

Court No. - 22

Case :- CRIMINAL REVISION No. - 2221 of 2011

Revisionist :- Smt. Sadhna Gupta & Another

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

Counsel for Revisionist :- Anil Srivastava, Anil Tiwari, Dinesh Rai, Smt. Renu Rajat

Counsel for Opposite Party :- Govt. Advocate, A.K. Awasthi, Praveen Kumar Singh

Hon'ble Abhai Kumar, J.

This revision has been preferred by Smt. Sadhna Gupta and Km. Gauri against the order dated 14.4.2011 passed by the learned Principal Judge, Family Court, Allahabad in Maintenance Case No. 236 of 2003 (Smt. Sadhana Gupta and another Vs. Sudeep Kunwar) whereby application of revisionists was partly allowed against opposite party no. 2 Sudeep Kunwar.

Brief facts of the case are as follows:

Revisionists preferred an application under Section 125 Cr.P.C. against opposite party no. 2 for maintenance of Rs. 10,000/- to revisionist no. 1 and Rs. 5000/- to revisionist no. 2 being the daughter of revisionist no. 1 and opposite party no. 2. Marriage of revisionist no. 1 with the opposite party no. 2 took place on 6.12.2000 and various articles as well as cash were given in the marriage but immediately after marriage revisionist no. 1 is being treated improperly and as opposite party no. 2 was having illicit relation with his Bhabhi (wife of his brother), she was expelled from the house in July, 2001 in pregnant stage and

since then she is living with her father. Revisionist no. 2, daughter of revisionist no. 1, was born on 13 February 2002 but behaviour of in-laws remained same. She went to the in-law's place after panchayat on 23.3.2003 but she was beaten there, then police was involved in the matter and brought the matter amicably settled. Later on 6.4.2003 she was tried to be abducted by her father-in-law, brother-in-law and sister-in-law. Opposite party no. 2 is Deputy Manager in Reserve Bank of India and was getting Rs. 30,000/-. Marriage is being admitted by the opposite party no. 2. Service in Reserve Bank of India is also admitted by him but it is his contention that immediately after marriage revisionist no. 1 pressed for family partition and her behaviour was not conducive to the family of the opposite party no. 2. On 19.1.2001 she went in Tilak Ceremony of brother-in-law of her brother Manoj Kumar without the permission of the family members and from there she directly went to her parental house. One day prior to Holi, he went to the place of revisionist no. 1 for taking her but family members of revisionist no. 1 were not ready for that. After great persuasion, revisionist no. 1 came to the place of opposite party no. 2 on 12.3.2001 but the behaviour of revisionist no. 1 was same and she also threatened to entangle the family members of the opposite party no. 2 in criminal cases and then she was again sent to her parental house. Later on father of the revisionist no. 1 agreed to send her to the working place of opposite party no. 2, Salwani

Mednipur. Father of opposite party no. 2 on 18.4.2001 got the Bidai of revisionist no. 1 and took her to Mednipur. The behaviour of revisionist no. 1 was same at Mednipur too and she maltreated opposite party no. 2 before his friends. In the meantime, wife of opposite party no. 2 got pregnant. On 22.7.2001 father and brother of revisionist no. 1 came to the working place of opposite party no. 2 and took her with them to Ballia and since then she is living there. Opposite party no. 2 did try to get the Bidai of revisionist no. 1 but failed. Proceeding under Section 498A, 323, 504, 506 IPC and Section 3/4 Dowry Prohibition Act was also initiated by the revisionist no. 1 and her father, in which opposite party no. 2 and his family members were acquitted. Case under Section 9 of Hindu Marriage Act as well as case of custody of child was also filed by revisionist no. 1 and got them decided ex-parte.

In the year 2007, opposite party no. 2 met with a serious road accident and received various injuries and he was also in coma but revisionist no. 1 did not take care of him and even did not care to see him. It is also contention of the opposite party no. 2 that revisionist no. 1 is postgraduate. She is doing tuition of more than 30 girls, besides that she is also doing sewing and weaving work and earning Rs. 11,500/- per month.

It is admitted fact that marriage took place in the year 2000 and it is also admitted fact that revisionist no. 1 is living separately from opposite

party no. 2 since 23.7.2001, when she is said to have left the working place of opposite party no. 2 alongwith her father. It is also admitted fact that case under Section 9 of Hindu Marriage Act is being decided ex-parte in favour of revisionist no. 1 and case of custody of child (revisionist no. 2) is also decided in favour of revisionist no. 1. So far the acquittal of opposite party no. 2 and his family members under Section 498A and other sections is concerned, it is being admitted during the trial by the opposite party no. 2 that they have been convicted in appeal by Session Judge and appeal in this regard is pending before the High Court.

