

Reserved on 07.04.2022
Delivered on 26.04.2022

Court No. - 16

Case :- CRIMINAL REVISION No. - 896 of 2019

Revisionist :- Smt.Kiran Singh

Opposite Party :- State Of U.P. And Anr.

Counsel for Revisionist :- Sanjay Kumar Singh

Counsel for Opposite Party :- Govt. Advocate,Ram Kushal Tiwari

Hon'ble Brij Raj Singh,J.

1. Heard Sri Sanjay Kumar Singh, learned counsel for the revisionist, Sri Ram Kushal Tiwari, learned counsel for the opposite party no.2 and Sri Diwakar Singh learned AG.A. for the State and perused the record.

2. This Criminal Revision has been filed against the impugned award of maintenance order dated 28.05.2019 passed by the Principal Judge Family Court, Sultanpur in Criminal Case No.2629 of 2014(Smt. Kiran Singh versus Ghanshyam Singh) under Section 125 Cr.P.C. Further prayer has been made that the opposite party no.2 may be directed to pay an amount of Rs.15,000/- to the revisionist and enable the revisionist to lead a true life in her parental house.

3. Learned counsel for the revisionist submitted that the revisionist filed application under Section 125 Cr.P.C. before the court below, in which she stated that she was married with opposite party no.2 on 25.02.2007 as per Hindu Rites. After marriage, opposite party no.2 and his family members started demanding for a motor cycle and were harassing her for dowry. The revisionist was deserted by opposite party no.2 on 31.10.2021 and since then the revisionist is living with her parents. Learned counsel for the revisionist further submitted that the revisionist has no source of income whereas opposite party no.2 is working in Mumbai and earning 30,000/- per month. Opposite party no.2 has also agricultural property and thus has sufficient source of income. In

support of the arguments learned counsel for the revisionist has cited the judgment of *Rajnish versus Neha and another*; (2021) 2 SCC 324 and *Babu Lal versus Sunita*; 1987 CrL. J. 525 and *Darshan pal versus Smt. Darshana*; 1986 CRL. J. 48.

4. Learned counsel for the opposite party no.2 submitted that opposite party no.2 appeared before the Court and filed objection mentioning that it is the revisionist, who deserted him and she also aborted a child on 18.08.2007 without taking him into confidence. It is further objected in the reply that revisionist does not want to live in the house of the opposite party no.2.

5. I have considered the argument advanced by learned counsel for the parties and perused the record.

6. While passing the impugned order, the trial court framed 5 issues:-

- (i) Whether the revisionist is married to opposite party no.2,
- (ii) Whether the opposite party no.2 has deserted the revisionist,
- (iii) Whether the revisionist has any source of income and whether she is able to maintain herself,
- (iv) Whether the opposite party no.2 has sufficient source of income,
- (v) Whether the revisionist is entitled for maintenance, if yes, how much and from which date.

7. So far the issue no.1 is concerned, there is no dispute that the revisionist and opposite party no.2 are wife and husband and they were married together. Issue nos. 2,3,4 and 5 are interrelated. Therefore I am discussing the issues in detail.

8. The revisionist has specifically mentioned that opposite party no.2 deserted her. There is reference of the case of conjugal rights, which was decided *ex-parte* and the court below while taking note of the said *ex-parte* decree rejected the prayer for maintenance. The court below recorded some minor contradiction in the statement of revisionist and on

the basis of the same, her case has been found not fit for maintenance. The court below also recorded fact that on the basis of statement of cross examination, it is not clear as to which date, revisionist went to her parents' house. It has been further noted by the court below that the revisionist had knowledge about the case for restitution of conjugal rights but she did not appear and court below has inferred that the revisionist does not want to live with her husband on the basis of some statements given in cross examination. Drawing such inference, the court below rejected the application for maintenance. It has been opined by the court below that since issue no.2 has been decided in negative, therefore, there is no need to give finding regarding financial status of revisionist and opposite party no.2.

9. Admittedly, there is no bar under Section 125 Cr.P.C. to grant maintenance to wife, even against whom, a decree for restitution of conjugal rights has been passed. It would be very harsh to refuse maintenance on the ground of a decree of restitution of conjugal rights passed in favour of husband. It is also settled law that even after divorce wife is entitled for maintenance and since the revisionist is legally wedded wife of opposite party no.2, he has to maintain her. It is admitted on record that wife is residing with her parents and has no source of income. Therefore, award for maintenance cannot be denied.

10. Section 125(1) Cr.P.C clearly points out that 'wife' includes a woman, who has been divorced or has obtained a divorce from her husband and has not re-married. The claim of maintenance can only be refused if she has received some compensation from her husband and the decree of the restitution of conjugal rights does not put bar in providing the maintenance.

11. The court below has not dealt the issue no.4 in relation to the source of income of opposite party no.2, therefore, in the revisional jurisdiction, I

cannot conclude regarding the monthly income of opposite party no.2, which requires consideration afresh by the court below.

12. In view of the aforesaid discussion and legal aspect, I set aside the impugned order dated. 28.05.2019.

13. The mater is remanded back to the court below who shall determine Issue Nos. 3, 4 and 5 and thereafter order will be passed accordingly. The revision is **allowed** in part. The matter is remanded back to the court below to decide the Issue Nos. 3, 4 and 5, afresh after affording opportunity to the parties and pass fresh order keeping in view the observations made hereinabove. The said exercise will be done within six months from today.

14. Office is directed to communicate this order to the court below for necessary compliance, forthwith.

Order Date :- 26.04.2022

Arun K. Singh/Akanksha

(Brij Raj Singh, J.)