
(1999) 07 AHC CK 0178
In the Allahabad High Court
Case No : Criminal Revision No. 955 of 1998

Bhagwati Shankar Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Citation : (1999) 3 ACR 2750

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Judgement

B.K. Rathi, J.—This revision has been filed under Sections 397, 401, Code of Criminal Procedure against the order dated 16.5.1998 passed by Additional Principal Family Judge, Kanpur Nagar, by which he awarded the maintenance of Rs. 500 to opposite party No. 2, Rs. 400 to opposite party No. 3 and Rs. 250 per month to each opposite party Nos. 4 and 5 from 29.11.1996 i.e., the date of the application.

2. I have heard Sri K.K. Tripathi, learned Counsel for the applicant, Sri Vijay Prakash, learned Counsel for the opposite parties and the learned A.G.A.

3. It is not disputed that the opposite party No. 2 is the wife, opposite party No. 3 is the daughter and opposite party Nos. 4 and 5 are sons of the applicant. An application was made for their maintenance by the opposite party No. 2 which has been allowed and the maintenance has been awarded as above.

4. It is contended by the learned Counsel for the applicant that the applicant is a retired employee and getting Rs. 1,783 only as pension. That, therefore, the maintenance awarded is highly excessive. That he is not in a position to pay the maintenance of Rs. 1,400 awarded by the trial court. However, the contention of the learned Counsel for the applicant cannot be accepted. The judgment of the trial court shows that the applicant himself admitted that he is getting Rs.2,500 as pension, therefore, the argument that he is getting Rs.1.783 as pension

cannot be accepted.

5. Next it is contended by the learned Counsel for the applicant is that opposite party No. 2 is also in service and is earning a lot of amount. However, there is no evidence regarding it.

6. Lastly, it is contended that the maintenance has been awarded from the date of the application. That huge amount has become due and the applicant, who is a pension holder cannot pay that amount. It is, therefore, prayed that the order be modified and the maintenance be awarded from the date of the order.

7. In my opinion, this request is just and proper. The applicant will feel difficulty in paying the huge arrears. Therefore, I accept this request of the applicant.

8. Therefore, the revision is allowed in part and the order of the Judge, Family Court, Kanpur Nagar, is modified only to the extent that the amount awarded by him to the opposite party Nos. 2 to 5 shall be payable from the date of the order, i.e., 16.5.1998 in place of 29.11.1996. The rest of the order is maintained. The revision is disposed of finally.