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Judgment reserved on 09.12.2021

Judgment delivered on 6.1.2022

Court No. - 72

Case :- CRIMINAL REVISION No. - 1154 of 2021

Revisionist :- Tarun Pandit
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Amit Krishna
Counsel for Opposite Party :- G.A.,Siddharth Khare

Hon'ble Syed Aftab Husain Rizvi,J.

1. This criminal revision is directed against the judgment and order dated 4.3.2021 passed by Additional Special Judge, Family Court, Gautam Budh Nagar in Criminal Misc. Case No. 653 of 2013 Smt. Sneha Vs. Tarun Pandit. By the impugned order the learned court below has allowed the maintenance application U/s 125 Cr.P.C. of O.P. No. 2 Smt. Sneha Pandit and has awarded Rs. 25,000/- per month as maintenance to her from the date of filing of the application.

2. In brief the facts are that O.P. No. 2 Smt. Sneha Pandit moved an application for maintenance U/s 125 Cr.P.C. against revisionist Tarun Pandit with the allegations that her marriage was solemnized with opposite party on 22.11.2009 and she performed her marital obligations after the marriage. After sometime of the marriage the behaviour of opposite party was not cordial with her and he started to mentally and physically torture her. Making certain other allegations it was further stated that opposite party has left her at her maternal house and since 30.11.2013 she is living with her father. The opposite party is ignoring her and not maintaining her and is not ready to keep her with him

WWW.LAWTREND.IN

and has deserted her. She has no source of income while opposite party is Squadron Leader in Air Force and his salary is Rs. 80,000/- per month. On the aforesaid ground Rs. 40,000/- as maintenance allowance per month was claimed by O.P. No. 2.

The revisionist (opposite party) filed his reply in which he admitted the marriage but denied rest of the allegations and further submitted that the applicant herself without any just cause is living separately from her husband and it is she who has deserted the opposite party. Revisionist (opposite party) has also made certain allegations against the applicant and stated that she is responsible for the whole affairs and she does not want to live with opposite party. It is further alleged that applicant has falsely shown her address of NOIDA Gautam Budh Nagar. In fact applicant and her parents live at house no. D-84 Saket Colony, District Meerut and that is their permanent address. The address mentioned in the application is false. The applicant has filed the application with false facts concealing the real facts and has not come with clean hands. The learned court below after taking evidence and hearing arguments of the parties by the impugned judgment and order has allowed the application and awarded the maintenance allowance.

3. One of the grounds on which the impugned judgment and order has been challenged is that the revisionist (opposite party) has taken specific objections regarding jurisdiction of the court at Gautam Budh Nagar but the court below has not recorded any finding regarding jurisdiction of

WWW.LAWTREND.IN

the court at Gautam Budh Nagar. The learned counsel for the revisionist contended that in para 11 and 12 of the objections filed by the opposite party there are specific objections and it is alleged that O.P. No. 2 was living with her parents in their house at 84 D, Saket Colony, Meerut and not at Gautam Budh Nagar. This objection has also found support from the order dated 29.8.2016 passed by the Additional Principal Judge, Family Court, Meerut in proceeding U/s 24 of the Hindu Marriage Act filed by the O.P. No. 2. The court below recorded the specific finding that O.P. No. 2 was residing at 84 D, Saket Colony, Meerut and not at Gautam Budh Nagar. The said finding has never been challenged by the O.P. No. 2 before any higher authority and the same has attained the finality. Therefore, the court at Gautam Budh Nagar has no jurisdiction to entertain the petition U/s 125 Cr.P.C. and the judgment and order is without jurisdiction, illegal and deserves to be set-aside. Learned counsel also contended that entire criminal proceedings were also initiated by O.P. No. 2 at Meerut and not at Gautam Budh Nagar. This clearly shows that O.P. No. 2 was residing permanently at Meerut and not at Gautam Budh Nagar but just to harass and pressurize the revisionist and his family members proceeding U/s 125 Cr.P.C. was deliberately initiated at Gautam Budh Nagar.

