

Court No. - 79

Case :- CRIMINAL REVISION No. - 4498 of 2022

Revisionist :- Gaurav Vashishtha

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Abhinav Gaur, Ankit Shukla, Mohd. Rashid Siddiqui, Sr. Advocate

Counsel for Opposite Party :- G.A., Suresh Chandra Pandey

Hon'ble Prashant Kumar, J.

Heard Mr. Abhinav Gaur, learned counsel for the revisionist,

Mr. Suresh Chandra Pandey, learned counsel for the opposite

party no. 2, learned A.G.A. for the State and perused the record.

The instant revision has been filed challenging the order dated

30.08.2022 passed by learned Additional Principal Judge,

Family Court, Mathura in Case No. 882 of 2019 (Ruchi Rawat

Vs. Gaurav Vashistha.) by means of impugned order the

maintenance under section 125 Cr.P.C. was enhanced to Rs.

10,000/- from Rs. 4,000/- (as fixed by this Court).

Learned counsel for the revisionist states that wife's right to

claim maintenance can be denied in the circumstances only

provided under section 125(4) Cr.P.C. Section 125(4) is being

quoted herein under:-

Section 125(4) in The Code Of Criminal Procedure, 1973

"No wife shall be entitled to receive an allowance [for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if

they are living separately by mutual consent."

Counsel for the revisionist further submits that as per this section if a wife leave the house on her own free will she will not entitled for maintenance under section 125 Cr.P.C. His argument is that the respondent no. 2 has left the house on her own free will. This fact could also be substantiated by first information report dated 28th December, 2017, in which it has been stated that on 25th December, 2017, parents of respondent no. 2 has come down to the matrimonial house and beaten the husband (applicant herein) and his parents. A medical report in this effect has also been brought on record. Thereafter, she left her matrimonial house on her own free will, on this FIR a charge sheet was submitted on 23rd March, 2018. This also, goes to show that she had left her matrimonial house on her own free will.

The counsel for the revisionist further submits that after she had left her matrimonial house, the revisionist filed an application for divorce on 15th January, 2018 in which respondent no. 2 has filed a written statement and opposing the same. Thereafter, as a counter blast, the respondent no. 2 has filed an FIR on 19th February, 2018, the moment she came to know about the lodging of the divorce petition, in which final report was also submitted on 28th February, 2018, stating that allegation levelled by respondent no. 2 were baseless and no evidence was

found to institute a criminal case. Thereafter, respondent no. 2 also filed a protest petition in which reinvestigation was ordered. On 11.11.2019, the Judicial Magistrate issued summon against the revisionist in complaint case no. 163 of 2019, against which a criminal revision has been filed which was rejected on 25.08.2021. Against which the revisionist has filed an Application u/s 482 No. 21219 of 2021 before this Court, and an interim order was passed on 16.05.2022 in favour of the revisionist, and the said application is still pending before this Court.

During the pendency of these criminal proceedings an application under section 125 Cr.P.C. filed by respondent no. 2 in which an interim maintenance for an amount of Rs. 5,000/- per month has been awarded by the order dated 25th August, 2020, against which the respondent no. 2 filed another Application u/s 482 Cr.P.C. No. 1585 of 2021 before this Court and this Court vide order dated 21.01.2021 reduced the interim maintenance from Rs. 5,000/- to Rs. 4,000/- per month and the same is being complied with. Thereafter, the application u/s 125 Cr.P.C. pending before the Family Court, Mathura has been finally decided vide order dated 30th August, 2022 against which the instant criminal revision has been filed.

The opposite party no. 2 has filed her appearance, in fact on 15.03.2023 the counsel for the opposite party no. 2 sought time

to file counter affidavit and on his request one month time was granted to him however till date no counter affidavit has been filed, and today when the matter was taken up counsel for the opposite party no. 2 submits that he does not wish to file any counter affidavit and would like to argue the matter on merits. Against the impugned order dated 30.08.2022, the respondent no. 2 has also filed a criminal revision no. 4981 of 2022. Both the matter are tagged and are being heard together.

Counsel for the opposite party no. 2 submits that the opposite party no. 2 has not left her matrimonial home on her volition and has sufficient cause for not residing in her matrimonial home as she was continuously being taunted and asked to bring more dowry. No wife will leave the house of the husband without any rhyme or reason. Counsel for the respondent no. 2 further submits that the cause of dispute was a medical report from a private hospital in which it is alleged that she cannot conceive. He further submits that his client is still ready and willing to go back to her matrimonial home. He further submits that respondent no. 2 is having degrees of M.A. and B.Ed. and revisionist is qualified C.TET., but she has no source of income and she has to maintain the same standard of living as she was accustomed to in her matrimonial home. Learned counsel for the respondent no. 2 argues that the ratio of the judgement laid down by Hon'ble Apex Court in Case of ***Rajnish Vs. Neha and***

another 2021 (2) SCC 324 be applied.

When the present matter was called out, the Court asked the learned counsel for the parties as to whether there were any possibility of any compromise, the counsel for the revisionist stated that he had filed a application for divorce and also ready to give one time alimony. An opportunity was given to the parties to see if there is a possibility of compromise. After the counsels came back, the court was informed by the counsel for the respondent no. 2 that there is no possibility of any kind of compromise. When asked whether she left her in-laws house on December 25, 2017 of her own free will, the counsel for the opposite party no. 2 agrees, but now says that the opposite party no. 2 is ready and willing to go back to her matrimonial home. The Revisionist's counsel says that there is enough bad blood in the relationship and there is no possibility to live as husband and wife.

The provision of Sections 125(4) Cr.P.C. is very clear that no wife shall be entitled to receive any maintenance from her husband if she refused to live with her husband. Here in the present case the opposite party no. 2 had left her matrimonial home on her own volition on 25th December, 2017. Since she had left on her own free will she is not entitled to get the benefit of maintenance, as per Section 125 (4) Cr.P.C.

In view of the aforesaid fact and circumstances, the impugned judgment and order dated 30.08.2022 passed by the learned Additional Principal Judge, Family Court, Mathura in Case No. 882 of 2019, under section 125 Cr.P.C., suffer from illegality & perversity and is accordingly set aside.

The revision is, therefore, ***allowed***.

(Prashant Kumar,J.)

Order Date :- 1.6.2023

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