A.F.R.
Reserved on: 28.04.2022
Delivered on: 13.05.2022

Case :- CRIMINAL REVISION No. - 763 of 2018
Revisionist :- Arshiya Rizvi And Anr.
Opposite Party :- State Of U.P. And Anr.
Counsel for Revisionist :- Nadeem Murtaza, Mohd. Mohsin
Counsel for Opposite Party :- Govt. Advocate, Purnendu Chakravarty
Hon'ble Brij Raj Singh,J.

The present revision has been preferred with a prayer to quash the judgment and order dated 22.05.2018, passed by the Principal Judge/A.D.J., Family Court, Lucknow in Criminal Case No.360/2007 (Baby Sukaina @ Zahra Rizvi and another Vs. Shri Adil Rizvi), so far as it relates to the rejection of the application under Section 125 Cr.P.C. in respect of revisionist no.1 and also enhance the amount of maintenance awarded to the revisionist no.2.

2. Revisionist no.1-wife and revisionist no.2-daughter of opposite party no.2, filed application under Section 125 Cr.P.C. stating therein that revisionist no.1 was married to opposite party no.2 on 15.01.2003 at Lucknow according to Muslim religion (Siya) rites. After marriage, revisionist no.1 - wife came to the house of opposite party no.2 – Shri Adil Rizvi and led her marital obligation. Out of the wedlock of revisionist no.1 and opposite party no.2, a girl child was born on 07.07.2004. It has been further mentioned in the application that parents of revisionist no.1 - wife had given dowry as per their financial condition

like golden and silver jewelary, clothes, colour television, C.D. player, washing machine, fridge, A.C. and furniture etc. Rs.40,000/- and a motorcycle was demanded by the father of opposite party no.2. His father asked the revisionist no.1 to bring the aforesaid amount and motorcycle from her parents. The mother of opposite party no.2, Smt. Khurshid Zamal @ Rani asked revisionist no.1 to bring one Maruti Car, one Generator as dowry as her father promised to give the same. The application further indicates that after sometime of marriage, the relation between revisionist no.1 - wife and opposite party no.2 – husband started getting strange disposition and they created pressure to bring dowry as mentioned aforesaid. When the dowry demand could not be fulfilled by revisionist no.1, opposite party no.2 and his family members beaten her on 15.09.2003. When the said fact was known to parents of revisionist no.1, they complained in police and on his complain, opposite party no.2 and his family members requested to pardon them and made promise that they would not do any act of harassment against her. The revisionist no.1 was again beaten by opposite party no.2 and his mother on 05.05.2004 and they threw-out her from their house. She reached her parents' house and she was hospitalized in Vardan Nursing Home, where a girl child Sukaina @ Zahra Rizvi was born. The opposite party no.2 was not providing any maintenance, therefore, she filed an application under Section 125 Cr.P.C. for maintenance.

3. The opposite party no.2 filed objection before the court below and denied the incident dated 26.11.2003 and stated that she has not produced any evidence regarding

that incident. He further stated that he had borne the expenditure of Nursing Home at the time of birth of his daughter. He further stated that the revisionist no.1 is graduate and earning Rs.4,000/- per month from tuition. He further stated that the father of revisionist no.1 is a gazetted officer and he is receiving salary at Rs.40,000/- and her mother is also a teacher in primary school and her salary is Rs.22,000/- per month. It was also stated that the financial position of revisionist no.1 is strong, therefore, there is no occasion to provide her maintenance as she can maintain herself.

4. After hearing both parties, the judgment has been passed on 22.05.2018 and the application for maintenance under Section 125 Cr.P.C. filed by revisionist no.1, has been dismissed. However, the application in respect of revisionist no.2 has been allowed and Rs.5,000/- per month has been awarded as interim maintenance. Hence, the present revision has been filed by the revisionists.

5. Heard Sri Nadeem Murtaza, learned counsel for the revisionists, Sri Diwakar Singh, learned A.G.A. for the State and Sri Purnendu Chakravarty, learned counsel for opposite party no.2.

6. Learned counsel for the revisionists has submitted that the court below has recorded incorrect finding wherein it has been observed that it is the revisionist no.1 who has left the house of opposite party no.2. He has further advanced submission that the court below has given erroneous finding wherein it is held that revisionist no.1 was not able to show any injury regarding physical

assault made by her in-laws. It has been further argued that it was binding upon the court below that once it settled that revisionist no.1 is wife, she is entitled for maintenance. The court below also misread the judgment passed in the case of **Sunita Kachwaha and others Vs. Anil Kachwaha, (2014) 16 SCC 715**. The cruelty done by her in-laws, has not been considered and court below passed the order on the presumption that the revisionist has deserted the husband, therefore, she is not entitled for maintenance.

