



2026:AHC:134499

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 408 of 2025

Devendra Saraswat

.....Revisionist(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Revisionist(s) : Gaurav Srivastav, Rajesh Kumar
Srivastava

Counsel for Opposite Party(s) : G.A.

Court No. - 87

HON'BLE LAKSHMI KANT SHUKLA, J.

1. Heard Mr. Gaurav Srivastava assisted by Mr. Mukesh Rai, learned counsel for the revisionist, learned A.G.A. for the State and perused the record.

2. As per the office report, notice has been duly served upon O.P. Nos. 2 and 3. However, despite sufficient service of notice, neither O.P. Nos. 2 and 3 nor anyone on their behalf has appeared to oppose the present criminal revision.

3. Revisionist Devendra Saraswat has approached this Court by means of the present criminal revision challenging the order dated 06.12.2024 passed by the learned Additional Principal Judge, Family Court No. 2, Agra (hereinafter referred to as the "trial court"), whereby the trial court allowed the application filed under Section 125 Cr.P.C. by O.P. Nos. 2 and 3 and awarded maintenance of Rs. 15,000/- per month to O.P. No. 2 and Rs. 10,000/- per month to O.P. No. 3.

4. Feeling aggrieved by the said order, the present criminal revision has been filed on the ground that the impugned order is based on surmises and conjectures and has been passed arbitrarily and in a mechanical manner without proper application of judicial mind. It is further contended that the impugned order is liable to be set aside in the exercise of this Court's revisional jurisdiction.

5. Learned counsel for the revisionist submitted that the present criminal revision has been preferred mainly on two grounds. Firstly, it is contended that the trial court failed to consider the specific plea of the revisionist that O.P. No. 2 was living in adultery. It is submitted that the said issue was required to be examined in view of the provisions contained in Section 125(4) Cr.P.C.. However, no specific finding or satisfaction has been recorded by the trial court on the said issue while passing the impugned order. Secondly, it is submitted that the amount of maintenance awarded by the trial court is highly excessive, particularly in view of the unascertained income of the revisionist.

6. To buttress his submissions, learned counsel for the revisionist drew the attention of the Court to the statement of O.P. No. 2 recorded at page 106 of the paper book. It is submitted that O.P. No. 2 stated that she did not know Lalit Mohan Pandey personally, that her father knew him, and that she had never met him. She further stated that she was not aware of his place of residence and, on being shown a photograph, stated that it was not the photograph of Lalit Mohan Pandey. She admitted that money had been transferred from the account of Lalit Mohan Pandey to her bank account but stated that she did not know how much amount had been received. She further admitted that such transfers continued even after she had separated from her husband. She also stated that Lalit Mohan Pandey was not her relative and denied having any illicit relationship with him. However, she admitted that she had received money from his account and that she had never lodged any complaint regarding the transfer of Rs. 10,000/- from his account to her account. She further admitted that her mobile number was linked with the said bank account. Learned counsel also referred to page 107 of the paper book, where O.P. No. 2 admitted that she had received Rs. 10,000/- till the filing of her affidavit.

7. On the basis of the aforesaid evidence, learned counsel submitted that Lalit Mohan Pandey is admittedly not related to O.P. No. 2 either by blood or matrimonially. Therefore, the question as to why and under what circumstances she was regularly receiving money from him has remained unexplained. It is contended that if such payments were being received by O.P. No. 2 on a regular basis, the same ought to have been treated as her source of income. It is further argued that if the plea of adultery is not

accepted, then the regular receipt of money from Lalit Mohan Pandey would nevertheless indicate that O.P. No. 2 was capable of maintaining herself. In either situation, according to the revisionist, O.P. No. 2 would not be entitled to claim maintenance from him.

8. It is further submitted that the revisionist was earlier employed in a shoe manufacturing company and was drawing a monthly salary of about Rs. 27,000/- to Rs. 28,000/-. However, on account of the complaint lodged by O.P. No. 2, he lost his employment and is presently earning only about Rs. 22,000/- per month. In view of his present income, the amount of maintenance awarded by the trial court is stated to be highly excessive and beyond his financial capacity.

