



2026:AHC:4275

## HIGH COURT OF JUDICATURE AT ALLAHABAD

### CRIMINAL REVISION No. - 5971 of 2024

Smt. Suman Verma and another

.....Revisionist(s)

Versus

State of U.P. and another

.....Opposite Party(s)

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| Counsel for Revisionist(s)    | : Deepak Kumar Yadav      |
| Counsel for Opposite Party(s) | : G.A., Shashank Tripathi |

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**Last heard on 5.12.2025**

**Pronounced on 8.1.2026**

**In chamber**

**HON'BLE GARIMA PRASHAD, J.**

1. Heard Sri Deepak Kumar Yadav, learned counsel for the revisionist, learned A.G.A. for the State and Sri Kumar Dhananjay, learned counsel holding brief of Sri Shashank Tripathi, learned counsel for the opposite party No.2.

2. The present criminal revision has been preferred against the judgment and order dated 03.10.2024 passed by the Additional Principal Judge, Family Court, Bulandshahr under Section 125 Cr.P.C. whereby the application for maintenance towards the revisionist No.1/wife of the opposite party no.2 has been rejected and an amount of Rs. 3,000/- per month has been directed to be paid by the opposite party No.2/husband of the revisionist No.1 towards the maintenance of the minor son (Master Tilak Verma) only. The revisionist no.1 has sought enhancement of maintenance of Rs. 15,000/- per month towards herself and up to Rs.

10,000/- towards her minor son/revisionist No.2 from the date of application.

3. Learned counsel for the revisionists submits that the marriage between the parties was solemnized on 20.05.2006 according to Hindu rites and rituals. From the wedlock, a son (Master Tilak Verma) was born who is presently about fifteen years old and is residing with the revisionist no.1/wife. As per the revisionist no.1, she was driven out of the matrimonial home along with her son in the year 2015 due to physical and mental cruelty including beatings and harassment. An earlier petition for maintenance had been disposed of on 07.11.2005 by the Family Court, Bulandshahr in view of a compromise which had been entered between the parties on the assurance of opposite party No.2 that he would keep the revisionist No.1/wife properly, and accordingly she had returned to the matrimonial home and had withdrawn the case. Again on 09.01.2020, she was beaten and expelled from the matrimonial home along with her son on the demand of dowry. As per the revisionist No.1/wife, she is educated but a homemaker having no vocational skills such as tailoring, embroidery, knitting, and thus has no independent source of income. She is currently residing at her parental home and is financially dependent on them. As per the revisionist No.1/wife, the opposite party No.2/husband is employed as a Class-IV employee at Primary School, Saitha, Block Gulawathi, District Bulandshahr, and earns approximately Rs. 35,000/- per month as salary. She has accordingly sought Rs. 15,000/- per month for herself and Rs. 10,000/- per month for her son towards maintenance in the Application under Section 125 Cr.P.C. filed on 19.04.2021.

4. Learned counsel for the revisionists submits that it has been wrongly held that the revisionist No.1/wife is living separately without sufficient cause. It is submitted that such finding has been given on the ground that the revisionist No.1/wife had refused to go back during the proceedings instituted under Section 9 of the Hindu Marriage Act by the

opposite party No.2/husband. It is further submitted that learned Family Court Judge has rejected the plea of the revisionist No.1/wife on the ground that she had not filed any cruelty or dowry related case or any complaint regarding assault against the husband and as such given a wrong finding that she was living separately of her own volition for want of sufficient cause and hence was not entitled to receive any maintenance from the opposite party No.2/husband. Learned counsel for the revisionists submits that the revisionist No. 1/wife has no source of income and that the opposite party No.2/husband has failed to produce any proof that the revisionist No.1/wife had been working and was gainfully employed. It is submitted that the opposite party No.2 has never paid a penny towards maintenance of herself and her minor child.

5. Per contra, learned counsel for the opposite party No.2 submits that since the time of marriage, the revisionist No.1/wife used to threaten that she would falsely implicate the opposite party No.2/husband and his family members in criminal cases. It is submitted that she had abandoned the husband and left her matrimonial home of her own accord in the year 2007 within eleven months of marriage. The opposite party No.2 has denied that the minor son (Master Tilak Verma) was born out of wedlock taking a plea that there has been no physical relationship between the parties since 2007.

