
(2019) 07 UK CK 0071
In the Uttarakhand High Court
Case No : Criminal Revision No. 40 Of 2017

Pooja & Another

APPELLANT

Vs

Sanjay Khanna

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125
Evidence Act, 1872 — Section 103

Citation : (2019) 07 UK CK 0071

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Nikhil Singhal, Sanjeev Singh

Final Decision : Disposed Of

Judgement

Sharad Kumar Sharma, J

1. It is a criminal revision, which has been preferred by the revisionist/wife, who has questioned the judgment and order dated 04.02.2017 as rendered by the Family Court, Haridwar in Case No. 29 of 2011 'Smt. Pooja & Another vs. Sanjay Khanna', whereby, the learned Family Court while considering the propriety of the application under Section 125 of Cr.P.C. has proceeded to deny the grant of maintenance to the wife, i.e. the revisionist no. 1, but as far as the revisionist no. 2 is concerned, who is the minor son, the Family Court by the judgment dated 04.01.2017 has awarded him a maintenance of Rs. 2,500/- per month.

2. In brief, the facts of the case are that it is not in dispute that the revisionist no. 1 and the respondent their marriage was solemnized in accordance with the Hindu rites and rituals on 27.11.2009. Thereafter, it was an allegation, which was leveled by the revisionist no. 1 that the respondent use to physically assault her and often use to hurl abuses and one of such incident, which has been narrated in the pleadings before the Court below was that of 7.12.2009, wherein, the revisionist no. 1 has alleged that she was seriously assaulted by the respondent,

and as a consequence of the blow, which he has inflicted on revisionist no. 1, it is contended by her that it has resulted into damaging the eardrum of the revisionist due to which her hearing capacity has reduced. Coupled with the aforesaid difficulties, she also contended that it was under the aforesaid circumstances, which she was facing, her father was unable to bear the shock and due to which her father met with the sad demise on 09.12.2009.

3. Her case before the Court below was that despite of the aforesaid incident, which has been narrated in the pleadings, the in-laws of the revisionist has not shown any solace to her and their atrocities even persisted to continue despite of her various efforts, which she contends that she tried to pacify the dispute and misunderstanding amongst themselves. She has also leveled the allegation pertaining to the demand of dowry by the respondent by way of raising a demand of providing with the motorcycle etc.

4. The precise ground for the claim raised by the revisionist in her application under Section 125 of Cr.P.C. was that in order to protect herself from the atrocities of her husband, she has started residing at her parents' home along with the child and ever since January, 2012, she is residing with her parents. She has contended that after the birth of the son the expenses which she has now to incur in the upkeep of the child in the absence of there being any source of income available to her is posing great difficulty and thus she contended that since the husband/respondent is employed as a driver and having an income of Rs. 30,000/- per month, an appropriate direction may be issued to the husband/respondent to pay a maintenance at the rate of Rs. 15,000/- per month, which has been bifurcated in its computation as Rs. 10,000/- towards revisionist no. 1 and Rs. 5,000/- towards revisionist no. 2.

5. In response, which was submitted by the husband to the application under Section 125 of Cr.P.C., the respondent/husband had basically admitted the fact pertaining to the solemnization of marriage, the birth of the child, but as far as the rest of the allegations are concerned pertaining to the cruelty, which is alleged to have been exercised by him upon revisionist no. 1, this fact was specifically denied and he has also denied the fact that the income, which has been depicted in the application under Section 125 of Cr.P.C. is false, apart from the fact that the pleading and the fact of atrocities was not supported by any specific document out of number of facts, hence it is per se false and his income is only Rs. 3,000/- per month, which he occasionally gets on account of being engaged as a driver temporarily for driving the vehicles.

6. The learned Family Court while considering the application under Section 125 of Cr.P.C. by the impugned judgment dated 04.12.2003, apart from considering the rival contentions raised by way of pleading, had come to a conclusion that as far as the allegation leveled by the revisionist no. 1 pertaining to the cruelty exercised by respondent no. 2, she has utterly failed to place any document on record to show that on account of the alleged assault by the respondent/husband, she has suffered grievously and for which to get it cured she has

undertaken any medical treatment. Even there was nothing on record brought by her to show the place from where she has got herself treated and what amount of money was invested by her in her treatment. Rather to the contrary in the cross-examination one thing, which has been reflected from the statement of PW2, that the revisionist no. 1 was suffering from some hearing problem right from the stage when she was studying in class-9 that even much prior to the marriage on 27.11.2009. Thus, considering the ground of staying away from the husband and not discharging her matrimonial obligations and considering the false story, the finding of which has been recorded by the Court below pertaining to the exercise of cruelty by the husband upon her, the Family Court after considering the evidence adduced by the parties, and more particularly, the fact that the revisionist/wife has not been able to bring any material on record to show what was the actual income accruing to the husband in order to appropriately consider her application under Section 125 of Cr.P.C., which was burden which was required to be proved by her under Section 103 of the Evidence Act. Thus, the Court considering that under the circumstances, which has been reflected in the pleadings between the parties, the factum of cruelty and the factum of income accruing to the husband was not established by the revisionist/wife, which she was legally responsible to discharge and thus the Family Court has rightly not granted any maintenance to her because she was staying away from her husband for no valid reason, which she could have succeeded in establishing the same by way of adducing evidence, but while carving out an exception atleast the fact of revisionist no. 2 being his son is not a fact which is disputed by the revisionist or by the respondent at any point of time.

7. Considering the present era of inflation, this Court is of the opinion that considering the income, which is accruing to respondent no. 2 even as a driver, and also considering the fact that for the purposes of maintaining a child for his better upkeep and grooming a sum of Rs. 2,500/- per month as computed by the Family Court and awarded by the impugned award dated 04.12.2017, is on a meager side, but simultaneously while modifying the judgment dated 4.12.2017, this Court is conscious about the fact also to the effect that the income which was accruing to the husband himself as a matter of fact was not denied that the husband is having an income more than what has been projected by him in his pleading. Thus, to give a rational consideration for determination of maintenance required to take care of the child while considering it in relation to the income accruing to the husband, this Court is of the view that a sum of Rs. 3,500/- would be feasible amount, to be paid by respondent no. 2 to revisionist no. 1 as a maintenance payable to revisionist no. 2, who is the minor. This Court is disturbing the reasoning and the findings for denial of maintenance to the wife, due to her failure to prove her case and claim raised therein.

8. With the aforesaid slight modification of the judgment impugned dated 04.12.2017, the rest of the findings pertaining to the denial of maintenance to revisionist no. 1 is affirmed and consequently the revision only partially succeeds so far it relates to the awarding of the compensation payable to revisionist no. 2.

9. Subject to the above observation, the present criminal revision is closed.

10. However, it goes without saying that this judgment will automatically have an implication that if there stands any arrears to be paid by respondent no. 2 that would be remitted back by him within six weeks from the date of receipt of this judgment.