

A.F.R.

RESERVED ON : 5.1.2021

DELIVERED ON : 3.3.2021

Court No. - 87

Case :- CRIMINAL REVISION No. - 2541 of 2019

Revisionist :- Ankur Gupta

Opposite Party :- State Of U.P. And 3 Ors.

Counsel for Revisionist :- Rajiv Lochan Shukla, J.B. Singh

Counsel for Opposite Party :- G.A., Nipun Singh

Hon'ble Suresh Kumar Gupta, J.

1. This CrI. Revision has been preferred by the revisionist being aggrieved with the judgement and order dated 29.4.2019 passed by the Principal Judge, Family Court, Gautam Budh Nagar in Case No. 120 of 2014 (Smt. Rachna Vs. Ankur Gupta) under Section 125 Cr.P.C., P.S. Sector-39 NOIDA, District Gautam Budh Nagar whereby the learned court below has been pleased to award Rs. 25,000/- maintenance each to the two minor daughters of the revisionist and Rs. 20,000/- as rent, cumulatively Rs. 70,000/- in exercise of powers under Section 125 Cr.P.C.

2. Brief facts of this case are that the opposite party No. 2 has filed an application against the revisionist under Section 125 Cr.P.C. which is registered as Misc. Complaint No. 120/2014 (Smt. Rachana Vs. Ankur Gupta) before the learned Principal Judge/Family Court, Gautam Budh Nagar on 26.4.2014.

3. As per complaint, it has been stated by the opposite party No. 2 that her marriage was solemnized with the revisionist on 20.2.2008 and after their marriage both the revisionist and opposite party No. 2 were living together at Bangalore very happily and on 14.8.2009 a daughter-Aakansha was born to the opposite party No. 2 with the wedlock of revisionist. Later on, 17.2.2012 another daughter-Yashashwini was born to the opposite party No. 2, presently both the daughters are in the care and custody of the opposite party No. 2.

4. After marriage, revisionist as well as opposite party No. 2 moved to the Bangalore where the revisionist is an employee in IT Major Yahoo Software Development Corporation as Product Manager and the Opposite party No. 2 also got employment in NIFT Bangalore as Assistant Professor.

5. It is further alleged in her complaint that during pregnancy of second daughter, revisionist solemnized marriage in USA with Ms. John NG and totally neglected the opposite party No. 2 so the opposite party No. 2 moved out to Bangalore and take shelter at her parent's house in NOIDA. Opposite party No. 2 with two daughters, residing with her parents since 17.3.2012 and she is now transferred to NIFT Campus, Haus Khas New Delhi and where she is working as Assistant Professor.

6. After filing the written objection and exchanging the affidavits, Principal Judge/Family Court, Gautam Budh Nagar directed the revisionist to deposit Rs. 20,000/- per month from the date of order to the opposite party No. 2 for interim maintenance of both daughters vide order dated 7.11.2014.

7. In pursuance of the order of family Court, he is regularly paying the money to the opposite party No. 2 from November till April 2019 and during pendency of this application, statement of opposite party No. 2 is recorded before the learned court below as PW1 on 16.2.2016 and 14.3.2016. In consequences of relevance of opposite party no. 2, revisionist has also filed a chief examination by means of an affidavit on 19th August, 2016 as DW-1.

8. During pendency of interim maintenance, revisionist also moved the application to quash and modify the order of interim maintenance but no any order has been passed and opposite party No. 2 filed the income tax return of the revisionist as well as her income tax for assessment year 2015 to 2019.

9. Learned Principal Judge/Family Court, Gautam Budh Nagar without applying his judicial mind and totally ignoring the materials and evidence on record passed the impugned judgement and order dated 29.4.2019 which is totally illegal and arbitrary.