6. Learned counsel for the opposite party No.2 further submits that the revisionist No.1/wife is highly qualified. She had done M.A. before marriage whereas the opposite party No.2 was High school pass. As per him, the revisionist No.1/wife is presently working as a teacher at Red Rose Public School, Dhaulana Adda, Gulawathi, District Bulandshahr and has I.T.I. diploma in tailoring and that she also earns by giving tuition to children. It is thus submitted that revisionist No.1/wife is not entitled to any maintenance.

7. Learned Family Court has rejected the claim of maintenance of the revisionist No.1/wife on the ground that she had concealed her professional education from the Court and had not approached the Court with clean hands. The Family Court, has also held that though the opposite party No.2/husband has claimed that the minor child is not his son but he has failed to produce any reliable evidence, and hence rejected such plea of the opposite party No.2/husband. It has therefore proceeded to hold that the revisionist No.2/minor son is entitled to maintenance from his father/ opposite party No.2 taking the gross income of the opposite party No.2 as per his salary slip submitted by him of Rs. 48,350/- per month in May, 2024. The learned Family Court has partly allowed the application and directed an amount of Rs. 3,000/- per month to be paid by the opposite party No.2 to his minor son from the date of filing of the petition.

8. Heard learned counsel for the parties as well as perused the record. Section 125 (4) Cr.P.C. provides that the wife shall not be entitled to receive maintenance if she is living separately without sufficient cause. Plea that she refused to stay with the husband even after filing of petition under Section 9 of the Hindu Marriage Act by the husband, is no more res integra. The Hon'ble Supreme Court in the Case of **Rina Kumari Alias Rina Devi Alias Reena vs. Dinesh Kumar Mahto Alias Dinesh Kumar Mahato (2025) 3 SCC 33** has held that refusal of wife to stay away from her matrimonial home, notwithstanding the passing of restitution decree could not be used against her as disqualification under Section 125(4) Cr.P.C.. The learned Family Court has therefore erred in applying that disqualification and holding that revisionist No.1/wife was not entitled to maintenance. The learned Family Court has also erred in giving a findings that since no dowry related case or complaint for assault had been filed by the revisionist No.1/wife against her husband, there is no proof of cruelty or demand of dowry which forced her to live separately.

9. The preponderance of the judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 Cr.P.C. and the mere filing of a petition for restitution of conjugal rights by the husband would not, by itself, be sufficient to attract the disqualification under Section 125(4) Cr.P.C. The opposite party No.2's conduct in denying the fatherhood to the minor child would have been probably the last straw adding to the suffering due to the ill treatment in her matrimonial home.

10. Though the learned Family Court is right in recording that the revisionist No.1/wife had concealed material facts regarding her entire education and qualification, it cannot be ignored that the opposite party No.2/husband has also made false statement on affidavit denying fatherhood of the minor child only to deny the payment of maintenance towards his wife and minor child. There is also no specific finding regarding proof of gainful employment of the revisionist No.1/wife.

11. It is also evident that the maintenance amount awarded to the revisionist No.2/minor son of Rs. 3,000/- per month is a meager amount considering that the boy is an adolescent needing support to study well and grow in a healthy environment. The admitted gross salary of the opposite party No.2 which is Rs. 48,350/-. The learned Trial Court has wrongly permitted deduction of Rs. 35,124/- p.m. towards payment of loan etc. It is clear that the opposite party No.2 has been creating ways and means to evade payment of maintenance to his legally wedded wife and minor son. As per the decision of the Hon'ble Supreme Court in **Rajnesh vs. Neha (2021) 2 SCC 324**, maintenance amount should be about 25% of the net salary of the opposite party no.2/husband. Finding of the learned Trial Court that a net payable salary is only Rs. 13,226/- per month is not correct and deserves to be re-appreciated. The object of the provisions contained in Section 125 of the Code cannot be lost sight of. Indisputably, the provision is a measure of social justice and its object is to prevent destitution and vagrancy. The statutory right of the

wife to maintenance cannot be permitted to be parted away and infringed by setting up a case that she had the capacity to earn. The learned Judge, Family Court totally misconstrued the evidence on record to arrive at a finding that the revisionist No.1/wife was capable of maintaining herself and hence not entitled to any maintenance. The fact that the wife could work or could earn some money is not the end of the matter. Neither the mere potential to earn nor the actual earning, howsoever meager it may be, is sufficient to deny the claim of maintenance. The Hon'ble Supreme Court in the case of **Sunita Kachwaha and others vs. Anil Kachwaha (2014) 16 SCC 715** considered a similar case on facts and observed as under:

