

Neutral Citation No. - 2025:AHC:111343

Reserved on: 03.07.2025

Delivered on: 09.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 1351 of 2023

Revisionist :- Rajeev Sachdeva

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Nipun Singh, Sumit Suri

Counsel for Opposite Party :- Arvind Kumar Trivedi, Balbeer Singh, Dhruv Kumar Dhuriya, G.A., Saurabh Shukla

Hon'ble Rajeev Misra, J.

1. Challenge in this criminal revision is to the order dated 23.08.2022 passed by Civil Judge (JD)/FTC-I, Ghaziabad in Criminal Misc. Application No. 13157 of 2020 (Smt. Nidhi Sachdeva Vs. Rajeev Sachdeva and Others), under Section 12 of the Protection of Women from Domestic Violence Act, 2005, Police Station-Kaushambi, District-Ghaziabad, whereby the application for interim relief in terms of Section 23 of aforementioned Act has been allowed as well as the order dated 08.02.2023 passed by Additional District Judge, Court No.-3, Ghaziabad in Criminal Appeal No. 151 of 2022 (Rajeev Sachdeva Vs. State of U.P. and Another), under Section 29 of the Protection of Women from Domestic Violence Act, 2005, whereby aforementioned appeal filed by revisionist against order dated 23.08.2022 has been dismissed.

2. I have heard Mr. Nipun Singh, the learned counsel for revisionist, the learned A.G.A. for State-opposite party-1 and Mr. Saurabh Shukla, the

learned counsel representing complainant/opposite party-2.

3. Perused the record.

4. It transpires from record that marriage of opposite party-2 was solemnized with revisionist on 22.02.2015 in accordance with Hindu Rites and Customs. However, subsequently, it appears that differences arose between the parties on account of marital discord. Resultantly, opposite party-2 lodged an FIR dated 08.07.2015, which was registered as Case Crime No. 0414 of 2015, under Sections 498A, 406, 313, 354(A)(1), 509, 323, 34 IPC, Police Station-Geeta Colony, District-East Delhi. Thereafter, another FIR dated 27.09.2015 was lodged by opposite party-2, which was registered as Case Crime No. 0948 of 2015, under Sections 451, 323, 34 IPC, Police Station-Vivek Vihar (East), District-East Delhi.

5. In respect of Case Crime No. 0414 of 2015, the accused persons including the revisionist filed anticipatory bail application before the competent Court. During course of hearing of the anticipatory bail application, it was discovered by Court that opposite party-2 is already married. The said fact was noted in the order dated 31.03.2016 passed by Special Judge (PC Act), CBI East, KKD Court, Delhi. For ready reference, the relevant portion of the order dated 31.03.2016 is quoted herein under;-

“Before passover, during arguments, the court was trying to reconcile the dispute between the parties. At that time, few lawyers informed the court that complainant was earlier married and Ist/Ind Motion is pending. However, complainant denied this fact and passover was sought. Thereafter, one Advocate Sh. Amit Sharma, who is now present in court, informs the court that complainant was earlier married and she has concealed this fact from the court. When the court confronts the complainant, only then, complainant informs the court that she was earlier married and had got legal divorce and this fact was informed to the applicants and it was agreed between the parties that this matter

should always be amongst the parties. However, this court is very much disturbed with the conduct of the complainant. Before passover, the complainant must have come before the court with clean hands and must have informed about her marital status but she did not do the same. When O was questioned about this fact, he states that he has come to know for the first time today that complainant is already married. Similarly, Sh. Akhtar Shamim, Advocate for the complainant also states that he was also not aware of the fact that complainant is already married. FIR perused. In the FIR, nothing is mentioned about the marital status of the complainant and it is also not mentioned that complainant was earlier married.”

Ultimately, the accused were granted anticipatory bail, vide order dated 07.05.2016.

6. Against order dated 07.05.2016, opposite party-2 filed bail cancellation application, which was rejected, vide order dated 28.07.2016 with cost of Rs. 2,000/-. The Court again reprimanded opposite party-2 for abusing the process of Court.

