
(2013) 04 AHC CK 0030
In the Allahabad High Court
Case No : Criminal Revision No. 634 of 1995

Sharif Ahmad

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 3 ACR 3130 : (2013) 5 ALJ 692 : (2013) 81 ALLCC 897 :
(2013) 3 DMC 457

Hon'ble Judges : Mushaffey Ahmad, J

Bench : Single Bench

Advocate : K.C. Saxena, for the Appellant; Anand Srivastava, Ateeq Ahmad Khan, Vivek Shandilya and Sudama Ji Shandilya, for the Respondent

Judgement

Mushaffey Ahmad, J.—There is no one present on behalf of the revisionist even on the revision of the list. It appears that non-appearance of the revisionist is not unwitting, as he left midway the proceedings before the lower court as well. Mr. Ateeq Ahmad Khan and Mr. Sudama Ji Shandilya, holding brief of Mr. Vivek Shandilya are present and heard for respondent No. 2.

2. The revision has been preferred against the order dated 06.03.1995 passed by the Judge, Family Court, Jhansi in Case No. 224 of 1990, u/s 125 Cr.P.C. granting maintenance of Rs. 400/- a month to respondent No. 2 from the date of application.

3. In Criminal Writ Petition No. 5714 of 2009 (in SLP (criminal) No. 2213 of 1988), the Hon"ble Supreme Court has observed in its order dated 09.07.1990 (Smt. Haneefa Begaum v. Sharif Ahmad) "that if the petitioner-husband maltreats her in future she will be free to pursue her legal remedy.... As has been observed earlier if any further ground becomes available to the petitioner to move in the matter, the same cannot be brushed aside on the basis that earlier she had lost her SLP in this Court." Under the benign permission of Hon"ble the Apex Court respondent No. 2 filed application before the Judge, Family Court. In the application respondent No. 2 has averred that she was married to the

revisionist in February, 1980 and lived with him and performed her obligations as wife, but opposite party/revisionist behaved cruelly and beat and eventually expelled her from the house; she moved an application before Special Judicial Magistrate, Jhansi on 16.8.1983, which was rejected on 6.11.1984; the revision against the said order was allowed and maintenance award of Rs. 400/- was granted; the husband-revisionist went in for revision before the Hon"ble High Court, which was allowed on 15.4.1988 and the order granting maintenance was set aside; the applicant-wife moved SLP before the Hon"ble Apex Court, which was rejected on 29.8.1988; the parties reached compromise through mediation of their relatives on 25.2.1989; in the compromise revisionist-husband promised to keep her well but when she went to live with him, she was again maltreated; on 17.3.1989 at about 8.00 p.m. the revisionist beat and reviled her; she raised alarm whereon witnesses intervened and saved her; she sustained injuries, which were examined by doctor in the district hospital; report was lodged against the revisionist, who had simply entered into compromise only to kill her; the revisionist is posted as T.T.E. in the central railway and drawing a handsome salary; the applicant/respondent being helpless and resourceless she was entitled to get maintenance from the revisionist.

4. The revisionist filed his WS admitting marriage with the respondent No. 2. He however alleged that the applicant-wife did not perform her obligations in the family; she was not maltreated; the application for maintenance filed earlier was rejected upto Supreme Court; there was no compromise dated 25.2.1989 nor did she live with the revisionist; there was no incident on 17.3.1989 as it has been alleged by the applicant-wife; she had withdrawn from the company of the revisionist without any reasonable cause or excuse; the application is barred by section 300 Cr.P.C. and liable to be dismissed.

5. The judgment under challenge reveals that the husband-revisionist appeared before the Court till 26.8.1994, but thereafter he did not appear and the proceedings went on ex-parte. The respondent No. 2 examined herself as P.W. 1 and Zahid Ali as P.W. 2 and Haneefa Begum as P.W. 3 and produced compromise dated 25.2.1989. A copy of order dated 9.7.1990 passed by Hon"ble the Apex Court, FIR dated 17.3.1989, injury report, a letter of the revisionist written to the Judge, Family Court, reservation chart the revisionist-husband brought on record. It has been mentioned by the Judge in the impugned judgment that the husband-revisionist cross-examined Haleef Uddin and Zahid Ali and thereafter, did not turn up to contest the application. The learned Judge discussed the evidence in the light of objections raised by the husband and concluded that the husband having sufficient means willfully neglected to maintain applicant-wife. The learned Judge gave due weight to the compromise deed prepared by the parties. The learned Judge also discussed the evidence with regard to incident dated 17.3.1989, the FIR lodged and medical examination report prepared in that respect. The compromise deed prima facie established that the applicant-wife went to stay with the revisionist-husband pertaining to the compromise, but the injuries and FIR in that respect prima facie established that the applicant was

beaten and expelled. The applicant presented the application for maintenance under permission of Hon"ble the Apex Court. There was no rebuttal through evidence from the revisionist-husband to any of the facts pleaded by the applicant. The Judge therefore rightly held that on evidence it was established that the revisionist-husband committed cruelty to the applicant-wife and expelled her from the house.

6. The respondent No. 2 produces a letter from Senior Divisional Officer (Karmik) Jhansi in response to the information sought under the Right to Information Act. In this letter it has been mentioned that revisionist Sharif Ahimad is working as Chief Ticket Inspector at Jhansi Railway Station and receiving pay band 9300-34800+4200. The contesting respondent has specifically mentioned in para six of the counter affidavit that the revisionist is now getting salary of more than Rs. 36000/-per month as Chief Ticket Inspector. As the revisionist, has not produced any document or evidence to show the respondent wife had any source of maintenance. On the other hand the revisionist himself is drawing a handsome salary, he is liable to maintain his wife.

7. The neglect of his wife for such a long time is stupendous. The resourceful revisionist takes on his helpless wife in the second innings. Callously he shoves her into war of attrition where invariably she has been the sufferer. The inexorable procedural complexity has done little towards mitigating her predicament. Even if the revision fails, the struggling wife would get, in the contemplation of evasive husband, only Rs. 400/- a month an amount which was considered reasonable about 18 years back, but reduced to value of purchasing two day"s bread not to mention other necessities. The husband enjoying dearness allowance on every six month and the wife getting nothing. Justice requires equilibrium between obligation and default Interest on the arrears at the rate of 8% compound-able on every six months is the desideratum against an evasive husband, and which shall meet the ends of justice.

8. Learned counsel submits that a very meager amount was awarded as maintenance. With the efflux of time the amount has become insignificant. Rs. 400/- were granted as maintenance when the revisionist-husband was drawing a salary of Rs. 3000/- only. Learned counsel contends that maintenance must be granted according to salary he is getting and standard of the living of the husband. We hold there is provision for alteration of maintenance under changed circumstances for which the respondent wife may apply before the court concerned and the Judge on receiving the application shall decide the same in accordance with law, as expeditiously as possible, but not later than four months. The revision has no force and is hereby dismissed. The interim order, if any, stands vacated.