7. Learned counsel for the revisionists has placed reliance on the following judgments:-

(i) **Sunita Kachwaha and others Vs. Anil Kachwaha, (2014) 16 SCC 715**.

(ii) **Shamima Farooqui Vs. Shahid Khan, (2015) 5 SCC 705**.

(iii) **Shayara Bano Vs. Union of India and others (Ministry of Women and Child Development Secretary and others), (2017) 9 SCC 1**.

(iv) **Iqbal Bano Vs. State of U.P. and others, (2007) 6 SCC 785**.

(v) **Smt. Kiran Singh Vs. State of U.P. and another passed in Criminal Revision No.896 of 2019**.

8. Learned counsel for the revisionists has further submitted that the court below has passed the judgment against the record and considered the income of the opposite party no.2 as Rs.30,000/- but in the statement and cross examination before the court below the opposite party no.2 has admitted that he was getting Rs.47,000/- salary; thus the maintenance awarded in favour of revisionist no.2 at Rs.5,000/- is not sufficient as the salary of opposite party no.2 was Rs.47,000/- and

calculation which was done Rs.30,000/-, is totally perverse and illegal.

9. Sri Purnendu Chakravarty, learned counsel for opposite party no.2 has submitted that in the revisional jurisdiction under Section 397 Cr.P.C. the court has limited scope to appreciate the fact for which finding has already been recorded by the court below. He has further submitted that the court below has passed the order in letter and spirit of under Section 125 (4) Cr.P.C. because it is the revisionist no.1 who had refused to live in the house of opposite party no.2; therefore, she is not entitled for maintenance. He has next submitted that arrears for enhancement in respect of the maintenance of child i.e. the revisionist no.2 cannot be looked into in the revisional jurisdiction because the court below had considered the income and salary of the opposite party no.2 and has passed the order accordingly which cannot be interfered in the revisional jurisdiction.

10. Sri Chakravarty has further submitted that there is no perversity, illegality in the order passed by the court below, therefore, this Court cannot interfere in the case. It has been further submitted that the facts considered by the court below are not contrary to the law and the court below has not recorded finding against the record and evidence. The order passed by the court below is justified and needs no interference.

11. It has been further argued that as per Muslim Personal Law the revisionist no.1 is divorced Muslim wife, therefore, she has to pursue the maintenance case before the Muslim Women (Protection of Rights on Divorce) Act,

1986 (here-in-after referred to as the "Act, 1986"). He has vehemently argued that after divorce she is not entitled for maintenance.

12. The argument of Sri Chakravarty, learned counsel for opposite party no.2, is that the revisionist is entitled to seek remedy as provided in Act, 1986, is not sustainable in the eyes of law.

13. The issue in the case of the present controversy of **Danial Latifi and another Vs. Union of India, MANU/SC/0595/2001 : 2001 Criminal Law Journal 4660** came up and in para 36, the Act 1986 is considered, which is reproduced below:-

> *"**36.** While upholding the validity of the Act, we may sum up our conclusions:*
>
> *(1) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3 (i) (a) of the Act.*
>
> *(2) Liability of the Muslim husband to his divorced wife arising under Section 3 (i) (a) of the Act to pay maintenance is not confined to the iddat period.*
>
> *(3) A divorced Muslim woman who is not remarried and who is not able to maintain herself after the iddat period can proceed as provided under Section 4 of the Act against her relative who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law for such divorced woman including her children and parents. If any of her relative being unable to pay maintenance, the Magistrate may direct the State Waqf Board established under the Act to pay maintenance.*
>
> *(4) The provisions of the Act do not offend Article 14, 15 and 21 of the Indian Constitution."*

14. In the Case of ***Iqbal Bano Vs. State of U.P. and***

others, (2007) 6 SCC 785. The Hon'ble Supreme Court had observed that proceedings under Section 125 Cr.P.C. are civil in nature even if the Court notices that the divorced women in the case in question, it is always open to court to treat it as an petition under the Act considering the beneficial nature of the legislation. Paragraph no.9 of the **Iqbal Bano *(supra)*** is quoted below:-

