
(2009) 05 UK CK 0010
In the Uttarakhand High Court

Purshottam Joshi

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 401
Family Courts Act, 1984 — Section 19

Citation : (2009) 05 UK CK 0010

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Judgement

Dharam Veer, J.—This criminal revision, preferred by the revisionist under Sections 397/401 of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.) r/w Section 19(4) of Family Courts Act, 1984, is directed against the judgment and order dated 13.12.2007 passed by Judge, Family Court Nainital, Camp Haldwani in Misc. Crl. Case No. 41/2006, Smt. Kanti Joshi and Anr. v. Purshottam Joshi, whereby the learned Judge, Family Court has directed the revisionist to pay Rs. 3,000/- per month to respondent No. 2 towards maintenance allowance from the date of application i.e. 20.4.2006.

2. Heard learned Counsel for the parties and perused the entire material available in file.

3. In brief the facts of the case are that respondent No. 2-Smt. Kanti Joshi moved an application u/s 125 Cr.P.C. with the averments that she is the legally wedded wife of the revisionist and respondent No. 3-Km. Uma Joshi is the unmarried daughter of revisionist. For last many years, the revisionist is residing separately from the respondents No. 2 and 3 and is not discharging his liabilities. Further, the revisionist used to commit physical and mental harassment of the respondent No. 2 without any proper reason and she was also not being given any maintenance. In between, respondent No. 3 somehow completed her B.S.C. Examination and due to financial constraints, she is unable to pursue her studies farther. Respondent No. 2 is also having a son who is unemployed and thus she

has got no source of income. On the other hand, the revisionist is a retired Tehsildar and he gets Rs. 8,000/- per month as pension and he also gets Rs. 2,000/- as income from house rent. Besides this, the revisionist also earns Rs. 5000-6000 per month from Insurance Business. Thus, the revisionist earns Rs. 20,000/- per month in total. Further, respondent No. 2 is an old and sick lady and respondent No. 3 i.e. her daughter is not able to complete her studies. As such, an amount of Rs. 5,000/- each for respondent Nos. 2 and 3 was sought as maintenance against the revisionist.

4. The revisionist also appeared before the court below and denied most of the averments made in the application. He stated that he gets Rs. 6,000/- per month as pension. Further during his service time he got constructed a house in which the respondent Nos. 2 and 3 are residing. He further stated that he is 72 years of age and he also has problems due to his physical sufferings and he has to spend a lot in his treatment. He also denied any income from house rent and insurance.

5. After hearing learned Counsel for the parties and appreciating the material on record, learned Judge Family Court, Nainital Camp Haldwani vide judgment and order dated 13.12.2007 directed the revisionist to pay Rs. 3,000/- per month to respondent No. 2 from the date of application i.e. 20.4.2006. However, the application with regard to respondent No. 3-daughter was dismissed.

6. Sri Vijay Bhatt, Adv. for the revisionist has argued that the court below has erred by awarding excessive maintenance to respondent No. 2. He further submitted that the revisionist is an old man of 75 years and he also has some physical sufferings and for his own maintenance also, he has to spend a lot of money. In the present case, it is an admitted fact between the parties that the revisionist is a retired Tehsildar and he gets pension. The court below has considered the monthly pension of Rs. 8,000/- per month, however the revisionist has filed Pension Payment Certificate before this Court as Annexure 6 to the revision. In that certificate, the pension of revisionist has been shown as Rs. 7,614/- per month. Even if this certificate is accepted as true, then also revisionist gets Rs. 7614/- per month as pension. Besides this the respondent No. 2 also produced Form-16A issued in favour of the revisionist and also produced the copy of bank statement in which for the year 2006-07, an amount of Rs. 5,000/- was shown as income of commission of revisionist. Therefore, the court below rightly held that the revisionist also does the work as Agent of Life Insurance Corporation. The court below also considered the fact that the revisionist pays the entire Tax etc. of the house in which respondent No. 2 resides. Accordingly, the amount of monthly maintenance allowance was fixed by the court below.

7. So far as the quantum of maintenance amount is concerned, it is true that the revisionist is 75 years of age and he also has to look after himself. Besides this the revisionist is also paying the water and electricity charges and other taxes of the house where respondent No. 2 resides. As such, I am of the view that the interest of justice would be met if an amount of Rs. 2,500/- per month may be

fixed as maintenance allowance to respondent No. 2 by the revisionist.

8. In view of the above-said discussion, the revision is partly allowed. The judgment and order dated 13.12.2007 passed by the court below is modified to the extent that the revisionist shall pay Rs. 2,500/- per month instead of Rs. 3,000/- per month as directed by the court below from the date of application i.e. 20.04.2006. Interim order dated 04.1.2008 passed by this Court stands vacated.