“the learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant- wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.” (emphasis supplied)

12. In the case of **Shamina Faruqi vs. Shahin Khan (2015) 5 SCC 705**, the Supreme Court expounded the philosophy behind the award of maintenance. The observations of the Supreme Court in paragraph 14 are instructive. They are extracted below:

“14.....it can never be forgotten that the inherent and fundamental principle behind Section 125, CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither

and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125, CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125, CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125, CrPC, unless disqualified, is an absolute right.....”

13. In the light of aforesaid exposition of law, there was sufficient material on record in the facts of the present case. The revisionist No.1/wife could have the capacity to earn from tailoring, which may not be sufficient to support livelihood of the revisionist No.1/wife, and afford her to maintain the same standard of living which she will get if she was residing with the opposite party No.2. Thus, the revisionist No.1/wife is entitled to maintenance from the opposite party No.2 even if the revisionist has the capacity to work. The opposite party No.2 has admittedly not paid any amount towards maintenance of her wife or his minor son who is now an adolescent boy and requires reasonable financial support from the opposite party No.2.

14. It must always be kept in mind that this exercise is not a mere adjudication on a claims for money, but a judicial responsibility that affects the dignity, sustenance and stability of life of the applicant. Therefore, orders on maintenance must reflect not only correctness in law but also an understanding of human conditions that lie beneath the pleadings presented before the Court. It is of utmost importance that the

judgment of Hon'ble Supreme Court in *Rajnesh vs. Neha* (supra) provides a guiding framework and is always followed to ensure that the orders granting maintenance are passed with fairness, uniformity and clarity.

15. In view of the aforesaid circumstances, it is held that the impugned order has been passed without properly appreciating the revisionist No.1/wife's financial incapacity. The opposite party No.2 has not placed on record any material evidence to establish that the revisionist No.1/wife is presently employed or earning any specific income. The mere fact that she is a post graduate and has done ITI Diploma in tailoring by itself cannot lead to the conclusion that revisionist No.1/wife is working for gain. It is a matter of social reality that women devote themselves to domestic responsibilities and take care of children and are unable to be gainfully employed. It is, therefore, misplaced for a husband to rely solely on the qualification of his wife to evade his legal obligation to maintain her. When a marital discord arises and parties get separated, then the very sacrifice is often portrayed as a devilish act intended to extract money from the husband. Such sweeping assumptions are not only unfair but deeply insensitive to the social and emotional realities that women face.

16. In the present case, the revisionist No.1/wife has been staying at her parental home and taking care of her child without any financial or emotional support from the opposite party No.2/husband. The Family Court must adopt a practical and a humane approach. This Court is of the view that revisionist No.1/wife's assertion that she is unemployed, burdened with the responsibility of single-handedly taking care of a young child and residing with her parents without any independent source of income is credible in the absence of any evidence contrary. Her situation reflects the reality faced by many women, who, despite their education, find it difficult to join the workforce after years of domestic duties and child care responsibilities.

17. In view of the above discussion, this Court is of the opinion that the impugned order cannot be sustained in its present form. The complete responsibility of meeting the daily need, education and medical expenses of a minor child lies upon both the parents. It is accordingly held that both the revisionist No.1/wife as well as the minor son are equally entitled to maintenance from the opposite party No.2 and he is legally liable to maintain both his wife and minor son.

18. Accordingly, the impugned order is set aside and remanded back to the learned Family Judge for fresh determination of maintenance, on the basis of material on record and in accordance with principles governing grant of maintenance, after taking note of the observations made in the present judgment.

19. The learned Family Judge shall pass a reasoned order afresh within a period of one month from the date of receipt of the copy of this judgment. All rights and contentions of the parties on merits are left open to be urged before the learned Family Court.

20. The revision is disposed of.

**(Garima Prashad,J.)**

**January 8, 2026**

<Sachin Mishra>