendente lite provided the conditions mentioned in Section 24 are satisfied. While deciding the prayer for interim relief under Section 24, the Court will always take into consideration the conduct of the party seeking the relief, as the grant of relief under Section 24 is always discretionary."*

12. Once the provision which the learned Principal Judge refers to under the Act, 1955 itself does not dis-entitle the claim for maintenance then the relief under the general provision under Section 125 Cr.P.C. cannot be denied solely on the consideration that marriage would be voidable. Here, no proceedings have been drawn to the notice of the Court where either of the parties had sought a decree for declaration of the marriage as a nullity as such, once marriage persists, the status of the revisionist as the legally wedded wife of the opposite party No.2 continues and not subject to challenge. The marriage itself has not been declared a nullity and in the absence of the same, denial of relief of maintenance on the incorrect assumption of the applicability of Section 12(1)(c) of the Act, 1955 was clearly illegal and perverse.

13. In these circumstances, the finding recorded by the learned trial Court that the revisionist was dis-entitled for the maintenance as she was covered by the bar to grant of maintenance under 125(4) Cr.P.C. is patently illegal and perverse and is liable to be set aside. Consequently, the matter is remanded back to the learned Principal Judge, Family Court, Chandauli for passing a fresh order in the light of the observations made herein before only with respect to the claim of the maintenance of the revisionist without disturbing the maintenance, awarded to the minor daughter.

14. Let a copy of this order be communicated to the learned Principal Judge, Family Court, Chandauli and the learned counsel for the revisionist may also file a copy of this order before him within a period of one month from today.

15. Learned Principal Judge, Family Court, Chandauli shall on receipt of this order and after due notice to the parties, proceed to decide the case within a further period of three months.

16. With the above directions, the instant criminal revision stands ***allowed.***

(Rajiv Lochan Shukla,J.)

September 24, 2025

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