

Neutral Citation No. - 2023:AHC:227112

Reserved On: 25.08.2023

Delivered On: 01.12.2023

In Chamber

Case :- CRIMINAL REVISION No. - 3686 of 2023

Revisionist :- Lalit Singh

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Vineet Kumar Sahu, Abhinav Gaur, Uma Shankar Singh

Counsel for Opposite Party :- G.A., Prem Chandra Dwivedi

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard learned counsel for the revisionists, learned counsel for the opposite party Nos.2 and 3, learned AGA for the State and perused the material placed on record.
2. By means of instant criminal revision, the revisionist has assailed ex-parte judgement and order dated 23.12.2021 passed by the Additional Principal Judge, Family Court No.3, Agra in Maintenance Case No.999 of 2019 (Smt. Renu @ Shipra Verma and Another vs. Lalit Singh), under Section 125 Cr.P.C., Police Station Etmaddaula, District Agra and has also prayed for setting aside the recovery warrant dated 10.10.2022, passed by court below in Misc. Criminal Case No.138 of 2022, issued on application under Section 125(3) Cr.P.C.
3. Factual matrix of the case in brief are that the opposite party No.2 instituted a maintenance case under Section 125 Cr.P.C. before the Principal Judge, Family Court, seeking maintenance for herself and her minor son namely, Master Agastay, son of Lalit Singh claiming herself as guardian of the minor, with averment that her marriage with opposite party Lalit Singh was solemnized on 17.6.2010 according to Hindu rites and rituals in Agra. The people of her parental side spent around Rs.10 lacs in the marriage as gifts and dowry, which includes an Alto Car, Demand Draft of Rs.3 lacs, Rs.11,000/- cash, ornaments and households. However, the opposite party and his family members were not satisfied to

this and they began to demand Rs.5 lacs as additional dowry and when their demand could not be fulfilled by parents of the applicant, the opposite party and his family members began to harass her and subjected her to mental and physical cruelty. They also abused her. The applicant suffered all the humiliation and torture any how for some time and she became pregnant in the meanwhile. She was kicked out from her matrimonial home on 1.1.2011, on first occasion. She delivered a child at her parental place and thereafter she was sent to the place of opposite party after mediation of some respectable of locality. The behaviour of opposite was normal for some time but they again engaged in maar-peat, abusing and harassing the applicant and she was ultimately turned out from her matrimonial home on 7.8.2018. She informed her father regarding her ordeal. His father made a complaint at police station concerned and took the applicant alongwith him at his home. The applicant is not having any source of income. She is a housewife. She is not a skilled lady. The opposite party is having a good health. He is a mechanical engineer and his monthly income from all sources is around Rs.50,000/- per month and therefore, the opposite party be directed to pay Rs.15,000/- per month for maintenance of herself as well as her minor son. Process was issued to opposite party, who failed to appear despite the service of notice. Therefore, the proceeding were initiated ex-parte against him on 26.8.2021. The applicant filed her affidavit evidence 5-C, in which she supported the averments made by her in maintenance application. She also filed photographs of marriage, photocopy of Aadhar Card, and affidavit 7-C with regard to her income and liabilities.

4. Learned court below after considering the pleadings of the applicant and the documentary as well as oral evidence adduced by her, gave finding that on the basis of evidence on record, it is proved that the applicant is legally wedded wife of opposite party. Opposite party has deserted his wife and son and thus, failed to bear his matrimonial

obligations. The applicant is residing at her parental place alongwith her minor son. She is not having any source of income. She is a domestic women whereas opposite party is a mechanical engineer. His monthly earning is said to be Rs.50,000/- per month, however, no evidence has been placed on record in support of the monthly income of the opposite party. Although, income of opposite party is not certified, yet he is an able bodied person and has deliberately neglected to maintain his wife. The applicant has shown her academic qualification as M.A., B.A. in her affidavit of assets and liabilities but she has stated herself to be a homemaker. Version and evidence of the applicant has not been rebutted by opposite party due to his non-appearance in the proceeding. The applicant has been successful in proving her case ex-parte. The learned court below has awarded maintenance to the tune of Rs.6,000/- per month to the applicant and Rs.3,000/- per month to her minor son from the date of filing of application dated 17.9.2019, which is payable on 10th of each month.

5. As the revisionist has not complied with the order of court below regarding payment of maintenance as awarded to the applicant and her minor son, the applicant filed a Criminal Misc. Application Under Section 125(3) Cr.P.C. for issuing recovery warrant for a sum of Rs.2,52,000/-, as arrears of maintenance awarded in ex-parte judgement dated 23.12.2021. Learned In-charge Principal Judge issued a recovery warrant of Rs.2,52,000/- on 18.7.2022, the date on which the misc. execution application was moved. The applicant is also directed to take stapes.