10. Learned counsel for the revisionist submitted before the court that the property of House No. 122B, Sector Panchkula, House No. 450, Sector 2 Panchkula and House No. 403 Tower No. 6, Royal Estate Zirakpur Punjab are incorrect. It is further submitted that learned trial court while passing the impugned judgment and order has considered the economic status of the revisionist and passed the impugned judgement and order. Learned counsel further submitted

that the learned court has misinterpreted the oral and documentary evidence and finding of the lower court is solely on the basis of income tax return of the previous year while the latest income tax return clearly shows that the revisionist was no longer employed and had a yearly income of Rs. 4.14 lacs. It is next submitted that in the month of July 2011, opposite party No. 2 left the house of her husband and went to her parental home and several efforts commits by the revisionist but opposite party No. 2 did not want to live with the revisionist. Opposite party No. 2 is living apart from the revisionist without any reasonable cause. Revisionist has also filed the Petition No. 112 of 2012 under Section 13 of Hindu Marriage Act for dissolution of marriage before the court of District Judge, Panchkula. When the opposite party No. 2 got knowledge of the said divorce petition then he filed transfer petition in Apex Court and on the said transfer application of opposite party No. 2, the case was transferred from District Panchkula to District, Gautam Budh Nagar which is still pending before the Family Court, Gautam Budh Nagar. During pendency of this case, opposite party No. 2 also filed the case under Section 12 readwith Section 17, 19, 20, 21 & 22, Protection of Women from Domestic Violence Act, 2005 before Judicial Magistrate, Gautam Budh Nagar and also lodged the first information report bearing case crime No. 25 of 2014, under Sections 498A/323/504/506/406/494/420 IPC & Section 3/4 Dowry Prohibition Act at police station Mahila Thana, District Gautam Budh Nagar and charge sheet was also submitted on 15.7.2014 by the Investigating Officer. However, further proceeding of aforesaid case has been stayed by this Hon'ble Court on 24.9.2014 passed in Crl. Misc. Application No. 41465 of 2014 and the said case is still pending before this Hon'ble Court. Except this, several litigations were pending before the parties. Learned trial court without considering the facts and circumstances of the case and evidence available on record, passed the impugned judgment and order on 29.4.2019 and prayed for quashing the impugned judgement and order dated 29.4.2019.

11. It has been pointed out by the learned counsel for the opposite party No. 2 that the revisionist submitted that he has intimate relationship with Ms John NG in USA since 2014 and further submitted that the revisionist is highly qualified having post graduate degree from IIT, Khadagpur and management course from Howard University and due to intimacy with Ms John NG, revisionist abandoned the opposite party No. 2 and he did not care the daughters and due to compelling circumstances opposite party No. 2

leave Bangalore and came under the shelter of her old aged parents and since then, respondent is residing in parental home since 17.3.2012. After leaving, Bangalore respondent joined NIFT Campus, New Delhi as Assistant Professor and after deduction, her salary is only Rs. 41,000/-.

12. Learned counsel for the opposite party No. 2 further submitted that the revisionist admit his relationship with Ms John NG and execution of will is in his favour. It also alleged that the loan of Rs. 2.50 lacs US Dollar, which according to the revisionist he allegedly borrowed for education loan. Respondent successfully established by way of documentary evidence about the details of property possessed by the revisionist and learned family court rightly awarded the maintenance amount to her daughters of Rs. 25,000/- each and Rs. 20,000/- as house rent allowance. It is further submitted that the applicant is working in Hauj Khas and no property is available on such house rent in New Delhi. It is further submitted that the welfare of their daughters is not only responsibility of the opposite party No. 2 but the same is also equal, rather more responsibility of revisionist to look after the welfare. Cost of living in NCR is too much higher and it is not possible to hire any accommodation. Hence amount of Rs. 20,000/- is quite justified legal and also liable to be upheld by this Court. Revisionist has no right to challenge the amount of maintenance awarded by Family Court. Apart from house property this is also admitted fact that the revisionist has so many properties, admitted income from the dividends and shares of various companies and, rental income. It is further submitted that ample evidence available on record, which itself proves that revisionist has wilfully neglected and refused to maintain the minor daughters and the court below after considering the statement accounts as well as the previous income tax return has come to a right conclusion in awarding maintenance. It is also submitted that in order to escape from his responsibility, revisionist intentionally and deliberately filed the return for the Assessment Year 2018-2019 and 2019-2020 showing his annual income @ 4,13,000/- However, intentionally the income tax return of previous year were not filed by the revisionist and the same were brought on record by the answering respondent. Lastly learned counsel for the respondent submitted that the criminal revision is devoid of merit and is liable to be dismissed subject to imposition of heavy cost upon the revisionist.