Learned counsel for the O.P. No. 2 submitted that a perusal of the objections filed by the revisionist against the application U/s 125 Cr.P.C. would reflect that no precise objection was taken before the court below that the application U/s 125 Cr.P.C. is not maintainable at District Gautam Budh Nagar as it lacks jurisdiction. In para 11 it is

WWW.LAWTREND.IN

stated that opposite party has deliberately filed the application U/s 125 Cr.P.C. at District Gautam Budh Nagar only in order to harass the revisionist, however, in fact, she is resident of District Meerut. Therefore, there was no occasion for the court below to deal with the objection of the jurisdiction before it. Learned counsel further contended that in para 10 of the counter affidavit the respondent has mentioned in detail and brought on record the material to demonstrate that she has been residing at district Gautam Budh Nagar. In fact, the respondent was undergoing a course in J.P. Institute of Information Technology at District Gautam Budh Nagar. Learned counsel further submitted that the finding of the trial court in proceeding U/s 24 of the Hindu Marriage Act dated 29.8.2016 is based on medical certificate issued by the doctor in District Meerut. In fact, on a visit to District Meerut for a date in the case the respondent fell ill and she has to consult a doctor there. On the basis of the same the court mentioned about her residence which is un-consequential. There was no occasion to arrive to a conclusion that the respondent was residing in District Meerut and the respondent has already brought on record a number of documents to demonstrate otherwise.

From the perusal of the objections of revisionist (opposite party) filed against the application U/s 125 Cr.P.C. it appears that there is no specific plea that the court at Gautam Budh Nagar lacks jurisdiction. In para 11 of objections only it has been alleged that address mentioned in the application is false and applicant does not reside there. She and her parents are permanent resident of

WWW.LAWTREND.IN

District Meerut and application has been moved at Gautam Budh Nagar to harass the opposite party and her family. It also appears that point of jurisdiction has not been sincerely raised before the trial court and due to this the trial court has not dealt with it. Further an application U/s 125 Cr.P.C. can be moved at a place where applicant is temporarily residing. It has been alleged in counter affidavit that applicant is temporarily residing at Gautam Budh Nagar and pursuing a course in J.P. Institute of Information Technology at Gautam Budh Nagar. So the ground that court at Gautam Budh Nagar lacks jurisdiction has no force.

4. Another ground on which the impugned judgement and order has been challenged is that Family Court, Meerut which is the competent court in divorce petition U/s 13 of Hindu Marriage Act has granted divorce decree in favour of the revisionist and has also awarded Rs. 25 lacs as permanent alimony U/s 25 of the Hindu Marriage Act while passing the decree of divorce and hence, no maintenance U/s 125 Cr.P.C. can be awarded and application is not maintainable. Learned counsel for the revisionist vehemently contended that in divorce petition no. 1614 of 2013 U/s 13 of Hindu Marriage Act the competent court has passed the divorce decree dated 21.2.2016 and while passing the decree has also awarded permanent alimony of Rs. 25 lacs, which has duly been deposited by the revisionist in the court on 20.3.2018. Thus, O.P. No. 2 has Rs. 25 lacs at her disposal and can not be said to without financial resources and her condition is not of a destitute. There is no question of non sustenance. The court below

WWW.LAWTREND.IN

has not considered it. Though the appeal against divorce decree is pending but the said order has not been stayed. The court below lost its sight in not considering the legal preposition that a divorced wife can claim maintenance U/s 25 of the Hindu Marriage Act and not U/s 125 Cr.P.C. When a divorce decree U/s 13 of the Hindu Marriage Act is passed the wife of such annulled married can claim maintenance U/s 25 of Hindu Marriage Act. It is only such court which passed the divorce decree who is alone competent to grant maintenance U/s 25 of the Hindu Marriage Act. Hence, the impugned order is absolutely illegal, arbitrary and against the said principal of law. Learned counsel placed reliance on the following citations:

