
(2019) 11 UK CK 0181

In the Uttarakhand High Court

Case No : Criminal Revision No. 144 Of 2019, 160 Of 2018

Sanjay Dhyani & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 25-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 125(2), 127
Hindu Marriage Act, 1955 — Section 9, 24
Evidence Act, 1872 — Section 103

Citation : (2019) 11 UK CK 0181

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Kailash Chandra, Charanjeet Kaur, P.S. Bohra, M.S. Bisht

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. These are two connected Criminal Revisions. Criminal Revision No. 160 of 2018, Smt. Kusum and another Vs. State of Uttarakhand and another, has been preferred by the revisionist wife as well as the minor daughter, who have prayed for an enhancement of the maintenance as determined by the Principal Judge, Family Court, Pauri Garhwal vide its judgment impugned dated 05.03.2018, as rendered in Misc. Criminal Case No. 48 of 2016, Smt. Kusum and another Vs. Sanjay Dhyani, whereby, the learned Family Court while determining the application contained under Section 125 of the Cr.P.C. had awarded a maintenance of Rs.5,000/- each to the revisionist No.1 and revisionist No.2 of the present Revision.

2. The present Revision was instituted by the revisionist wife on 29th May, 2018, praying for an enhancement on its hearing for admission on 30.05.2018, notices were issued by this Court on 30th May, 2018. Steps were taken by the revisionist and the notices have been served on the respondents No.2, who had put in appearance through his Advocate on 04.02.2019. Questioning the same

judgment determining the maintenance @ Rs.10,000/-, (in total) the revisionist of Criminal Revision No. 144 of 2019, Sanjay Dhyani Vs. State of Uttarakhand and others, had also filed a Revision on 29th March, 2019, challenging the judgment of determination of maintenance to the tune of Rs.10,000/- p.m. (in total) in pursuance to the impugned order as aforesaid.

3. This Revision, which was preferred by the revisionist husband was with delay of 301 days but that may not have much relevance as of now because the delay has been condoned thereafter by this Court on 31.05.2019 and as a consequence thereto, the Revision was admitted and an interim order was granted to the effect that subject to the condition that the revisionist of Criminal Revision No. 144 of 2019, pays a sum of Rs. 8,000/- p.m. to the respondent No.2, i.e. the wife of Criminal Revision No. 144 of 2019, the remittance of the balance amount as determined by the impugned order was kept in abeyance. The Criminal Revision is also listed today for final hearing.

4. Since being a dispute of a domestic matrimonial nature, as it is involving only a question of determination of an amount to be quantified to be made payable to the wife as well as the daughter, who is admittedly born out of the matrimony of the husband and wife of these two Criminal Revisions. The matter in the interest of litigating parties is taken upon for hearing.

5. Brief facts, which has emerged to be considered from the pleadings of the parties before the Family Court, it was to the effect that as a culmination of the marriage, which was solemnized on 20th May, 2010 at Kotdwar, the husband and wife initially continued to stay together and discharged their respective matrimonial obligations and, as a consequence thereto on 12.11.2011, a daughter was born out of the said matrimony. In the proceedings before the Court below, which was registered as Misc. Criminal Case No. 48 of 2016, Smt. Kusum and another Vs. Sanjay Dhyani, she has come up with the case that at the time of marriage, the father of the revisionist has performed the marriage within his financial capacity and to the best of his ability and financial capabilities and had given sufficient dowry, but her case was that being dissatisfied with the amount of dowry, which has exchanged hands during the course of marriage, she has contended in her application under Section 125 Cr.P.C. that there was atrocities exercised by the respondent husband of Criminal Revision No. 144 of 2019, and she has submitted that the atrocities included to the effect that in order to harass the applicant wife, the connection of the inverter was removed from her room and further it was alleged by her that under the duress being exercised by the sister-in-law and by husband on the investigation made by the father-in-law, there was a consistent demand raised for giving the four wheeler in the dowry. Due to non satisfying of the said, her case is that she was thrown out of the matrimonial home in September, 2010. Despite of all financial dearth, the father of the wife on 12.12.2010, had purchased some articles of dowry according to the choice of the in-laws. Despite of that eventuality of the demand alleging to be unsatisfied, it is the case of the applicant wife that she was

maltreated by the in-laws family members and, ultimately, it has resulted into desertion of the respondent wife on 3rd May, 2011, when she was carrying a pregnancy. Due to there being no shelter available to her, she has pleaded in her application under Section 125 Cr.P.C. that initially she has resided with her parents and later on with her maternal uncle w.e.f. 02.02.2012, who had taken her from Kotdwar to Roorkee, since she has contended that she is residing there since then. Later w.e.f. 26.01.2013, she alleged to be residing at Kotdwar.

6. She submits that during her stay, she has delivered a female child but on account of the expenditure, which she has to bear in order to maintain herself and the newly born daughter, she has claimed for the grant of maintenance reasonable to the effect to commensurate to the status, which she is otherwise deserve to maintain in parlance to the income, which was accruing to her husband, who is said to be working as Clerk in the State Bank, Branch Roorkee and according to respondent wife, the income, which was accruing to him was Rs.50,000/- p.m. and hence, she has claimed that maintenance of Rs.25,000/- may be granted to her as well as her daughter.