7. At this juncture, opposite party-2 filed a complaint dated 18.04.2016, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against revisionist (hereinafter referred to as the Act, 2005). The same was registered as Complaint Case No. 2104 of 2016 (Smt. Nidhi Sachdeva Vs. Rajeev Sachdeva and 5 Others). Along with this complaint, an application for interim relief as contemplated under Section 23 of the aforementioned Act was also filed, which was separately registered as Criminal Misc. Application No. 13157 of 2020 (Smt. Nidhi Sachdeva Vs. Rajeev Sachdeva and Others), under Section 23 of the Protection of Women from Domestic Violence Act, 2005, Police Station-Kaushambi, District-Ghaziabad.

8. Aforementioned application filed by opposite party-2 was opposed by the revisionist. He duly filed his objections to the same disputing the right

and entitlement of opposite party-2 to claim maintenance from revisionist primarily on the ground that no domestic relationship is in existence between the parties.

9. During pendency of proceedings under Section 12 of the Act, 2005 initiated by opposite party-2 and as noted herein above, revisionist filed a suit for declaration of his marriage with opposite party-2 as null and void in terms of Section 11 of the Hindu Marriage Act. The said suit was filed in the Court of Principal Judge, (East District), Family Court, Karkarduma, Delhi and was registered as HMA No. 542 of 2019 (Rajeev Sachdev Vs. Nidhi Kapoor). In the aforesaid suit, opposite party-2 filed an application under Section 24 of the Hindu Marriage Act claiming maintenance pendent-elite and also litigation expenses.

10. To create pressure, opposite party-2 again lodged another FIR dated 05.02.2020 against the brother and uncle of revisionist. Same was registered as Case Crime No. 236 of 2020, under Sections 376-D, 328, 34 IPC, Police Station-Sahibabad, District-Ghaziabad.

11. However, the Principal Judge, (East District), Family Court, Karkarduma, Delhi, vide order dated 04.02.2021, rejected the application for interim maintenance filed by opposite party-2 on the ground that since opposite party-2 was already married and therefore, her marriage with revisionist during subsistence of first marriage is illegal i.e. void ab-initio, as such, opposite party-2 is not entitled to claim interim maintenance during the pendency of the matrimonial dispute.

12. Ultimately, above-mentioned suit i.e. HMA No. 542 of 2019 (Rajeev Sachdev Vs. Nidhi Kapoor), under Section 11 of the Hindu Marriage Act was decreed, vide judgment/order dated 20.11.2021 passed by the Principal Judge, (East District), Family Court, Karkarduma, Delhi.

13. Feeling aggrieved by the judgment/order dated 20.11.2021, opposite party-2 filed an appeal before the Delhi High Court, which was registered as MAT. APP. (F.C.) 35/22, CM Appeal No. 15953 of 2022 (Nidhi Kapoor

Vs. Rajeev Sachdeva). The appeal was dismissed as withdrawn, vide order dated 30.03.2022. For ready reference, the order dated 30.03.2022 is reproduced herein below:-

“ CM Appl. 15953/2022 (for exemption)

1. Exemption allowed subject to just exceptions.

2. Application is disposed of.

MAT.APP (F.C.) 35/2022

1. By this appeal, the appellant challenges the judgment dated 20th November 2021 passed by the learned Principal Judge, Family Courts, Karardooma Courts.

2. After some arguments, learned counsel for the appellant seeks leave to withdraw the appeal.

3. Leave granted.

4. Appeal is dismissed as withdrawn.

5. Order be uploaded on the website of this Court.”

14. After the marriage of the parties was declared null and void, opposite party-2 pressed her application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 in proceedings under Section 12 of the aforementioned Act initiated by her. The Civil Judge (JD)/FTC-I, Ghaziabad without considering the fact that marriage of the parties stands dissolved and there is no relationship between the parties as per Section 2(f) of the Act, 2005, yet allowed the claim for interim maintenance prayed for by opposite party-2, vide order dated 23.08.2022. Accordingly, revisionist was directed to pay interim maintenance to opposite party-2 @ Rs. 10,000/- per month pendente-lite.

15. Feeling aggrieved by the order dated 23.08.2022, revisionist preferred an appeal in terms of Section 29 of the Act, 2005 before the Appellate Court. The same was registered as Criminal Appeal No. 151 of 2022

(Rajeev Sachdeva Vs. State of U.P. and Another).