1. Rakesh Malhotra Vs. Krishna Malhotra 2020 Cri.L.R. (SC) 209

2. Palla Shanti Kiran Vs. State of Andhra Pradesh 2020 (4) ALT 329

3. Sudhir Kumar Vs. State of Rajasthan 1996 Cri.L.R. (Rajasthan) 315

4. Rajnesh Vs. Neha Criminal Appeal No. 730 of 2020

5. Vishal Prajapati Vs. Smt. Monika Prajapati First Appeal No. 70 of 2020 decided on 30.9.2021

6. Surendra Kumar Bhansali Vs. The Judge Family Court and another 2004 AIR (Rajasthan) 257

7. Har Charan Singh Vs. Kamal Preet Kaur 2005 (3) RCR (Civil) 808

8. Nirmal Kumar Vs. State of U.P. 2000 (41) A Cr.C. 661

5. Learned counsel for the O.P. No. 2 contended that respondent is entitled to maintenance U/s 125 Cr.P.C.

WWW.LAWTREND.IN

despite the fact that competent court granted divorce and has also given permanent alimony of Rs. 25 lacs U/s 25 of the Hindu Marriage Act because the judgment dated 21.2.2018 granting divorce has not attained finality. Respondent has filed an appeal which is pending and will be considered proceeding in continuation. Further respondent has not accepted the amount of alimony and same is lying in the court below. There is no occasion to accept the alimony as it would amount to accepting the decree of divorce. It is also contended that respondent has never requested or filed an application U/s 25 of the Hindu Marriage Act to claim permanent alimony and the court has granted it on its own volition. Learned counsel further contended that even a divorced wife is entitled for maintenance U/s 125 Cr.P.C. and cited **Rohtas Singh Vs. Ramendri (Smt.) and another (2000) 3 SCC 180 and Swapan Kumar Banerjee Vs. State of West Bengal and others AIR 2019 SC 4748**. Learned counsel also contended that the case law of Palla Shanti Kiran Vs. State of Andhra Pradesh (Supra) and Rakesh Malhotra Vs. Kiran Malhotra (Supra) relied on by the counsel of the revisionist do not apply on the present case. In case of Palla Shanti Kiran (Supra) the marriage was declared void/annulled U/s 14 of Hindu Marriage Act and once marriage has been declared void there was no occasion to consider the contesting parties to have been married at all and in that circumstances it was held that the applicant was not entitled for maintenance U/s 125 Cr.P.C. as there was no husband and wife relationship while in Rakesh Malhotra (Supra) the wife therein had accepted the amount of

WWW.LAWTREND.IN

permanent alimony, hence, it was held that she is not entitled for maintenance. Learned counsel contended that in the present case respondent has never accepted the amount of permanent alimony.

6. It is undisputed that petition U/s 13 of Hindu Marriage Act for divorce was filed by the revisionist and it is being contested by the O.P. No. 2. The trial court has allowed the petition, passed the decree of divorce and has also awarded permanent alimony of Rs. 25 lacs. The revisionist has deposited the amount in the court below but the O.P. No. 2 has not accepted the decree or permanent alimony and has filed an appeal against it and has also not withdrawn the amount of permanent alimony. The amount of permanent alimony is lying deposited with the court below. In the case of Rakesh Malhotra (Supra) the Hon'ble Supreme Court in para 9, 11, 16 and 17 has made the following observations:

"9. The basic issue that arises for consideration is whether after grant of permanent alimony under section 25 of the Act, a prayer can be made before the Magistrate under Section 125 of the Code for maintenance over and above what has been granted by the Court while exercising power under Section 25 of the Act.

11. At the stage of passing a decree for dissolution of marriage, the Court thus considers not only the earning capacity of the respective parties, the status of the parties as well as various other issues. The determination so made by the Court has an element of permanency involved in the matter. However, the Parliament has designedly kept a

WWW.LAWTREND.IN

window open in the form of subsections (2) and (3) in that, in case there be any change in circumstances, the aggrieved party can approach the Court under sub-section (2) or (3) and ask for variation/modification.

16. Since the Parliament has empowered the Court under Section 25(2) of the Act and kept a remedy intact and made available to the concerned party seeking modification, the logical sequitur would be that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where considering the exigencies of the situation and urgency in the matter, a wife initially prefers an application under section 125 of the Code to secure maintenance in order to sustain herself. In such matters the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a Competent Court either under the Act or similar such enactments. But the reverse cannot be the accepted norm.

17. In the circumstances, we allow these appeals, set aside the view taken by the High Court and direct that the application preferred under Section 125 of the Code shall be treated and considered as one preferred under Section 25(2) of the Act."

7. There is fine distinction between the facts of the two cases. In the case of Rakesh Malhotra it was the wife who has filed petition of dissolution of marriage under Section 13 of Hindu Marriage Act and on her petition a decree was passed and while passing the decree the court also awarded permanent alimony, which was accepted by the

WWW.LAWTREND.IN

wife. While in the present case divorce petition has been filed by the husband. It is being contested by the wife who has preferred an appeal and also has not accepted the permanent alimony which is lying deposited in the court below.

8. In the case of Rajnesh Vs. Neha on the issue of overlapping of jurisdiction in grant of maintenance the Hon'ble Supreme Court has held as Under:

(a) Issue of overlapping jurisdiction

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding:

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding."