From the side of revisionists, revisionist no. 1 produced herself as PW-1 whereas from the side of opposite party no. 2, he produced himself as DW-1 1 whereas DW 2 is also produced namely Sumit Green Gold, Principal Little Fox School, Lukarganj, Allahabad who is primarily produced for providing evidence regarding the study of revisionist no. 2 in his school and is not very material for the decision of the present case.

From the facts it can be said that there is evidence of one is to one of revisionist no. 1 against opposite party no. 2. Surprisingly, trial court believed the statement of opposite party no. 2 inspite of the fact that his statement is also not being corroborated by any supporting evidence whereas evidence of revisionist no. 1 is being discarded without proper reasons. It is found by the trial court that revisionist no. 1 is living

separately from opposite party no. 2 without any proper reason and she is not entitled for any maintenance whereas maintenance of Rs. 2000/- was awarded to revisionist no. 2 being the daughter of opposite party no. 2. Trial court decided the matter as if it is deciding a criminal case and supposing that all the facts are to be proved beyond all reasonable doubt as it is required in a criminal case but failed to appreciate the fact that proceeding under Section 125 Cr.P.C. is quasi civil in nature and on the basis of evidence produced, a pragmatic view was to be taken and it is to be seen on the broader perspective that who was at fault. In a proceeding under Section 125 Cr.P.C., it is not necessary to prove every fact beyond reasonable doubt and in case any fact is being pleaded then same can be viewed in view of the evidence produced by both the parties. No doubt certain facts which are being asserted by the revisionist in their application under Section 125 Cr.P.C. are not being proved or there is no concrete evidence regarding that but if all these facts are being seen in comparison with the statement given by the opposite party no. 2, then it can be said that living separately of revisionist no. 1 is not without any reason. Some fact is being presumed by the trial court which is also erroneous. It is asserted by the revisionist no. 1 that opposite party no. 2 was having illicit relation with his Bhabhi. This fact is also being corroborated by the revisionist no. 1 in her statement as PW-1. It is also asserted by her that

when she went to Salwani, the working place of opposite party no. 2, after few days Bhabhi of opposite party no. 2 also reached there. No doubt, no corroborative evidence in this regard is being produced but it was not possible for the revisionist no. 1 to produce evidence regarding the illicit relation of the opposite party no. 2 with his Bhabhi, all these facts are to be seen in broader perspective and other incidents in the matter.

The first point which is being considered by the trial court is regarding the going of revisionist no. 1 in Tilak Ceremony of brother-in-law of her brother without the permission of the family members. It is admitted fact that at the particular time, opposite party no. 2 was not with her rather he was at Salwani at his working place. If the revisionist no. 1 went to attend the function then heaven was not fallen and this fact cannot be considered adverse. There is nothing on record on the basis of which it can be said that she went to attend the function without the permission of the family members of the opposite party no. 2. Revisionist no. 1 has denied this fact whereas opposite party no. 2 has asserted this fact in his statement but in absence of any other evidence it can be assumed that she went in the function either with the permission of the family members of the opposite party no. 2 or without permission but it does not make any difference in the merit of the case and same cannot be read against the revisionist no. 1. Revisionist no. 1 has specifically

mentioned that after attending the function she did not go to her father's house whereas opposite party no. 2 has stated that after function she directly went to her parents house. This evidence is again one is to one and what evidence is to be believed it is to be seen. Revisionist is denying for that and has stated that after the marriage she went to her father's place for the first time with her husband one day prior to Holi. This fact is also admitted by opposite party no. 2 that he went to her inlaws one day prior to Holi although he stated that he went there to get Bidai of revisionist no. 1. All these facts are being taken adversely by the trial court which cannot be said to be a correct view and in a modern time, the view of the trial court that revisionist no. 1 ought not to have gone without the permission of in-laws is also conservative view and which cannot be accepted in an educated society. Revisionist no. 1 herself is postgraduate. Father of revisionist no. 1 is a doctor and opposite party no. 2 is also Deputy Manager in Reserve Bank of India. In the backdrop of the educational qualification of the parties, such a conservative view cannot be accepted.

