

Reserved on 16.01.2023

Delivered on 07.02.2023

Court No. - 88

Case :- CRIMINAL REVISION No. - 811 of 2022

Revisionist :- Bitola @ Rinku

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

Counsel for Revisionist :- Ravindra Kumar

Counsel for Opposite Party :- G.A.,Pradeep Kumar

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the revisionist and learned AGA for the State. None has appeared on behalf of opposite party No.2 despite service of notice.

2. This criminal revision has been preferred against the judgement and order dated 02.02.2022, passed by the learned Additional Principal Judge, Family Court, Fatehpur, in Case No.122 of 2016 (Bitola @ Rinku Vs. Dharmender), whereby the application of revisionist under Section 125 CrPC for maintenance, has been rejected.

3. Learned counsel for revisionist submitted that the revisionist is wife of the opposite party No.2 and their marriage has taken place in the year 2013 but after marriage she was harassed by the opposite party No.2 and his family members and that in the month of November, 2014, she was forced to leave her matrimonial home. Referring to the averments and evidence of the parties, it was submitted that there is sufficient evidence to show that the revisionist has sufficient cause and reasons to live separately but her evidence has not been considered by the court below in correct perspective and the case of revisionist was dismissed on the ground that the revisionist is residing separately without any just cause. The alleged decree of restitution of conjugal rights passed in favour of the opposite party No.2 cannot be the basis to reject the claim of maintenance. It was further submitted that revisionist has no source of income to maintain herself. The findings rendered by the court below are not based on evidence and thus, impugned order is liable to be set aside. In support of his submissions, learned counsel for revisionist has placed reliance upon the decision of Smt. Kiran Singh vs.

State of U.P. and another [Criminal Revision No.896 of 2019], decided on 26.04.2022.

4. Learned AGA submits that there is no illegality or perversity in the impugned order.

5. I have considered the submissions and perused the record.

6. Chapter IX of Code of Criminal Procedure deals with the order for maintenance of wives, children and parents. As per section 125 of Cr. P. C. if any person having sufficient means neglects or refuses to maintain his wife, his legitimate or illegitimate minor children, whether married or not, and his father or mother unable to maintain themselves, the Magistrate First Class upon proof of such refusal or neglect direct such person to make monthly allowances and to pay the same to such persons from time to time. It is well established that object of grant of maintenance is to afford a subsistence allowance to the wife who is not able to maintain herself. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. Maintenance awarded to a wife is not a bounty. It is awarded to her so that she can survive. The fact that time is spent between the date of the application and a final adjudication and an award in favour of the wife, does not mean that she had enough funds to maintain herself. The provisions of maintenance of wives and children intend to serve a social purpose [see *Jagir Kaur & Anr. v. Jaswant Singh* [AIR 1963 SC 1521]. In *Nanak Chand v. Chandra Kishore Aggarwal & Ors* [1969 (3) SCC 802, the Supreme Court, discussing Section 488 of the old Cr.P.C, held that Section 488 provides a summary remedy and is applicable to all persons belonging to any religion and has no relationship with the personal law of the parties. In **Captain Ramesh Chander Kaushal v. Veena Kaushal and Ors.** [AIR 1978 SC 1807], the Court held that Section 125 is a reincarnation of Section 488 of the Cr.P.C. of 1898 except for the fact that parents have also been brought into the category of persons entitled for maintenance. It was observed that this provision is a measure of social justice specially enacted to protect, and inhibit neglect of women, children, old and infirm and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. Again in

Vimala (K) v. Veeraswamy (K) [(1991) 2 SCC 375, a three-Judge Bench of the Hon'ble Apex Court held that Section 125 of the Code of 1973 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. It was held the provision provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

7. In case of **Kirtikant D. Vadodaria V State of Gujarat**, (1996) 4 SCC 479, while discussing the dominant purpose of [Section 125](#) of the Code, the Supreme Court had held as follows:

"15. ... While dealing with the ambit and scope of the provision contained in [Section 125](#) of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in [Section 125](#) provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in [Section 125](#) are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in [Section 125](#) clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."

8. A similar view was taken by the Supreme Court in **Chaturbhuj V Sita Bai**, (2008) 2 SCC 316, wherein the legal position pertaining to [Section 125](#) of the Code was reiterated and it was stated that the provision was a measure of social justice, specially enacted to protect women and children, and it thereby fell within the constitutional sweep of Article 15(3) reinforced by [Article 39](#) of the Constitution of India. Therefore, while adjudicating a matter pertaining to this provision, it must be borne in mind that the dominant object of [Section 125](#) is to prevent destitution and vagrancy by compelling those individuals, who have the means as well as the moral obligation, to support those who are unable to support themselves.

