

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Criminal Revision No. 141 of 2008**

Smt. Poonam and another ..... Revisionists

versus

State of Uttarakhand and another ..... Respondents

Mr. Lok Pal Singh and Mr. Tapan Singh, Advocates for the revisionists.  
Mr. P.S. Saun, AGA with Mr. S.S. Adhikari, Brief Holder for the  
respondent State.  
None for the private respondent.

**Hon'ble U.C. Dhyani, J. (oral)**

Applicant Smt. Poonam (wife) alongwith her son moved an application under Section 125 of Cr.P.C. for grant of maintenance allowance against her husband in the Court of Principal Judge, Family Court, Dehradun. Ajay Kumar (husband) contested the application and filed written statement. Evidence was led by the parties. After considering the evidence on record, learned Principal Judge, Family Court dismissed the application under Section 125 of Cr.P.C., vide judgment and order dated 13.06.2008. Aggrieved against the same, present criminal revision was preferred by the wife and her son (revisionists herein).

2) As per applicant-wife, she was married to respondent-husband on 12.12.1991, at Dehradun, according to Hindu rites and rituals. Applicant-wife went to Saharanpur after her marriage and performed conjugal rights. Her parents gave the articles in marriage according to their capacity. A son named

Master Sagar alias Tinku was born out of the wedlock of Smt. Poonam with Ajay Kumar. Master Sagar was aged 10 years at the time of filing of application under Section 125 of Cr.P.C. He was a student of class V. After sometime, husband and in-laws of applicant-wife, started harassing her for not bringing sufficient dowry. They ridiculed her on the ground that no colour T.V. or fridge or motorcycle was given in the marriage. Applicant's husband and in-laws assaulted and ousted her from the matrimonial home. Applicant-wife did not take any action, for otherwise the same would have eroded the image of her matrimonial home. Applicant-wife was not given food for 2-3 days. She was also deprived of clothes, apart from food. She further stated in the application that her husband was a drunkard, who used to beat her. She took Rs. 5,000/- from her parental house twice or thrice, but could not satisfy her husband, who threatened that if she did not bring motorcycle, colour T.V. etc., she would be killed.

3) Applicant-wife further stated in the application that her husband owned a printing press. Monthly income of her husband was Rs. 20,000/-. He was also the owner of a house in which the tenants were living. Total monthly income of her husband was Rs. 26,000/-. The respondent-husband owed a duty to maintain his wife alongwith the son. Applicant-wife herself was an illiterate lady, who knows nothing but to append her signatures. She has no source of livelihood.

Her husband has not given her anything since the day she alongwith her son was ousted from her matrimonial home.

4) Respondent-husband admitted in the written statement that he was married to applicant-wife on 12.10.1991, at Dehradun and a son was begotten out of said wedlock. Respondent-husband denied assault and harassment to the applicant-wife. He also denied demand of dowry in his written statement. According to respondent-husband, applicant-wife used to go out of the matrimonial home with some persons, to whom she told that they were her relatives, without rhyme or reason. According to him, applicant-wife did not perform conjugal rights. Respondent-husband was a semi-literate person, who received Rs. 1,200/- per month, while working in a printing press in Saharanpur. He was not the owner of printing press. The applicant-wife was living separately from him without sufficient reason and, therefore, she was not entitled to maintenance allowance. According to respondent-husband, his wife was living in adultery with some person (name not disclosed). It was further stated that applicant-wife was living with such person in Dehradun.

5) The averments contained in the application were affirmed by the applicant-wife in her affidavit dated 23.11.2007. In her cross-examination, applicant-

wife stated that she was living with her mother at Dehradun. She was assaulted by her husband. She did not report the incidents to police because it would have been of no use indulging in litigation. She was living in her parental home since 25<sup>th</sup> August 2001. She was ousted by her husband. She was an illiterate lady. She denied the fact that her husband was also an illiterate person. Applicant-wife denied the fact that she was not willing to live in Saharanpur. She did not want to live with her husband, in as much as, her husband assaulted her and levelled unfounded allegations against her. She did not know the name of the printing press where her husband was working. She also denied that she was earning Rs. 2,000/- per month.