There are certain other issues which are being raised before the trial court and argument is being taken in this regard but as already said above in a proceeding under Section 125 Cr.P.C. all these ancillary facts are not to be proved beyond all reasonable doubt and they can be only helpful in deciding the major issues. There is clearcut

statement of revisionist no. 1 regarding the maltreatment of her and it is also statement of PW-1 that when one day prior to Holi in the year 2001 her husband took her to his parental house then it was agreed that she will go to the working place of opposite party no. 2. From this fact it can also be inferred that all was not well in the matrimonial house of the revisionist no. 1 and that is why it is settled between the parties that she will go to the working place of opposite party no. 2 that is Salwani.

Revisionist no. 1 was living at Salwani where she got pregnant but immediately after that she left the place with her father and since then she is living separately. It is observed by the trial court that it was not possible for the opposite party no. 2 to have physical relation with revisionist no. 1. Revisionist no. 1 would not have made physical relation with opposite party no. 2, had opposite party no. 2 is having relation with his Bhabhi. This observation of the trial court is also erroneous and it cannot be said that when any person is having relation with his Bhabhi, wife will not make physical relation with him. If it is seen in a broader perspective, then it can be inferred that when revisionist no. 1 was living peacefully at Salwani and she also got pregnant there then why she left that place. From this fact it can be accepted that there was certainly something wrong between the parties and contention of the revisionist no. 1 that Bhabhi of opposite party no. 2 also reached to

Salwani after few days of her arrival cannot be ruled out.

From the statement of PW-1, it can be inferred that there is straightforward statement of her regarding the facts and from her statement it can be accepted that certain wrong is being done with her and that is why she is living separately. Although, all the facts are not being proved in a clinical manner but they can be accepted when they are being compared with the statement of opposite party no. 2. The statement of opposite party no. 2 is quite shaky and not trustworthy and statement of opposite party no. 2 also faulty. The statement of revisionist no. 1 more reliable and acceptable.

As per statement of DW-1, her wife attended Tilak Ceremony without the permission of his family members remained there till Holi, then he went Ballia to take her wife but she did not come with him. Then on further persuasion his wife came to her matrimonial home on 13.3.2001 then he got the ticket reserved for taking her to Salwani but she did not agree to go to Salwani with him and he got the ticket cancelled and went to Salwani alone. Her father was summoned and then she went to her parental house alongwith his father and on persuasion by his father she came to Salwani with the father of opposite party no. 2 on 18.4.2001.

If this statement of opposite party no. 2 is read carefully then it can be inferred that one day prior to Holi, he went to inlaw's house. He wanted her

wife to take to Salwani alongwith him and also got the ticket reserved for that too but she did not agree to go Salwani. From this fact it can be inferred that certain incident took place and due to that revisionist no. 1 could not accompany the opposite party no. 2 to Salwani. Then certain development took place and certainly due to certain agreement between the parties revisionist no. 1 was sent to Salwani with the father of opposite party no. 2. It cannot be believed that revisionist no. 1 will refuse to go to the place of her husband and from that it can be inferred that certain untoward incident took place between this period. The statement of opposite party no. 2 that he went to the place of in-laws one day prior to Holi for taking the wife but she did not come with him to Varanasi, is also afterthought. It is further submission of DW-1 that father and brother-in-law of opposite party no. 2 came to Salwani on 22.7.2001 and inspite of being ill, he got them visited some places and even then on 23.7.2001 his wife departed with her father and brother. This fact is also not very trustworthy and when there was cordial relation between the parties and father and brother of revisionist no. 1 were got visited some places then why revisionist no. 1 left the working place of DW-1, is not made clear and this also shows that certain untoward happened in between. During this whole period opposite party no. 2 never took care of his wife and child and he did not even give money for the subsistence of the revisionists. He never tired to get Bidai (restitution

of his wife). It is the statement of DW-1 that in October, 2001, he came to Varanasi and got the ticket reserved for his wife but she did not go with him. From the facts it can be inferred that opposite party no. 2 all along creating certain evidence like reservation, cancellation of ticket, then visit of some places by the father and brother of the revisionist no. 1 at Salwani and then certain medical papers are also being produced by the opposite party no. 2. All these facts show that opposite party no. 2 is not behaving properly and in natural way rather he is creating unnatural evidence against the revisionists.