> *"**9.** Proceedings under Section 125 Cr.P.C. are civil in nature. Even if the Court notices that there was a divorced woman in the case in question, it was open to him to treat it as a petition under the Act considering the beneficial nature of the legislation. Proceedings under Section 125 Cr.P.C. and claims made under the Act are tried by the same Court. In Vijay Kumar Prasad v. State of Bihar and ors. [(2004) 5 SCC 196], it was held that proceedings under Section 125 Cr.P.C. are civil in nature. It was noted as follows:*
>
> > *"14. The basic distinction between Section 488 of the old Code and Section 126 of the Code is that Section 126 has essentially enlarged the venue of proceedings for maintenance so as to move the place where the wife may be residing on the date of application. The change was thought necessary because of certain observations by the Law Commission, taking note of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided together. As noted by this Court in several cases, proceedings under Section 125 of the Code are of civil nature. Unlike clauses (b) and (c) of Section 126 (1) an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives."*

15. In my opinion the proceeding under Section 125 Cr.P.C. is available to revisionist once she had taken resort to proceeding under Section 125 Cr.P.C. The

argument of Sri Chakravarty regarding the alternative remedy provided under the Act, 1986 has no force.

16. Sri Chakravarty has submitted that the revisionist has been divorced by the husband and after divorce she is not entitled for maintenance. This question has come up before Hon'ble the Supreme Court in the case of **Shayara Bano Vs. Union of India and others (Ministry of Women and Child Development Secretary and others), (2017) 9 SCC 1**. The Supreme Court has dealt the issue of maintenance under Section 125 Cr.P.C. pronounced that divorced woman is also entitled for maintenance to succor her need. Reference of Verses 224 to 228 contained in Section 28 of Sura II of the Quran are extracted below:-

*"**224.** And make not*
God's (name) an excuse
In your oaths against
Doing good, or acting rightly,
Or making peace
Between persons;
For God is one
Who heareth and knoweth
All things.
***225.** God will not*
Call you to account
For thoughtlessness
In your oaths,
But for the intention
In your hearts;
And He is
Oft-forgiving
Most Forbearing.
***226.** For those who take*
An oath for abstention
From their wives,
A waiting for four months
Is ordained;
If then they return,
God is Oft-forgiving,
Most Merciful.

227. *But if their intention*
Is firm for divorce,
God heareth
And knoweth all things.
228. *Divorced women*
Shall wait concerning themselves
For three monthly periods.
Nor is it lawful for them
To hide what God
Hath created in their wombs,
If they have faith
In God and the Last Day.
And their husbands
Have the better right
To take them back
In that period, if
They wish for reconciliation.
And women shall have rights
Similar to the rights
Against them, according
To what is equitable;
But men have a degree
(Of advantage) over them
And God is Exalted in Power
Wise."

17. Verses from 229 to 231 contained in Section 29 of Sura II, and Verses 232 and 233 included in Section 30 of Sura II, as also Verse 237 contained in Section 31 in Sura II, are relevant on the issue of divorce, which are extracted below:-

*"**229.** A divorce is only*
Permissible twice: after that,
The parties should either hold
Together on equitable terms,
Or separate with kindness.
It is not lawful for you,
(Men), to take back
Any of your gifts (from your wives),
Except when both parties
Fear that they would be
Unable to keep the limits
Ordained by God.
If ye (judges) do indeed
Fear that they would be
Unable to keep the limits

Ordained by God,
There is no blame on either
Of them if she give
Something for her freedom.
These are the limits
Ordained by God;
So do not transgress them
If any do transgress
The limits ordained by God,
Such persons wrong
(Themselves as well as others).
230.*So if a husband*
Divorces his wife (irrevocably),
He cannot, after that,
Re-marry her until
After she has married
Another husband and
He has divorced her.
In that case there is
No blame on either of them
If they re-unite, provided
They feel that they
Can keep the limits
Ordained by God.
Such are the limits
Ordained by God,
Which He makes plain
To those who understand.
231.*When ye divorce*
Women, and they fulfil
The term of their ('Iddat')
Either taken them back
On equitable terms
Or set them free
On equitable terms;
But do not take them back
To injure them, (or) to take
Undue advantage;
If any one does that,
He wrongs his own soul.
Do not treat God's Signs
As a jest,
But solemnly rehearse
God's favours on you,
And the fact that He
Send down to you
The Book
And Wisdom,
For your instruction.
And fear God,
And know that God
Is well-acquainted
With all things."