13. Learned counsel for the opposite party No. 2 relied upon the judgements of Hon'ble Apex Court reported in *[(2015) 6 Supreme Court Cases 353 (Bhuvan Mohan Singh Vs. Meena and others)]*;

[(2015) 5 Supreme Court Cases 705 (Shamima Farooqui Vs. Shahid Khan)]; [(2014)16 Supreme Court Cases 715 (Sunita Kachwaha and others Vs. Anil Kachwaha)], and the judgment passed by Hon'ble Delhi High Court on 1st July, 2019 in ***Crl Revision P. No. 855 of 2018 (Farooq Ahmed Shala vs. Marie Chanel Giller)***

14. I have considered the rival submissions made by the learned counsel for the parties and the written submissions filed on behalf of the revisionist.

15. The provisions of Section 125, Cr.P.C. is to provide for a social justice falling within the swim of Articles 15 (3) and 39 of the Constitution of India, which have been enacted to protect the weaker section of the society like women and children. It is in the form of secular safeguard irrespective of personal law of the parties. The object is to compel a man to perform moral obligations towards the society in respect of maintaining his wife, children and old parents so that they may not face destitution and become the liability of the society or may be forced to adopt a life of vagrancy, immorality and crime for their subsistence or go astray. The proceedings are summary in nature and provide for a speedy remedy against starvation of a deserted wife, children or indigent parents. To enforce the substantial issues of civil law, the only remedy available is in Civil Court, therefore, findings recorded in proceedings under Section 125, Cr.P.C. are not final and parties are always at liberty to agitate their rights in Civil Court. Order under Section 125, Cr.P.C. does not finally determine the status, rights and obligations of the parties and it only provides for maintenance of indigent wives, children and parents.

16. In ***[(2015) 6 Supreme Court Cases 353 (Bhuvan Mohan Singh Vs. Meena and others)]*** Hon'ble Supreme Court observed as under:

“.....2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a

beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds...."

17. In *Crl Revision P. No. 855 of 2018 (Farooq Ahmed Shala vs. Marie Chanel Giller)* decided on 1st July, 2019, Delhi High Court observed as under:-

"..... 21. Petitioner has a legal, social and moral responsibility to not only maintain his wife but also his children. Even if assuming that the respondent is earning, the same cannot be a reason for the petitioner to avoid the responsibility and duty of maintaining his minor daughters.

22. A child for her upbringing does not only require money. A lot of time and effort goes in upbringing of a child. It would be incorrect to hold that both the parents are equally responsible for the expenses of the child. A mother who has custody of a child not only spends money on the upbringing of the child but also spent substantial time and effort in bringing up the child. One cannot put value to the time and effort put in by the mother in upbringing of the child. No doubt, mother, if she is earning, should also contribute towards the expenses of the child but the expenses cannot be divided equally between the two....."

18. In *[(2015) 5 Supreme Court Cases 705 (Shamima Farooqui Vs. Shahid Khan)] Hon'ble Supreme Court* observed as under;

"...15. While determining the quantum of maintenance, this Court in *Jasbir Kaur Sehgal Vs. District Judge, Dehradun* has held as follows:-

"8.....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."

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning. ..."

19. In *[(2014)16 Supreme Court Cases 715 (Sunita Kachwaha and others Vs. Anil Kachwaha)] Hon'ble Supreme Court* in observed as under:-

".....8. The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography

and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance....”

20. The case requires to be considered not only bearing in mind the aforesaid proposition of law but also considering that the powers of Revisional Court against such an order are very limited for the reason that in revisional jurisdiction the Court satisfies itself as to the correctness, legality and propriety of any finding, sentence or order and as to the regularity of the proceedings of the inferior Criminal Court.

