

A.F.R.

Reserved Judgment

Court No. - 93

Case :- CRIMINAL REVISION No. - 2921 of 2018

Revisionist :- Pratima Singh

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

**Counsel for Revisionist :- Rajiv Lochan Shukla, Anand Pati
Tiwari, Chandra Shekhar Rai**

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

Connected with

Case :- CRIMINAL REVISION No. - 2922 of 2018

Revisionist :- Pankaj Singh Alias Dablu Singh

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

Counsel for Revisionist :- Suresh Chandra Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Om Prakash Tripathi, J.

1. Heard learned counsel for the revisionist, learned counsel for opposite party no. 2 and learned AGA for the State.
2. Criminal Revision No. 2921 of 2018 has been preferred against the order dated 18.04.2016 passed by the learned Principal Judge, Family Court, Mirzapur in Miscellaneous Case No. 220 of 2014 (Pratima Singh Vs. Pankaj Singh @ Dablu Singh), under Section 125 Cr.P.C, Police Station Kachhawan, District Mirzapur,

whereby the learned court has rejected the prayer of revisionist for grant of maintenance of Rs.8000/- per month from opposite party no. 2 and has granted monthly maintenance of Rs.2000/- per month from the date of order.

3. Criminal Revision No. 2922 of 2018 has been preferred against the order dated 18.04.2016 passed by the learned Principal Judge, Family Court, Mirzapur in Miscellaneous Case No. 220 of 2014 (Pratima Singh Vs. Pankaj Singh @ Dablu Singh), under Section 125 Cr.P.C, Police Station Kachhawan, District Mirzapur, whereby, the learned trial court has allowed the maintenance of Rs.2000/- per month to the opposite party no. 2 from the date of order.

4. As both the revisions have been preferred against the order dated 18.04.2016, so both the revisions are decided by a common judgment.

5. The main grounds for the Criminal Revision No. 2921 of 2018 is that impugned order is illegal arbitrary and against the evidence on record. Revisionist has no source of income and she is unable to maintain herself and is totally dependent on her parental family. Opposite Party No. 2 was earning Rs.15,000/- per

month by doing a private job in Delhi. On the basis of surmises and conjectures, trial court has fixed the income of opposite party no. 2 as Rs.6000/- per month. Opposite party no.2 is a graduate and was working in a private job. Notional income of Rs.6000/- per month has been fixed without any basis. No distinction has been drawn in respect of skilled and unskilled labour. Revisionist has always been and presently desirous to live with opposite party no. 2 as his wife and it is opposite party no. 2 who is not willing to keep and maintain the revisionist legally wedded wife. Maintenance amount is too less. Maintenance amount should be enhanced.

6. The main ground for Criminal Revision No. 2922 of 2018 is that impugned order is illegal, arbitrary and against the weight of evidence on record. Revisionist has no source of income and was unable to maintain himself and is totally dependent on his parental family. Learned court below has clearly ignored the fact that opposite party no. 2 was earning Rs.5000/- per month by doing private job as sewing, embroidering and beauty parlour. In her statement admitted by opposite party no. 2 that revisionist is already graduate and unemployed and also stated she had no knowledge regarding income of the revisionist and also stated that

she has not filed any case for maintenance, same was not considered by the court below. Income of the revisionist of Rs.6000/- per month fixed is illegally.

7. From the perusal of impugned order, it is admitted fact that Pratima Singh is legally wedded wife of Pankaj Singh.

8. The main point argued before this Court is that amount of maintenance of Rs.2000/- per month is very meagre whereas, the other side submitted that it is beyond the capacity of the husband as he is unemployed and not an earning hand. On the basis of evidence on record, trial court had adjudicated that husband of the revisionist Pratima Singh is not doing any service but he has agriculture farming, he is a young man and on the basis of daily wage Rs. 200/- per day is Rs.6000/- assessed the monthly income of the husband and keeping in mind the economical and social status of the parties Rs.2,000/- per month awarded as maintenance by the husband to the wife. The averment alleged by Pankaj Singh that revisionist is working in sewing, embroidering and beauty parlour and earning Rs.5000/- per month. Her father has 10 *bigha kheti* and is a Postman earning Rs.7000/- per month but such fact was not alleged even in examination-in-chief of Pankaj