16. Aforementioned appeal filed by revisionist also came to be dismissed by the Appellate Court, vide order dated 08.02.2023. Perusal of the order impugned dated 08.02.2023 will go to show that Court below concluded that since there was domestic relationship between the parties, therefore, no illegality has been committed by Court below in passing the order impugned.

17. Thus feeling aggrieved by the orders dated 08.02.2023 and 23.08.2022, revisionist has now approached this Court by means of present criminal revision.

18. Mr. Nipun Singh, the learned counsel for revisionist would submit that the orders impugned in present criminal revision are manifestly illegal and in excess of jurisdiction. Consequently, the same are liable to be set aside by this Court. According to the learned counsel for revisionist, since on the date of passing of the order, there was no domestic relationship nor there was any relationship in the nature of marriage between the parties, as the marriage of the parties had already been declared void, therefore, no interim maintenance could have been awarded by Court below under the Protection of Women from Domestic Violence Act. To buttress his submission, he has referred to the judgment and decree passed by Court of Competent Jurisdiction in HMA No. 542 of 2019 (Rajeev Sachdev Vs. Nidhi Kapoor), wherein the marriage of the parties was declared null and void at the instance of revisionist.

19. Learned counsel for revisionist, in order to lend legal support to his submission, first referred to the judgment of Supreme Court in **D. Velusamy Vs. D. Patchaiammal, (2010) 10 SCC 469** and has relied upon paragraphs 19 and 31 of the report. For ready reference, the same are reproduced herein below:-

“19. Having noted the relevant provisions in the Protection of Women from Domestic Violence Act, 2005, we may point out that the expression

“domestic relationship” includes not only the relationship of marriage but also a relationship “in the nature of marriage”. The question, therefore, arises as to what is the meaning of the expression “a relationship in the nature of marriage”. Unfortunately, this expression has not been defined in the Act. Since there is no direct decision of this Court on the interpretation of this expression we think it necessary to interpret it because a large number of cases will be coming up before the courts in our country on this point, and hence an authoritative decision is required.

31. In our opinion a “relationship in the nature of marriage” is akin to a common law marriage. Common law marriages require that although not being formally married:

- (a) The couple must hold themselves out to society as being akin to spouses.*
 - (b) They must be of legal age to marry.*
 - (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.*
 - (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.*
- (See “Common Law Marriage” in Wikipedia on Google.)*

In our opinion a “relationship in the nature of marriage” under the 2005 Act must also fulfil the above requirements, and in addition the parties must have lived together in a “shared household” as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a “domestic relationship”.

20. Learned counsel for revisionist has then referred to the judgment of Supreme Court in **Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad and Another**, (2013) 2 SCC 137 and has relied upon paragraph 22 of the report. For ready reference, the same is extracted herein under;-

“22. In the present case, if according to the respondent, the marriage between him and the appellant was void on account of the previous marriage between the appellant and Rohit Kumar Mishra the respondent ought to have obtained the necessary declaration from the

competent court in view of the highly contentious questions raised by the appellant on the aforesaid score. It is only upon a declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a “relationship in the nature of marriage” would be justified. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage.”

21. In the submission of the learned counsel for revisionist, the case in hand is squarely covered by the observations made by Court in paragraph 22 of the aforementioned report. The said submission is based on the ground that admittedly, the revisionist had sought declaration of his marriage with opposite party-2 as null and void, which decree has already been passed in his favour on 20.11.2021 in HMA No. 542 of 2019 (Rajeev Sachdev Vs. Nidhi Kapoor). Moreover, the said decree has become final as the appeal filed against the said judgment and decree by opposite party-2 was dismissed as withdrawn. It was thus contended that both the Courts below have ignored the aforesaid aspect of the matter, which has vitiated the same.