9. Keeping the aforesaid legal position in view, in the present case, it may be stated that the Family Court has dismissed the case of revisionist under section 125 CrPC on the sole ground that she is staying separately from her husband without any just reason. However, the court recorded finding that she is legally wedded wife the opposite party No. 2 and that she has no source of income to maintain herself and that she has no been provided any maintenance so far.

10. Before proceeding further it will be appropriate to refer to Sub-sections (1) and (4) of Section 125, Cr.P.C. which read as under:

"125. Order for maintenance of wives, children and parents-(1) if any person having sufficient means neglects or refuses to maintain- (a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation - For the purposes of this Chapter, - (a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority; (b) "wife" includes a woman who has been divorced by, or has obtained a divorce from her husband has not remarried.

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(4) No wife shall be entitled to receive an allowance 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."

11. In the instant matter it is not disputed that the revisionist is legally wedded wife of the opposite party No. 2. The revisionist has filed application under section 125 CrPC seeking maintenance, wherein inter-alia it was alleged that after marriage, she was harassed by the opposite party No.2 and his family members on account of demand of motorcycle, golden chain and rupees one lakh cash and that in the month of November 2014 she was forcibly left near her parental home. She made complaint to the police and thereafter in pressure of police, the opposite party No. 2 took her to matrimonial home but again she was harassed on account of dowry and that when she heard that the opposite party No. 2 and his family members were planning to kill her, she called her parental family and she came back to her parental home and a complaint was made to police. She has also alleged that she has no source of income to maintain herself, whereas the opposite party No. 2 is doing business of garments and earning Rs.60,000/ pm. The revisionist has supported this version in her statement before the Family court. On material particulars her version is supported by PW.3 Kapoor

Singh, who is brother of the revisionist. It appears that PW 2 Jagnaik was not produced for cross-examination. The opposite party No. 2/ husband has denied the version of the revisionist and stated that he is ready to keep the revisionist with him but she is not ready for the same. He has also come in to witness box. Beside him, another witness O.P.W.2 Samender, who is brother of opposite party No.2 and OPW 3 Motilal, who is uncle of opposite party No.3, have also been examined. The learned Family Court disbelieved the evidence of the revisionist on the ground that there are some material contradictions in her statement. However, perusal of record shows that on material aspects of the case, there is no material contradiction in her statement. Her statement is supported by P.W.3 Kapoor Singh. Here it may be observed that proceedings under section 125 CrPC are of summary nature and in such matters evidence of claimant/wife seeking maintenance is not to be appreciated in a manner like in criminal trial for offences under Indian Penal Code or other substantial criminal offences. As stated above, the provision of section 125 CrPC is measure of social justice and while adjudicating a matter pertaining to this provision, it must be borne in mind that the dominant object of [Section 125](#) is to prevent destitution and vagrancy and that it being a measure of social legislation, it is to be construed liberally for the welfare and benefit of the wife and children. In the instant case, it appears that the Family Court had conducted the proceedings without being alive to the objects and reasons and the spirit of the provisions under Section 125 of CrPC and disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife, who is unable to maintain herself. The object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by the Hon'ble Apex Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. In the instant case, the Family Court committed error by disbelieving the evidence of the revisionist to the effect that she was harassed by the opposite party No. 2 on account of dowry and that due to ill treatment meted out to her, she was compelled to reside at her parental

home. So far this question is concerned that a decree of restitution of conjugal rights has been passed in favour of the opposite party, it may be mentioned that recently in case of Smt. Kiran Singh vs. State Of U.P. And Anr. (Criminal Revision No.896 of 2019), decided on 26.04.2022, it has been held by the co-ordinate Bench of this court that 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 was further held that it would be very harsh to refuse maintenance on the ground of a decree of restitution of conjugal rights passed in favour of husband.

12. Considering the facts and evidence of the parties, vis-a-vis, the aforesaid legal position, it is apparent that the Family Court committed error by rejecting the application of the revisionist on the ground that she is staying away from her husband without any sufficient reason. Thus, the impugned judgment and order is set aside and the matter is remanded back to the Family Court concerned to consider the matter and pass an order afresh in accordance with law.

13. Revision is allowed in above terms.

Order Date :- 07.02.2023

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