6. Learned counsel for the revisionist submitted that the opposite party No.2 chose to live separately from the revisionist out of her free will and choice. She left her matrimonial home and went to the place of her parents in Agra for the first time on 19.7.2010 and on second time on 25.2.2010. The revisionist visited the place of parents of his wife to take her back with him as she was pregnant in February, 2011 but she refused to come

back Ghaziabad and informed the revisionist that she wanted to study for B.A. Entrance Examination, for which she already enrolled herself in a coaching institute in Agra. The revisionist has also filed a petition under Section 9 of Restitution of Conjugal rights in the court of Special Judge (S.D.), Ghaziabad, bearing Case No.1069 of 2011. On 4.8.2011, she gave birth to a male child. In spite of several requests of the revisionist, the opposite party No.2 refused to come back to the place of revisionist as she was insisting that she will only come back to her matrimonial home if her husband leaves her parents and agrees to live with her separately from them. The opposite party No.2 also filed an application under Section 156(3) Cr.P.C. on 21.9.2011, before the Court of Magistrate for registration of a case and investigation, which was allowed by the court vide order dated 30.9.2011 and FIR was lodged on 8.10.2011, under Sections 498-A, 323, 504, 506 IPC and 3/4 of D.P. Act against revisionist, in which compromise has already been taken place between the parties. In fact, the revisionist has never made any demand of dowry from the opposite party No.2 or her family members. He never subjected her to harassment or torture due to non fulfilment of alleged demand of additional dowry. The opposite party No.2 is living at her parental place without any rhyme and reason and the future of minor son of revisionist is being ruined. The revisionist is not mechanical engineer but a mechanic who works in a private shops to earn his livelihood. The relationship of the revisionist and opposite party No.2 was cordial, which resulted in birth of a son out of their wedlock. He submitted that as the opposite party No.2 herself left her matrimonial home and shifted to her parental place without there being any justified reason, the ex-parte maintenance order is not sustainable under law. The maintenance petition was barred by Section 125(4) of Cr.P.C., which provides that 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 and on proof that any wife in whose favour an order has been made under this section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order, under Sub-Section (5) of Section 125 Cr.P.C. The revisionist was previously working in a software company but he lost his job. There is no evidence of any violence caused by the revisionist against the opposite party No.2.

7. Learned counsel for the revisionist placed reliance on the judgment of Hon'ble Apex Court in **Deb Narayan Halder vs. Anushree Halder (SMT), (2003) 11 SCC 303**, wherein in paragraph No.20, it is held as under:-

“20. We therefore hold that the High Court was not justified in setting aside the findings recorded by the learned Judicial Magistrate. We have reached this conclusion after appreciating the evidence on record since there is no discussion of the evidence in the judgment of the High Court. Counsel for the respondent posed before us a question as a part of his submission as to why the respondent should leave her matrimonial home without any reason. In cases where there is a dispute between husband and wife it is very difficult to unravel the true reason for the dispute. After separation when the relationship turns sour, all sorts of allegations and counter allegations are made against each other. Evidence of contemporaneous nature therefore plays an important role in such cases as it may reveals the thinking and attitude of the parties towards each other at the relevant time. Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature. If really the respondent was subjected to cruelty and harassment in the manner alleged by her, we have no doubt she would have written about such treatment to her friends and relatives with whom she may have corresponded. The reports allegedly made by her to the police may have thrown some light on this aspect of the matter. Such evidence is completely absent in this case. It appears to us that the parties lived happily for many years after

the marriage till about the year 1996, whereafter there was some misunderstanding which ultimately resulted in their separation. Why this happened, it is difficult to fathom, but the evidence on record does not convince us that the respondent was subjected to torture and harassment by the appellant, and certainly not for the reasons alleged by her. The Court is not permitted to conjecture and surmise. It must base its findings on the evidence produced before it by the parties. The enquiry by the Court is restricted to the evidence on record and the case pleaded by the parties. It is not permissible to the Court to conjecture and surmise and make out a third case not pleaded by the parties only to answer the query such as the one posed to us.”

8. Learned counsel for the appellant further placed reliance on the judgement of this Court in **Criminal Revision No.4498 of 2022 (Gaurav Vashisth vs. State and Another)**, wherein it is observed as under:-

“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.”