21. In *Amur Chand Agrawal v. Shanti Bose and Anr.*, AIR 1973 SC 799, the Hon'ble Supreme Court has held that the revisional jurisdiction should normally be exercised in exceptional cases when there is a glaring defect in the proceedings or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice.

22. In *State of Orissa v. Nakula Sahu*, AIR 1979 SC 663, Hon'ble Supreme Court, placing reliance upon a large number of its judgments including *Akalu Aheer v. Ramdeo Ram*, AIR 1973 SC 2145, held that the power, being discretionary, has to be exercised judiciously and not arbitrarily or lightly. The Court held that "judicial discretion, as has often been said, means a discretion which is informed by tradition methodolised by analogy and discipline by system".

23. In *State of Karnataka v. Appu Balu Ingele*, AIR 1993 SC 1126=II (1992) CCR 458 (SC), Hon'ble Supreme Court held that in exercise of the revisional powers, it is not permissible for the Court to reappreciate the evidence. In *Pathumma and Anr. v. Muhammad*, AIR 1986 SC 1436, the Apex Court observed that High Court "committed an error in making a re-assessment of the evidence" as in its revisional jurisdiction it was "not justified in substituting its own view for that of the learned Magistrate on a question of fact".

24. If the instant case is examined in view of the aforesaid settled legal propositions, it is not permissible for the Court to reappreciate the evidence. More so, there is nothing on record to show that the

findings of facts recorded by the Family Court are perverse, based on no evidence or have been arrived contrary to the evidence on record.

25. In the case of maintenance, the Court has to see whether the wife has refused to live with her husband without any sufficient reason and it is also to be seen whether the husband has neglected to maintain his wife, without any valid reason. In the present case, admittedly, the parties are living separately from July, 2011 and the reason for living separately is physical and mental cruelty meted out to the wife and one of the just ground for refusal of wife to live with her husband is that her husband is in extra marital relationship with another woman.

26. The monetary relief granted under section 125 Cr.P.C. shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

27. Merely, because wife is capable of earning, is not sufficient ground to refuse claim of maintenance granted by Court to the minor daughters of the opposite party No. 2.

28. Plea advanced by the husband is that he does not have the means to pay or he does not have job or his business is not doing well, these are only the bald excuses and in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in the position to support himself, thus, he is under the legal obligation to support his minor children and her wives. So in these circumstances, the order of the learned family court to award the maintenance to the minor daughters of the revisionist is appropriate, just and legal.

29. So far as regard the house rent allowance awarded by the family court, is not just and proper. It is admitted fact that the respondent No. 2 is an Assistant Professor in NIFT and as per income tax return of assessment year 2018-2019, the annual gross total income of the opposite party No. 2 is Rs. 13,73,902/-. This is also an admitted fact that the opposite party No. 2 is presently living at her parental house alongwith her two daughters and as per salary slip, she also get the house rent allowance.

30. Since the opposite party No. 2 have already got the house rent allowance so, in my opinion, house rent allowance is not permissible under the maintenance allowance. Hence, the judgement and order of the family court regarding Rs. 20,000/- as rent allowance is liable to be quashed. It is also pertinent to mention that the rent allowance is also not come in the purview of maintenance allowance under section 125 Cr.P.C. So the award of maintenance allowance to the

minor children (opposite party Nos. 3 and 4), does not suffer from any illegality, impropriety, perversity or jurisdictional error. Finding of the court below for awarding maintenance to her minor daughter of Rs. 25,000/- each, is just and proper but Rs. 20,000/- as a house rent allowance is not inconsonance with the parameter of Section 125 Cr.P.C.

31. Under these facts and circumstances, revision is ***partly allowed*** with the observation that the children of opposite party No. 2 & the revisionist who are living with opposite party No. 2, will receive maintenance allowance of Rs. 25,000/- as awarded by the learned revisional court but so far as regard the house rent allowance which is awarded to the opposite party No. 2, is liable to be ***quashed***.

32. With the aforesaid direction/observation, this revision is ***disposed of***.

Order Date :-3.3.2021

Ankita