9. Learned counsel further submitted that the revisionist had filed certain photographs before the trial court in support of his plea. However, the trial court discarded the said photographs on the ground that the face of O.P. No. 2 was not clearly visible. Referring to pages 92, 93 and 94 of the paper book, it is submitted that the face of the lady appearing in the photographs is clearly visible. Therefore, the finding recorded by the trial court in this regard is unsustainable. It is contended that the trial court ought to have appreciated the said evidence while deciding the plea that O.P. No. 2 was living in adultery and, consequently, was disentitled to maintenance in view of the provisions contained in Section 125(4) Cr.P.C.

10. Per contra, the learned A.G.A. has vehemently opposed the present criminal revision and submitted that, so far as the photographs relied upon by the revisionist are concerned, although the reason assigned by the trial court for discarding the said photographs may not be legally sustainable, the photographs were nevertheless not proved in accordance with law and the rules of evidence. Since the said photographs were not duly proved, they were not admissible in evidence and, therefore, were rightly discarded. Accordingly, no interference is called for with the ultimate finding of the trial court in this regard.

11. So far as the regular receipt of money by O.P. No. 2 from a third person is concerned, it is submitted that the evidence on record shows that

the said amount was received by O.P. No. 2 for her medical treatment. A person in need may seek financial assistance from any person, and merely because O.P. No. 2 received monetary assistance from Lalit Mohan Pandey would not, by itself, give rise to any adverse inference against her. Therefore, the submissions advanced by the learned counsel for the revisionist in this regard are without substance.

12. With regard to the earning capacity of the revisionist, it is submitted that although the revisionist admitted that he was earlier earning about Rs. 27,000/- to Rs. 28,000/- per month, his plea that he lost his employment on account of a complaint lodged by O.P. No. 2 is not supported by any documentary evidence. In the absence of any cogent material, the said assertion cannot be accepted. Consequently, the submissions advanced on behalf of the revisionist regarding his reduced income are also liable to be rejected. It is, therefore, contended that the present criminal revision is devoid of merit and is liable to be dismissed.

13. Having heard the rival submissions and upon perusal of the record, this Court finds that the submission advanced by the learned A.G.A. regarding the regular transfer of money from the account of a third person, namely Lalit Mohan Pandey, to the account of O.P. No. 2 is not wholly sustainable. Although it has been contended that the said amounts were received by O.P. No. 2 towards her medical treatment, the evidence on record indicates that O.P. No. 2 admitted receiving money from the said person on several occasions. At the same time, she stated that she neither knew Lalit Mohan Pandey personally nor was aware of his place of residence. These statements are not free from doubt and the circumstances relating to such monetary transfers have not been satisfactorily explained by O.P. No. 2 before the trial court. Consequently, the submission advanced by the learned counsel for the revisionist on this aspect deserves due consideration.

14. So far as the photographs relied upon by the revisionist are concerned, this Court finds substance in the submission of the learned A.G.A. that the said photographs were not proved in accordance with law and, therefore, could not be read in evidence. Accordingly, this Court finds no reason to interfere with the finding of the trial court discarding

the said photographs.

15. However, the unexplained and regular receipt of money by O.P. No. 2 from a third person was a relevant circumstance which required due consideration by the trial court while examining the plea of the revisionist under Section 125(4) Cr.P.C. The trial court has failed to adequately deal with the said aspect. To that extent, the submission advanced by the learned counsel for the revisionist merits acceptance.

16. So far as O.P. No. 3 is concerned, it is not in dispute that O.P. No. 3 is the son of the revisionist and O.P. No. 2, who are legally wedded spouses. Therefore, O.P. No. 3 is legally entitled to claim maintenance from his father. Learned counsel for the revisionist has also not disputed the entitlement of O.P. No. 3 to maintenance.

17. In view of the aforesaid, this Court is of the considered opinion that O.P. No. 2 is not entitled to claim maintenance from the revisionist. Consequently, the impugned judgment and order are liable to be modified to that extent.

18. Accordingly, the present criminal revision is **partly allowed**. The impugned judgment and order, insofar as they direct payment of maintenance to O.P. No. 2, are hereby set aside. However, the direction awarding maintenance to O.P. No. 3 is affirmed and shall remain undisturbed.

(Lakshmi Kant Shukla,J.)

July 6, 2026
RPD