9. Per contra, learned counsel for the opposite party No.2 submitted that there is no illegality or irregularity in impugned order passed by learned court below. The revision is devoid of merits and has been preferred only with a view to delay the payment of maintenance awarded by learned court below to the opposite party No.2- the original applicant. She is not having any source of income. She is dependant on her parents for maintenance of herself and her minor son. The revisionist -husband is possessed of sufficient means to provide maintenance to the applicant and her minor son, who is living with her. Learned trial court has issued a

recovery warrant for arrears of maintenance vide impugned order dated 10.10.2022 but the revisionist is delaying the proceeding on pretext of present revision. He deliberately failed to appear before the court below after service of process on him and court was compelled to issue recovery warrant against him for payment of arrears of maintenance. The revisionist has deposited a meagre amount of Rs.20,000/- out of total arrears of Rs.4,14,000/-, which is payable till date.

10. From perusal of supplementary affidavit, it appears that in the case lodged vide Crime No.771 of 2011, under Sections 498-A, 323, 504, 506 IPC & Section 3/4 D.P. Act, Police Station Etmaddaula, District Agra, at the instance of opposite party No.2 against revisionist and others, parties entered into compromise, which was verified on directions of this Court dated 8.9.2016, on 17.10.2016 and some interim order is continuing in that case in favour of revisionist and his family members in respect of said offence, on the basis of compromise. It also appears that the prior to present case, the opposite party No.2 filed under Section 125 Cr.P.C., which was dismissed in default and thereafter, parties started living as husband and wife since 30.3.2015. A complaint case was also filed by opposite party No.2 against revisionist and his family members in the year 2013, in which the revisionist and others were summoned for charge under Section 406 IPC and the same was challenged through Application Under Section 482 No.35140 of 2014, before this Court and an interim order has been passed on 29.8.2014 in said application. A report of Mediator dated 1.2.2012 is also placed on record, which reveals that the revisionist and opposite party No.2 had settled their dispute through mediation before Allahabad High Court Mediation and Conciliation Centre and a settlement agreement was entered on 1.2.2012, wherein they undertook that they have no further claims and demands against each other with respect to Criminal Misc. Writ Petition No.20393 of 2011. The revisionist has also filed a certificate issued by Delhi Public I.T.I., in

which it is stated that he was employed in the institute from 6.6.2011 to 16.9.2011 and he was appointed as Principal there.

11. In the light of aforesaid facts and circumstances and also in view of fact that in impugned judgement the mode of service of notice/summon to revisionist in proceeding under Section 125 Cr.P.C. is not mentioned, therefore, the claim of the revisionist that he was not aware of the maintenance proceeding initiated by opposite party No.2 as the dispute between the parties was settled through compromise dated 4.3.2016 and no notice of said maintenance case was served upon him, cannot be brushed aside. This is admitted fact that impugned judgement is ex-parte. He has stated on affidavit that he only came to know about the impugned judgement and order dated 12.10.2022 when recovery warrant was issued in proceeding under Section 125(3) Cr.P.C., thus, with a view to afford an opportunity to the revisionist to present his case before the court below and also to ensure the just decision of maintenance case filed under Section 125 Cr.P.C. i.e. Maintenance Case No.999 of 2019, the impugned judgement and order is liable to be set aside, however, subject fulfilment of to certain conditions laid below, to ensure sustenance of the opposite party Nos.2 and 3 during pendency of maintenance case after its restoration.

12. Accordingly, present revision stands **allowed**.

13. The impugned orders passed in Maintenance Case No.999 of 2019 as well as in Misc. Case under Section 125(3) Cr.P.C. are set aside, subject to conditions that:-

(I) The revisionist shall deposit Rs.1,00,000/- as cost before the court below within two months, which will be payable to respondent No.2 and will pay Rs.5000/- per month in aggregate as interim maintenance to the respondent No.2 and her minor son for their sustenance during pendency of said maintenance case, which will be payable on 10th of December and

on 10th of each succeeding month. The maintenance case shall stand restored to its original number with above conditions and in case of non-fulfilment of these conditions, this order shall stand vacated. These amounts will be adjusted towards arrears of maintenance, in case application for maintenance is ultimately allowed.

(II) The interim maintenance to the tune of Rs.5000/- will be payable on 10th of each calender month till disposal of the application for maintenance under Section 125 Cr.P.C., dated 17.9.2019, on regular basis to the opposite party No.2 and 3 and in case, she refused to receive the money, the same will be deposited before the court below on regular basis. The court below will make every efforts to decide the maintenance case as far as possible within 6 months after giving opportunity of hearing and leading evidence to parties.

14. Any default in compliance of this order by the revisionist will incur *suo motu* cancellation of this order.

Order Date :- 1.12.2023

Kamarjahan