22. It was further contended by the learned counsel for revisionist that the Appellate Court on an erroneous view of the matter has returned a finding that since there was relationship between the parties, which shall be covered within the meaning of the term ‘Domestic Relationship’ as defined in Section 2(f) of the Protection of Women from Domestic Violence Act, 2005, therefore, opposite party-2 is clearly entitled to claim interim maintenance and has dismissed the appeal filed by the revisionist. In the humble submission of the learned counsel for revisionist, the Appellate Court miserably failed to appreciate the fact that decree of divorce had already been granted on 20.11.2021, therefore, opposite party-2 was not an aggrieved person nor there was any domestic

relationship in between the revisionist and opposite party-2 on the date of passing of the order by the Trial Court. Since the marriage of the parties was declared void, therefore, it was bad from inception. Once the marriage of the parties itself stand dissolved, the same shall relate back to the date of marriage and therefore, no consequences arising out of such a void marriage could be taken into consideration. On the above conspectus, he, therefore, concluded that the orders impugned are liable to be set aside by this Court.

23. Per contra, the learned A.G.A. representing State-opposite party-1 and the learned counsel representing first informant-opposite party-2 have vehemently opposed the present criminal revision. They submit that the arrangement made by Court below is interim in nature. Parties shall be at liberty to lead evidence in support of their respective cases. It is, thereafter, that Court below can examine the veracity of the claim raised by opposite party-2 threadbare. They, therefore, submit that it is premature to consider the merits of the case of the parties. On the above premise, it was thus strenuously urged by the learned A.G.A. as well as the learned counsel representing opposite party-2 that no interference is warranted by this Court in present criminal revision.

24. Having heard the learned counsel for revisionist, the learned A.G.A. for State-opposite party-1, Mr. Saurabh Shukla, the learned counsel representing complainant/opposite party-2 and upon perusal of record, this Court finds that it is an undisputed fact that opposite party-2 solemnized marriage with revisionist during the subsistence of her previous marriage. As such, opposite party-2 has herself indulged in polygamy, which is not permissible in law. It was on account of aforesaid fact that in the criminal proceedings initiated by opposite party-2, Court granted anticipatory bail to the accused including revisionist. Moreover, because of above, revisionist instituted proceedings under Section 11 of the Hindu Marriage Act for declaration of his marriage with opposite

party-2 as null and void. In the aforesaid divorce proceedings, opposite party-2 filed an application under Section 24 of the Hindu Marriage Act claiming interim maintenance. However, the same was negated by Court below on the ground that since marriage of opposite party-2 with revisionist is itself null and void, no direction for payment of interim maintenance can be issued. Ultimately, the marriage of the parties was declared null and void by the Court of Competent Jurisdiction, vide judgment and decree dated 20.11.2021 passed by Principal Judge, (East District), Family Court, Karkarduma, Delhi in HMA No. 542 of 2019 (Rajeev Sachdev Vs. Nidhi Kapoor), under Section 11 of the Hindu Marriage Act. The judgment and decree dated 20.11.2021 was challenged by opposite party-2 by filing an appeal before the Delhi High Court. However, the same was dismissed as withdrawn as is evident from the order dated 30.03.2022 passed by a Division Bench of Delhi High Court. Thus the declaratory decree qua the marriage of revisionist with opposite party-2 as null and void has become final. Since by means of the declaratory decree, the marriage of the parties has been declared null and void, it shall relate back to the date of marriage. The logical outcome of the same shall be that once the marriage of the parties itself has been declared void-ab-initio, the subsequent relationship between the parties is of no consequence. As such, the factual position, which has emerged on record is that there is no relationship between the parties in terms of Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 since 21.11.2021. In view of above, the orders impugned in present criminal revision cannot be sustained and are therefore, liable to be set aside.

25. As a result, the present criminal revision succeeds and is liable to be allowed.

26. It is, accordingly, **allowed**.

27. The orders impugned dated 23.08.2022 passed by Civil Judge

(JD)/FTC-I, Ghaziabad in Criminal Misc. Application No. 13157 of 2020 (Smt. Nidhi Sachdeva Vs. Rajeev Sachdeva and Others), under Section 12 of the Protection of Women from Domestic Violence Act, 2005, Police Station-Kaushambi, District-Ghaziabad and dated 08.02.2023 passed by Additional District Judge, Court No.-3, Ghaziabad in Criminal Appeal No. 151 of 2022 (Rajeev Sachdeva Vs. State of U.P. and Another), under Section 29 of the Protection of Women from Domestic Violence Act, 2005 shall stand set aside.

28. In the facts and circumstances of the case, the parties shall bear their own costs.

Order Date :- 09.07.2025

Vinay