7. The said application of the respondent wife was opposed by the revisionist husband of Criminal Revision No. 144 of 2019, on the ground that the so called pleading of atrocities, which have been taken as to be ground by the respondent wife as to be the basis to desert the husband and live separately from the husband with her parents is absolutely concocted and pleaded to be without there being any material on record.

8. In defence, the husband's case was that, the case of the respondent wife that she was deserted by the husband w.e.f. 02.12.2013, is absolutely false, rather she has deserted him w.e.f. 26.01.2013, since then, she is residing separately. He has further submitted that the desertion since was at the behest of the respondent wife herself and since she was voluntarily not discharging her matrimonial obligation, she was not entitled to be paid any maintenance in the light of the provisions contained under Section 125 of the Cr.P.C. itself because, there has had to be an action of a voluntary desertion at the behest of the spouse of the matrimony in order to entitle the applicant to 125 Cr.P.C. for the grant of maintenance. His case was that since it is the wife who has deserted him, on her own w.e.f. 26.01.2013, she would not be entitled for any maintenance under Section 125 Cr.P.C.

9. He further submitted that he has filed a proceeding by way of Case No. 147 of 2013, Sanjay Dhyani Vs. Kusum before the Additional Judge, Family Court Roorkee, District Haridwar under Section 9 of the Hindu Marriage Act, for restitution of the conjugal rights, but according to the revisionist husband, despite of the notice, having been served, she has not appeared in the proceedings under Section 9 and, consequently, it would amount to that for the last three years or more, she has deserted the husband voluntarily without there being any plausible reason behind desertion and hence, her claim under Section 125 Cr.P.C. would not be maintainable. Apart from the above facts, he has

submitted that the income, which has been projected by her to be accruing to the revisionist husband as a consequence of his engagement with the bank, the fact, which stands admitted and as it has been expressed, it was shown to be on a higher side because as per husband, it was not projecting the correct income and apart from the fact that there was no evidence of the income as such brought on record by the respondent wife in order to appropriately determine the maintenance, which was to be paid by the revisionist to the respondent wife and the minor daughter.

10. He further submits that when the wife has voluntarily not participated in the proceedings under Section 9 for the Restitution of the Conjugal Rights, it would yet again constitutes as to be a valid ground to deny the maintenance to her as claimed in the application under Section 125 Cr.P.C., because her non participation in the proceedings despite service of notice would amount to be a tacit denial to discharge matrimonial obligations

11. In opposition to the claim of maintenance, a very peculiar defence has been taken by the revisionist husband to the effect that the wife cannot treated as to be a dependent upon the income of the husband only because of the fact that the revisionist wife's father, who is now a retired employee is maintaining her and there is no responsibility as such or there is no dearth of maintenance because she has been taken care of by her parents.

12. He further submitted in his defence that since the respondent wife is a qualified lady, she has submitted that he is engaged in a profession of teaching and is presently, she is teaching in Siddhabali Public School from where she is having a sufficient income to maintain herself and her daughter, hence, she is not liable to claim maintenance under Section 125 Cr.P.C..

13. The learned Trial Court, while considering the said defence taken by the revisionist husband to the effect that she is working in a Siddhabali Public School was a fact which was neither accepted nor proved by any evidence led by husband on record and the Court has recorded a finding that looking to the circumstances at the time when she has left the matrimonial home, she was in a state of pregnancy and in such a crucial stage, it is practically not possible for the wife to be engaged in the job of teaching, which would have been too strenuous.

14. Even otherwise, this Court is also of the view that merely because of the fact that the aged parents of the respondent wife were receiving the post retiral dues, that in itself will not lead to a conclusion that the revisionist/husband can deny his responsibility of maintenance to the wife and his minor daughter, which he otherwise also socially owes a responsibility to maintain and particularly at least the daughter, who admittedly was born out of the matrimony.

15. This Court is also of the view that merely because of the applicant wife being a qualified lady that itself cannot lead to a conclusion that she has been profitably engaged until and unless the fact of engagement is proved by evidence

on record. This responsibility under Section 103 of the Evidence Act, was a burden to be discharged by husband, who claimed the wife to be working to deny his responsibility of maintaining her.