6) Respondent-husband also filed an affidavit in support of the averments contained in written statement. In his cross-examination, respondent-husband stated that when he and his wife were living together, he used to give the entire salary to his wife. He could not tell the exact sum, which was being given by him in the hands of his wife. He also stated that the son lived with his mother. The son was aged 12 years on the day the husband deposed before the trial court. Respondent-husband also stated that the expenses of living and education of son were being borne by his mother. Both were living in Dehradun. He admitted that he did not send any money for maintenance of his wife and his son at Dehradun. He denied the

suggestion that he assaulted his wife. He further stated that his father was the owner of the house in which he was living.

7) The relationship between the wife (revisionist no. 1 herein) and husband (respondent no. 2 herein) was admitted. It is also an admitted fact that the husband was not giving anything to his wife or son as maintenance allowance, since the day the wife was ousted from her matrimonial home. There is no evidence on record, oral or documentary, that the revisionists have sufficient means of livelihood. It is amply clear from the evidence on record that the wife and son were not having any means of their livelihood. They can hardly manage two square meals for them. It is surprising that the husband is not paying anything even to his son, what to talk of his wife, who are living separately from him. This is, therefore, clear that the husband has refused to maintain his wife and son, who are unable to maintain themselves. There is no iota of evidence to contradict such a finding. Even the Principal Judge, Family Court, Dehradun has inferred that the wife (alongwith her son) was unable to maintain herself. It is, therefore, held that the husband has neglected and refused to maintain his wife and minor son.

8) Once it was proved that the wife was unable to maintain herself, and once it was proved that the

husband, having sufficient means, neglected and refused to maintain his wife and son, who were unable to maintain themselves, they were entitled to maintenance allowance from the husband according to the scheme of Section 125 of Cr.P.C. There is, however, an exception to it, which is enshrined under sub-Section (4) of Section 125 of Cr.P.C. The same is being reproduced here-in-below for ready reference:

“125(4) 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.”

9) Although an attempt was made by the husband (respondent no. 2 herein) to show that his wife was living in adultery, but he did not succeed in establishing the said fact, in as much as whatever he alleged on this count against his wife, was said in roundabout manner. Respondent no. 2 was not specific in alleging as to with whom his wife lived in adultery. It was said that the wife was living ‘with some person’. Who was that person, was not pin pointed. Even the whereabouts of such person were not disclosed. There was no inkling about his identity. No evidence was offered to show that the wife was living in adultery with such person. Mere allegation by the husband against

his wife in this context would not be sufficient, for the same, in Indian society, is a grave charge against a wife. Learned trial court refused to grant maintenance to the wife, principally, on this ground. There was no evidence, what to talk of cogent evidence, to substantiate the allegation of adultery against the wife.

10) It was also not evidenced that the wife was not living with her husband without sufficient reason. On the contrary, if the husband levelled frivolous charges of adultery against the wife, that was sufficient reason for the wife to live separately from her husband, for no wife would like to live with such a husband, who will level such filthy, unfounded allegations against her at the drop of hat. It, therefore, cannot be inferred that the wife was living separately from the husband without sufficient reason or that she was living in adultery with 'someone else'. Even if it be conceded for the sake of argument that the husband was working in a printing press, it cannot be inferred by any stretch of imagination, that he would be earning Rs. 2,500/- only per month now-a-days. He must be earning more than that, for the monthly income of a skilled person is ordinarily computed at the rate of Rs. 4,000/- (approx.) per month. But since no finding regarding the income of the husband is given by the trial court, therefore, it will not be proper for this Court to make an attempt to arrive at any conclusion regarding monthly income of the husband. This Court should not substitute its own

discretion for the discretion of the court below. In any case, the impugned judgment and order cannot sustain, as the same is against the evidence brought on record.

11) Criminal revision, therefore, deserves to be allowed and is accordingly allowed. The matter is remitted back to the Principal Judge, Family Court, Dehradun to pass a suitable order in the light of observations made by this Court in the foregoing paragraphs of this judgment. Learned judge is also requested to quantify the maintenance allowance to be paid by the respondent-husband to the wife (revisionist no. 1 herein) and her minor son (revisionist no. 2 herein) per month. Such an order be passed as early as possible after giving notices and affording due opportunity of hearing to the parties.

12) Lower court records be sent back to the court concerned for ensuring compliance of the order.

**(U.C. Dhyani, J.)**

**Dt. November 26, 2013.**  
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