18. The Hon'ble Supreme Court has considered the issue of divorce in Muslim community in the case of **Shayara Bano (supra).** Paragraph nos. 134, 135, 137, 392 and 393 of the said judgment, are quoted below:-

> ***"134.*** *The "verses" referred to above need to be understood along with Verses 232 and 233, contained in Section 20 of Sura II of the Quran. The above two "verses" are extracted below:-*
>
> ***232.*** *When ye divorce*
> *Women, and they fulfil*
> *The term of their ('Iddat'),*
> *Do not prevent them*
> *From marrying*
> *Their (former) husbands,*
> *If they mutually agree*
> *On equitable terms.*
> *This instruction*
> *Is for all amongst you,*
> *Who believe in God*
> *And the Last Day.*
> *That is (the course Making for) more virtue*
> *And purity amongst you,*
> *And God knows,*
> *And ye know not.*
> ***233.*** *The mothers shall give suck*
> *To their offspring*
> *For two whole years,*
> *If the father desires*
> *To complete the term.*
> *But he shall bear the cost*
> *Of their food and clothing*
> *On equitable terms.*
> *No soul shall have*
> *A burden laid on it*
> *Greater than it can bear.*
> *No mother shall be*
> *Treated unfairly*
> *On account of his child,*
> *An heir shall be chargeable*
> *In the same way.*
> *If they both decide*
> *On weaning,*
> *By mutual consent,*
> *And after due consultation,*
> *There is no blame on them.*
> *If ye decide*
> *On a foster-mother*
> *For your offspring,*
> *There is no blame on you,*
> *Provided ye pay (the mother)*

What ye offered,
On equitable terms.
But fear God and know
That God sees well
What ye do."

135. *A perusal of the above 'verses' reveals, that the termination of the contract of marriage, is treated as a serious matter for family and social life. And as such, every lawful advice, which can bring back those who had lived together earlier, provided there is mutual love and they can live with each other on honourable terms, is commended. After following the above parameters, the Quran ordains, that it is not right for outsiders to prevent the reunion of the husband and wife. 'Verse' 233 is in the midst of the regulations on divorce. It applies primarily to cases of divorce, where some definite rule is necessary, as the father and mother would not, on account of divorce, probably be on good terms, and the interest of children must be safeguarded. Since the language of 'verse' 233 is general, the edict contained therein is interpreted, as applying equally to the father and mother, inasmuch as, each must fulfil his or her part, in the fostering of children.*

137. *Reference is also necessary to verses'34 and 35, contained in Section 6, as well as, verse 128 contained in 'Section 19, of Sura IV. All the above verses are extracted below:*

*"**34.** Men are the protectors*
And maintainers of women,
Because God has given
The one more (strength)
Than the other, and because
They support them
From their means.
Therefore the righteous women
Are devoutly obedient, and guard
In (the husband's) absence
What God would have them
guard.
As to those women
On whose part ye fear
Disloyalty and ill-conduct,
Admonish them (first),
(Next), refuse to share their beds,
(And last) beat them (lightly);
But if they return to obedience,
Seek not against them
Means (of annoyance):
For God is Most High,
Great (above you all).
35. *If ye fear a breach*

Between them twain,
Appoint (two) arbiters,
One from his family,
And the other from hers;
If they wish for peace,
God will cause
Their reconciliation:
For God hath full knowledge,
And is acquainted
With all things."
Section 19, Sura IV
*"**128.** If a wife fears*
Cruelty or desertion
On her husband's part,
There is no blame on them,
If they arrange
An amicable settlement
Between themselves;
And such settlement is best;
Even though men's souls
Are swayed by greed.
But if ye do good
And practice self-restraint
God is well-acquainted
With all that ye do."

392. *In view of the position expressed above, we are satisfied, that this is a case which presents a situation where this Court should exercise its discretion to issue appropriate directions under Article 142 of the Constitution. We therefore hereby direct, the Union of India to consider appropriate legislation, particularly with reference to 'talaq-e-biddat'. We hope and expect, that the contemplated legislation will also take into consideration advances in Muslim Personal Law – "Shariat", as have been corrected by legislation the world over, even by theocratic Islamic States. When the British Rulers in India provided succour to Muslims by legislation, and when remedial measures have been adopted by the Muslim world, we find no reason, for an independent India, to lag behind. Measures have been adopted for other religious denominations (see Part IX – Reforms to Personal Law in India, above), even in India, but not for the Muslims. We would, therefore, implore the legislature, to bestow its thoughtful consideration, to this issue of paramount importance. We would also beseech different political parties to keep their individual*

political gains apart, while considering the necessary measures requiring legislation.