Singh. So, this fact is not proved and court has come to conclusion that wife is unable to maintain herself. Wife is living at the house of his father i.e. her parental home from 24.03.2010, she is a graduate lady and not doing any service and no source of income, unable to maintain herself. Revisionist Pratima Singh is ready to reside with her husband but husband is not ready to reside with her because she has lodged an FIR under Section 498A IPC against him and his father and in the said case, they were detained in jail. Revisionist's husband is the only son of his father. It is also submitted by the husband that his mother is suffering from cancer and she was under treatment. The husband has said in his statement that wife had filed a case against him and his father for which he was detained in jail, so he refused to reside with her. Service of Pankaj Singh in Delhi through private job is also not proved.

9. Learned counsel for the revisionist also submitted the order of Ministry of Labour and Employment dated 30.09.2016, 19.09.2013, in which, daily wages of the skilled and unskilled persons has been classified. This is a revision, revisional Court has very limited powers only to adjudge the illegality and impropriety of the impugned order and has no power to re-

appreciate the evidence. Learned trial court has rightly adjudicated amount of maintenance as Rs.2000/- per month. So it is not proper to enhance the amount of maintenance from Rs.2000/- to Rs.8000/- per month as the husband is unemployed and has limited earning. So far as the submission of the husband that maintenance amount of Rs.2000/- per month is very excessive and liable to be set aside is also not tenable because keeping in mind the present inflation hike price of the goods, it is very difficult to manage even fooding of the revisionist. Thus, the maintenance amount of Rs.2000/- per month is not liable to be minimized or enhanced.

10. The next submission before this Court is that maintenance has been passed to be provided from the date of the order i.e. 18.04.2016. The trial court has emphasized that this petition for maintenance has been rejected on 16.07.2014 against which revision has been filed before this Court. Notice issued to opposite party no.2, opposite party no.2 had submitted his objection promptly. In fact application for maintenance has been filed initially as Misc. Case No. 91 of 2010 before Munsif Mirzapur on 12.08.2010. Application was dismissed ex-parte on 16.07.2014, in revision, the impugned order was set aside. This

shows that the journey of the maintenance application started from 12.08.2010 and up till now no amount of maintenance has been paid to the revisionist, which is very disgraceful.

11. Learned counsel appearing for Pratima Singh submitted that in ex-parte order dated 05.04.2011, Rs.2500/- awarded as maintenance per month, although this order has been set aside, later on, being ex-parte will not help Pratima Singh.

12. Learned counsel appearing for revisionists has relied upon the following judgments of the Supreme Court which are as under :

i.) Rajnesh vs. Neha and Another (2021) 2 SCC 324

ii.) Kurvan Ansari @ Kurvan Ali & Anr. Vs. Shyam Kishore Murmu & Anr. Civil Appeal No. 6902 of 2021 SC decided on 16th November, 2021, in which, claim was awarded from the date of petition in a motor accident claim. The facts of the said case is not similar to this case.

iii.) In Bina Devi Vs. State of UP 2010 SCC OnLine All 236. The court had held that maintenance is to be paid from the date of application, the court must record reasons. If the order is

silent, it will be effective from the date of order, for which reasons need not be recorded. The Court held that Section 125(2) Cr.P.C is prima facie clear that maintenance shall be payable from the date of the order. Thus, this Court is of the view that maintenance should be paid from the date of the order not from the date of application.

13. On the basis of above discussion, this revisional court is of the opinion that evaluation of finding of the trial court is not suffering from any illegality manifest error. Trial court has not overlooked the grounds of maintenance and evidence, as such, no interference is called for in the impugned order by this revisional court. Both the revisions are devoid of merit and is liable to be dismissed.

14. Both Criminal Revision No. 2921 of 2018 and Criminal Revision No. 2922 of 2018 are dismissed and impugned order dated 18.04.2016 is confirmed.

Order dated : 13.01.2022

Priya

(Hon'ble Om Prakash Tripathi, J.)