The Hon'ble Apex Court has thus held that a wife can make a claim for maintenance under different statutes.

WWW.LAWTREND.IN

There is no bar to seek maintenance both under the protection of Women against Domestic Violence Act, 2005 and Section 125 of the Cr.P.C., or under Hindu Marriage Act."

9. In Vishal Prajapati Vs. Smt. Monika Prajapati (Supra) rulings relied on by the learned counsel for the revisionist a Division Bench of Allahabad High Court has followed the aforesaid principle laiddown by Hon'ble Apex Court and has held that the court would consider an adjustment or set of the amount awarded in previous proceedings.

So there is no bar to seek maintenance both U/s 125 Cr.P.C. or Hindu Marriage Act but the court will have to adjust or set of the amount awarded in previous proceedings.

10. In Surendra Kumar Bhansali Vs. The Family Judge Court and another (Supra) it has been held that pendency of appeal does not preclude wife from filing of application U/s 25 of the Hindu Marriage Act. While in Har Charan Singh Vs. Kamal Preet Kaur (Supra) it has been held that court can grant maintenance and permanent alimony to wife without specific application. In Nirmal Kumar Vs. State of U.P. (Supra) it has been held that recovery of maintenance under both the sections U/s 125 Cr.P.C. and 24 of Hindu Marriage Act shall not be allowed.

In this case the O.P. No. 2 (wife) has not withdrawn the amount of permanent alimony awarded under section 25 of the Hindu Marriage Act, hence, there is no question of any adjustment or recovery under both the orders.

WWW.LAWTREND.IN

11. In Rohtash Singh Vs. Ramendri (Supra) it has been held by the Apex Court that :

"Claim for maintenance under the first part of Section 125 Cr.P.C. is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to sub-section (1) of Section 125 Cr.P.C. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance.

A woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her."

12. Applying the aforesaid preposition of law on the present set of facts it is clear that as O.P. No. 2 (wife) has not accepted the amount of alimony as she has challenged the divorce decree in appeal and appeal is pending and in that circumstances she can not accept the amount of alimony. So it can not be said that she has sufficient financial resources as permanent alimony has been awarded to her. At present she has no source of income and financial support to maintain her and comes in the category of destitute. The learned trial court has dealt with

WWW.LAWTREND.IN

the aforesaid point in its judgment and has categorically recorded the finding that applicant (O.P. No. 2) has no source of income and unable to maintain herself and has awarded the maintenance allowance. Hence, the impugned order does not suffer from any illegality or infirmity. There is no perversity in the impugned order.

13. Another ground on the basis of which the impugned order has been challenged is that the court below has directed the revisionist to pay maintenance from the date of filing of application i.e. since 30.10.2013. In doing so the court below has completely lost its sight to the admitted fact that O.P. No. 2 had been paid Rs. 18,900/- as maintenance from the salary of revisionist by his department, the Indian Air Force. Learned counsel contended that the court below has not given any reason for award of maintenance from the date of filing of application. Once the O.P. No. 2 had been paid maintenance @ Rs. 18,900/- per month from the salary of revisionist up to March, 2018 there was no justification for the court below to award maintenance from the date of application i.e. since 30.10.2013. Learned counsel submitted that on this ground the order of court below is perverse, illegal and not sustainable.

14. This argument has also no force. In the impugned order it is provided that if any amount of maintenance has been paid by the opposite party to the applicant the same shall be adjusted and rest amount will be paid in two months. It is undisputed that O.P. No. 2 has been paid Rs. 18,900/- as maintenance from the salary of revisionist up to

WWW.LAWTREND.IN

March, 2018. After passing of divorce decree the revisionist has deposited the amount of permanent alimony in the trial court and amount of maintenance which was being paid from the salary of the revisionist, has been stopped. The O.P. No. 2 has not withdrawn the amount of alimony and it is lying deposited in the court below as the O.P. No. 2 has challenged the decree of divorce in appeal which is pending. After March, 2018 no amount of maintenance is being paid by the revisionist. The trial court has already made provision of adjustment of the amount of maintenance earlier paid. So there is no illegality or infirmity on this count also.

15. From the above discussion it is clear that the impugned order does not suffer from any infirmity or illegality. It is also not perverse. There is no sufficient ground to set-aside the impugned order. The revision is liable to be dismissed.

16. Accordingly, the Criminal Revision is **dismissed**.

Dt/-6.1.2022
Masarrat