393. *Till such time as legislation in the matter is considered, we are satisfied in injuncting Muslim husbands, from pronouncing "talaq-e-biddat" as a means for severing their matrimonial relationship. The instant injunction, shall in the first instance, be operative for a period of six months. If the legislative process commences before the expiry of the period of six months, and a positive decision emerges towards redefining "talaq-e-biddat" (three pronouncements of "talaq", at one and the same time), as one, or alternatively, if it is decided that the practice of "talaq-e-biddat" be done away with altogether, the injunction would continue, till legislation is finally enacted. Failing which, the injunction shall cease to operate."*

19. It is admitted fact that revisionist no.1 and opposite party no.2 are wife and husband and they were married on 15.01.2003 which is uncontroverted. The revisionist no.1 was divorced but as per the judgment of Hon'ble Supreme Court passed in the case of **Shayara Bano Vs. Union of India and others (Ministry of Women and Child Development Secretary and others), (2017) 9 SCC 1** wherein it has been pronounced that if the divorce is declared in one go and the Fatava is issued, the same cannot be legal divorce and it has no legal force. The divorce given by opposite party no.2 was not in accordance with the Quoran therefore, the divorce given by the opposite party no.2 was not in accordance with law. Quoran is the only source in which the voice of Allah, Mohammad Sahab have been recited in Aayats. The divorce can be given in accordance with the "verses" which are envisaged in Quoran. The said fact can be seen in Sure Bakar, Sura No.II Aayat No.228, Sure Nisha, Sure No.4, Aayat No.3, 19, 35 and 128 and Sure Talaq Sure No.65, Aayat No.1 and 2. It is thus clear that Talaq

given on 05.04.2005 was not in accordance with law, therefore, in view of the judgment of Hon'ble the Supreme Court passed in the case of **Iqbal Bano Vs. State of U.P. and others, (2007) 6 SCC 785,** it was not accordance with law and the opposite party no.2 could not prove the divorce as per law.

20. The court has given finding that the revisionist no.1 was not examined by the doctor and there is no medical report to that effect; therefore, the fact narrated by her regarding the physical assault is erroneous. The court below passed the order that opposite party no.2 had not deserted her, rather, the revisionist no.1 had left the house on her own will. It has been further recorded by the court below that in absence of physical assault as stated by revisionist no.1, it cannot be interfered that any cruelty was done by the husband.

21. The finding recorded by the court below is wrong. Section 125 Cr.P.C. is to be read in harmonious construction and only on the basis of Section 125 (4) Cr.P.C. the court came to the conclusion that the revisionist no.1 was deserted because she could not produce the evidence of physical assault and cruelty. The court has not considered the fact that specific averment of dowry demand as well as cruelty has been made by revisionist no.1 in her statement as well as in her application. She deposed the fact before the court below that she was harassed and forced to leave the house of her husband. She stated that her in-laws had mentally tortured and thrown her from house, therefore, she was living in her parents' house. It is surprising to note the fact

that the court below has overlooked all the factual aspects and has considered the irrelevant facts to defeat the purpose of section 125 Cr.P.C. which has been explained in various judgments of Hon'ble Supreme Court. The court below has mentioned judgment of **Sunita Kachwaha (supra)** but while applying the same he totally overlooked the judgment of Hon'ble Supreme Court. Para 6, 7, 8, 9 of **Sunita Kachwaha (supra)** supports the case of revisionist no.1, which are quoted below:

> *"**6.** The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant-wife and the respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.*
>
> ***7.** Inability to maintain herself is the precondition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance.*
>
> ***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 the*

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.