There is no evidence regarding the income of revisionist no. 1. Being the daughter of a doctor and being postgraduate herself it can be assumed that she is entitled to lead a decent life and also being the wife of opposite party no. 2 who is Deputy Manager in Reserve Bank of India, revisionists are also entitled to get proper amount to lead a life equivalent to the life which is being led by the opposite party no. 2. Even if revisionists have failed to give the exact expenditure that is to be required for their livelihood but as said above they are entitled to lead to a life of the same status that is of opposite party no. 2. The statement of DW-1 that revisionist no. 1 is earning from tuition and other activities are without any corroborative evidence which cannot be accepted.

Mere Rs. 2000/- were awarded to the revisionist no. 2 being the daughter of opposite party no. 2,

whereas in the application under Section 125 Cr.P.C., it is clearly mentioned that opposite party no. 2 is earning Rs. 30,000/- per month and same is not being denied by the opposite party no. 2. During the course of this appeal payslip of opposite party no. 2 is being produced from which it can be inferred that opposite party no. 2 was earning Rs. 60,000/- per month. In the circumstances, the maintenance amount that is being asked by the revisionists in their application under Section 125 Cr.P.C. was apt and they are entitled for that.

The conduct of opposite party no. 2 is also adverse to his contentions. Since 2001 he has not given a single penny for the maintenance even to his daughter. He never tried for the custody of revisionist no. 2 being his daughter. He has also not made any security arrangement for the future of his daughter and surprisingly he has made nominee to his father and brother in his accounts. At least he ought to have made nominee to his daughter upto certain extent. During all these period, he never tried to see his daughter and not even his wife. He never tried to get back his wife.

The contention of the opposite party no. 2 as well as lower court that in the criminal case, opposite party no. 2 has been acquitted is also not there to help him and appellate court has already convicted the opposite party no. 2 and his family members in matrimonial dispute. Although he has stated that he is ready to keep his wife in case she

is ready but for that no effort is being made by him. Although he has produced DW-2 Principal of a School to prove that revisionist no. 2 is not taking proper education in that school but he never tried to ascertain as to whether his daughter is taking education or her education is proper or not. Certain notices are also said to have been sent by the opposite party no. 2 as DW-1 but they are also not being proved. He even go to the extent of saying that he is in private job and can be expelled at any time.

The statement of opposite party no. 2 can be said to bundle of lies and cannot be believed.

It is submission of the learned counsel that petition was filed in the year 2003 whereas it was decided on 14.4.2011 and maintenance is being given from the date of order whereas it should have been given from the date of application. It is also submission of the learned counsel that revisionists are living separately from the opposite party no. 2 since 2001 and she has to beg for livelihood either from father or brothers.

I totally agree with the learned counsel for the revisionist and it can be said that petition is being filed in the year 2003 and opposite party no. 2 is deserting the revisionist since 2001 without any reason and revisionists having no means of livelihood then in the peculiar circumstances, maintenance ought to have been given from the date of application.

It is observed by the trial court that opposite party no. 2 met with an accident and has incurred hugely upon that and he is not in a position to pay maintenance more than Rs. 2000/- to his daughter but this observation of the trial court is also not very conducive. The opposite party no. 2 is Deputy Manager in Reserve Bank of India and he has admitted in his statement as DW-1 that he is being reimbursed all the money that is being expended in accident. It is also presumption that being the government employee, opposite party no. 2 is entitled to all the reimbursement of the money incurred upon his treatment and it cannot be said that he is being in any manner hit economically. He is doing his job in a regular way and has not been demoted or his pay is being reduced. So the observation of the trial court cannot be accepted and maintenance as asked for is liable to be given. Revisionist No. 1 also stated that she was never informed regarding the accident, also goes to show that story of accident is also not very trustworthy.

In view of the circumstances narrated above, this revision is partly allowed and maintenance of Rs. 10,000/- to the revisionist no. 1 and Rs. 5000/- to the revisionist no. 2 is being fixed from the date of application.

A government salaried person usually gets 10% appreciation every year and accordingly maintenance amount is also to be increased 10% every year automatically without any further order

of the Court.

Revisionist No. 2 will get maintenance till she marries. Maintenance will be paid by the opposite party no. 2 in the first week of every month and arrear of maintenance will be realized from opposite party no. 2 @ Rs. 7500/- per month that will be towards Rs. 5000/- of revisionist no. 1 and Rs. 2,500/- of revisionist no. 2, till arrear exhausts. This order will be effective one month after the certified copy of this order is being produced before the trial court concerned.

Order Date :- 20.9.2017
Ranjeet Sahu