16. The intricacy of payment of maintenance to the respondent wife could be a fact to be considered at the time of determination of the quantification of maintenance to be made payable to wife, but the Court is of the view that so far as the determination of maintenance made in favour of daughter, all these intricacies will not come into picture because, being his admitted daughter, he owes an honourous responsibility to maintain her even irrespective of the fact if it is established that the wife was teaching and was having her source of earning, which he had otherwise failed to discharge by bringing any evidence to show wife's engagement. The defence taken by the revisionist husband to the effect that there have been certain deductions made from the salary by the employer bank, hence, the actual income accruing to him, which has been projected may not be a correct figure of income because after making certain deduction from the salary, he contends that the carry home salary for the husband happens to be only Rs.17,500/- pm. thus the amount of maintenance as determined by the Family Court is too excessive, which deserves to be calculated after rationally considering the circumstances of the case. The Family Court, after considering the entire circumstances and particularly the fact that since the matrimony is accepted, since the birth of daughter out of the matrimony is accepted, since it is accepted that he is employed in the Bank and having an income of Rs.50,000/- p.m., that in itself will lead to an inference that the husband can shy away from the responsibility to maintain the wife and his daughter. Even the Family Court while passing the impugned order dated 5th March, 2018, while determining the maintenance payable @ Rs.6,000/- to the respondent wife and @ of Rs.4,000/- to the daughter, this Court is of the view that the amount of determination of maintenance of total @ Rs.10,000/-, which yet again has been sought to be made convertible on the basis of any maintenance which is determined under the provisions of Protection of Women from Domestic Violence Act, this Court is of the view that the argument of receipt of maintenance under the Domestic Violence Act had nowhere under the Act had ever intended to mitigate the maintenance payable under section 125 Cr.P.C., which is absolutely independent and an independent statutory right, hence, I am of the opinion that the learned Family Court has reasonably determined the amount of maintenance, which the respondent wife would be entitled to be paid and, consequently, this Court is not inclined to interfere in the Criminal Revision as preferred by the husband, being Criminal Revision No. 144 of 2019 and the same is dismissed.

17. Reverting back to the Criminal Revision No. 160 of 2018, Smt. Kusum and another Vs. State of Uttarakhand and another, for enhancement of maintenance as determined by the Family Court, this Court is of the view that since when the fact of salary accruing to the husband has been established and proved before the Court below even as per the wife's case and the Court below under the given circumstances has determined the maintenance to be Rs.10,000/-p.m., the

revisionist in the Revision has not drawn or proved by any additional ground as such, which may entail the enhancement of the maintenance as already determined by the Family Court.

18. Hence, the ground which has been raised by the wife to the effect that the maintenance awarded at the stage of final adjudication of an application under Section 125 Cr.P.C. could not be lesser than the maintenance as awarded under Section 125 (2) of the Cr.P.C. is not acceptable for the reason being the determination of maintenance made either at the stage of Sub-section (2) of Section 125 of the Cr.P.C. is only an interim maintenance, it will not have any binding precedent or it will not be laying down a guiding principle that the amount of determination of maintenance at the stage of final adjudication has had to be in par with the amount of maintenance as determined at the stage of Section 125 (2) of the Cr.P.C. As both determination are independent determination altogether as it has to be determined on its independent criterion, which are not inter dependent on one another.

19. In that view of the matter, this Court is of the view that without prejudicing the rights of the revisionist wife to claim an appropriate enhancement of maintenance by invoking the provisions contained under Section 127 of the Cr.P.C. at an appropriate stage, the judgment under challenge in the Revision by the wife for enhancement of maintenance at this stage, this Court is of the view that no interfere in the said Criminal Revision is also called for. Thus, this Criminal Revision too would stand dismissed.

20. Learned Counsel for the revisionist wife has relied upon the judgment as rendered by the Hon'ble Apex Court in the matter of Jaiminiben Hirenbbhai Vyas and another Vs. Hirenbbhai Rameshchandra Vyas and another, wherein the Hon'ble Apex Court while deciding the Criminal Appeal No. 2435 of 2014, has laid down the modalities to be adopted for the determination of the maintenance to be made payable to the wife from the date of the application itself. It is quite obvious that the ratio propounded therein at para 8 and 9, lays down the said criterion, which is quoted hereunder:-

"8. In Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632, this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In Shail Kumar Devi, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such Order. Thus, such maintenance can be awarded from the date of the Order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary.

9. In the case before us, the High Court has not given any reason for not granting maintenance from the date of the application. We are of the view that the circumstances eminently justified grant of maintenance with effect from the date of the application in view of the finding that the Appellant had worked before marriage and had not done so during her marriage. There was no evidence of her income during the period the parties lived as man and wife. We, therefore reverse the Order of the High Court in this regard and direct that the respondent shall pay the amount of maintenance found payable from the date of the application for maintenance. As far as maintenance granted under Section 24 of the H.M. Act by the Courts below is concerned, it shall remain unaltered."

The aforesaid precedent has held that merely a pendency of the litigation will not deprive the wife to avail maintenance, which otherwise she would have been entitled to be maintained by the husband, had the matrimony survived, because even otherwise also, for the said period, during which, the matter was under litigation, she had to sustain herself on the basis of whatsoever meager resources, she could accumulate for her maintenance.

21. Hence, in that view of the matter, while dismissing the Criminal Revision No. 160 of 2018, Smt. Kusum and another Vs. State of Uttarakhand and another, of the revisionist wife for enhancement of the maintenance, the said judgment is only modified to the extent that the amount determined for maintenance @ Rs.10,000/- p.m. would be made payable to the wife w.e.f. the date of the application itself.

22. Consequently, subject to above modification, both the Criminal Revisions lack merits and are dismissed.