9. *The Family Court had in extenso referred to the respondent's salary and his economic condition. The respondent is stated to be an Engineer in PHE, Kota. He is in Government service and according to the pay certificate then produced before the Family Court, he was getting salary of Rs.20,268/- per month. In her evidence, the appellant wife has also stated that the respondent owns a very big house of his own in which he is said to have opened a hostel for boys and girls and is earning a substantial income. She has also stated that the respondent owns another house at Talmandi Sabji Kota, Rajasthan and is receiving rental income of Rs.4,500/- per month. Having regard to the salary and economic condition of the respondent, the Family Court has awarded maintenance of Rs.3,000/- to the wife and Rs.2,500/- to each of the daughters, in total Rs.8,000/- per month. It is stated that the maintenance amount awarded to the daughters has been subsequently enhanced to Rs.10,000/- per month. The maintenance amount of Rs.3,000/- per month awarded to the wife appears to be minimal and in our view, the High Court ought not to have set aside the award of maintenance. The learned counsel for the appellants prayed for enhancement of the quantum of maintenance to the appellant-wife. We are not inclined to go into the said submission, but liberty is reserved to the appellant wife to seek remedy before the appropriate court".*

22. Sri Nadeem Murtaza, learned counsel for the revisionists has further relied upon the judgment in the case of **Shamima Farooqui Vs. Shahid Khan, [(2015) 5**

SCC 705]. Relevant paragraph no.14 of the said judgment is quoted below:-

> ***"14.*** *Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs.17,654/-. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs.2,000/-. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs.2,000/- per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right."*

23. Similarly, Sri Murtaza has also relied upon a judgment passed by this Court in the case of **Smt. Kiran Singh Vs. State of U.P. and another [Criminal Revision No. 896 of 2019, decided on 26.04.2022]**. Paragraphs 9 and 10 of the said judgment which are relevant, are quoted below:-

> *"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 mainteance 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."*

24. Hon'ble Supreme Court in the case of **Sunita Kachwaha (supra)** has observed that High Court was not right in going into the intricacies of dispute between the appellant-wife and the respondent and observing that the appellant wife on her own left the matrimonial house and therefore she was not entitled to maintenance. The Supreme Court has recorded the finding that the wife must positively aver and prove that she is unable to maintain herself. However, where the wife states that she has great hardships in maintaining herself and daughters, while her husband's economic condition is quite good, wife would be entitled to maintenance.

25. In view of the aforesaid discussion, I over-rule the argument advanced by Sri Chakravarty, learned counsel for opposite party no.2 and I hold that the wife-revisionist is entitled for maintenance under Section 125 Cr.P.C.

26. The other point is very important to note that the court below has considered the income of the opposite party no.2 as Rs.30,000/- per month whereas the cross examination of D.W.-1 (opposite party no.2) indicates that he has admitted on record that his salary is Rs.47,000/-, thus, the finding in respect of income of the opposite party no.2 is running contrary to the records available.

27. In the submission of Sri Chakravarty, learned counsel for the opposite party no.2, has no legal force wherein he has submitted that under Section 397 Cr.P.C., which is revisional jurisdiction, the court has no power to re-appreciate the evidence. The High Court has ample power to see the illegality, perversity and error committed by the court below. In the present case, the issue of divorce under Section 125 Cr.P.C. has been decided and revisionist has been refused the maintenance. In the present case, the finding runs against the record and not in accordance with law. The Court has ample power to correct the order and take appropriate steps under the revisional jurisdiction; thus, the argument of Sri Chakravarty has no force.

28. In my opinion, once it is admitted on record that the salary of opposite party no.2 is Rs.47,000/-, the court below passed erroneous order by considering the income of opposite party no.2 as Rs.30,000/- only.

29. In view of the aforesaid factual and legal aspect, I am of the view that the order impugned dated 22.05.2018 is erroneous and cannot survive in the eyes of law, therefore, I set aside the impugned order for the aforesaid reasons.

30. The application for maintenance filed by revisionist no.1 is **allowed** and it is observed that she will be entitled for Rs.7,000/- per month as maintenance. She will be given maintenance Rs.1,500/- from 11.05.2007 to January, 2010; Rs.2,000/- from February 2010 to December 2014; Rs.4,000/- from January 2015 to May 2018 and Rs.7,000/- from January 2018 onwards.

31. Insofar as the prayer for enhancement of maintenance in favour of opposite party no.2 is concerned, I am not inclined to pass any order for the reason that I have awarded Rs.7,000/- per month to the revisionist no.1 reckoning the total salary of the opposite party No. 2 as Rs.47,000/-; thus total Rs.7,000 (in favour of revisionist no.1) + Rs.5,000 (in favour of revisionist no.2) = Rs.12,000/- of total salary of Rs.47,000/-, is justified. The order impugned dated 22.05.2018 is set aside in part and it is modified according to the observation made above.

Order Date:- 13.05.2022
Atul

(Brij Raj Singh, J.)