Reserved on 17.11.2020
Delivered on 08.01.2021

Court No. - 80

Case :- CRIMINAL REVISION No. - 1555 of 2020
Revisionist :- Irshad Ali
Opposite Party :- State Of U.P. And Another
Counsel for Revisionist :- Shri Krishna Mishra
Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. This Revision has been preferred against order dated 25.08.2020 passed by Principal Judge, Family Court, Bareilly in criminal case no. 305 of 2012 (Filing no. 09200318962012) (Smt. Akhtari Begam Vs. Irshad Ali), under Section 125 Cr.P.C., Police Station Anwala, District Bareilly, whereby revisionist Irshad Ali has been directed to pay maintenance at the rate of Rs. 3,000/- per months from the date of application to the date of order and to pay maintenance at the rate of Rs.2,000/- per month from the date of order to the opposite party no. 2 under Section 125 Cr.P.C.

2. Heard Sri S.K. Mishra, learned counsel for the revisionist and learned A.G.A. for State. However, no one has appeared on behalf of respondent no. 2 despite service of notice.

3. It has been argued by learned counsel for revisionist that impugned order is against facts and law and beyond jurisdiction and the amount of maintenance awarded by the court below is arbitrary and excessive. It has been submitted that the version of opposite party no.2 that she is married wife of revisionist or that on 07.05.1980 her marriage/nikah has been solemnized with revisionist according to Mahommedan rites and rituals, is false and baseless. At the time of alleged marriage, revisionist was a minor, aged about 14 years, and thus, he was not competent to enter into contract of marriage. The nikahnama filed by opposite party no.2 does not bear any signature of revisionist and that the said document is forged and fabricated. It was further argued that opposite party no.2 is not legally wedded wife of revisionist and thus, proceedings under Section 125 Cr.P.C. are not maintainable at her behest and therefore, impugned order is against law. It

was further submitted that court below did not get examine the signature, shown on alleged Nikahnama, from any expert, rather the court itself compared the signature shown on alleged Nikahnama with admitted signatures of revisionist and concluded that the signatures shown on alleged Nikahnama were of the revisionist. It was submitted that in said Nikahnama the caste of revisionist has been mentioned as 'Sheikh Mansoori' whereas revisionist belong to 'Saifi" caste, which also indicates that alleged Nikahnama is fabricated. Learned counsel submitted that the court below also failed to consider that in evidence of opposite party no.2, the date of Nikah was mentioned as 07.08.1980, whereas in Nikahnama date of nikah is mentioned as 09.08.1979 and that at that time the revisionist might not have been attained the age of puberty. Learned counsel submitted that in view of above stated facts and circumstances, the marriage/nikah of revisionist with opposite party no.2 is not established and thus, the impugned order is liable to set aside.

4. Learned AGA has argued that there is no error in the impugned order. The proceedings under Section 125 Cr.P.C. are of summery nature and that the opposite party no.2 has established by evidence that she is legally wedded wife of revisionist. The Nikahnama has been proved in accordance with law. It was submitted that finding of the court below that Nikah of opposite party no. 2 with the revisionist is established is based on evidence and there is no substantial error or perversity and thus, the said finding can not be disturbed in exercise of revisional jurisdiction.

5. I have considered rival submissions and perused record.

6. The main question that falls for consideration in the instant revision is that whether the respondent No. 2 has been able to show herself as married wife of revisionist in order to claim maintenance from revisionist under section 125 CrPC. At the out set it may be observed that proceedings under Section 125 Cr.P.C. are summary proceeding. In case of **Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and Another,** AIR 1999 SC 3348, it has been observed the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence

under Section 494 IPC. The Court explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. It was held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached. It was further observed as under :-

> "It is to be remembered that the order passed in an application under Section 125 Cr.P.C. does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the appellant has also filed a Civil Suit, which is pending before the trial court. In such a situation, this Court in S. Sethurathinam Pillai v. Barbara alias Dolly Sethurthinam, {1971 (3) SCC 923} observed that maintenance under Section 488 Cr.P.C., 1898 (Similar to Section 125 Cr.P.C.) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties."

7. In the case of **Ramesh Chander Kaushal v. Mrs. Veena Kaushal and others**, (AIR 1978 SC 1807) Krishna Iyer, J dealing with interpretation of Section 125 Cr.P.C. observed (at Para 9) thus:-

> "This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause of the derelicts."

8. It is well settled that for the purposes of a proceeding under Section 125 Cr.P.C., the factum of marriage has to be prima facie considered. If there is prima facie material on record to suggest that the parties have married or are having relationship in the nature of marriage, the court can presume in favour of the woman claiming maintenance. Since the provision under Section 125 Cr.P.C. is a measure of social justice and has been enacted to protect women, children or parents and the materials on record suggest two views, then the view in favour of women should be adopted. An order passed in an application under Section 125 Cr.P.C. does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide a summary remedy for providing maintenance to a wife, children and parents. In case of S. Sethurathiuam Pillai Vs. Barbara it was observed that maintenance under Section 488 Cr.P.C. 1898 (similar to Section 125 Cr.P.C.) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties. In a proceeding for maintenance under Section 125 Cr.P.C., a Magistrate or Judge of the Family Court has to be prima facie satisfied about the marital status of the parties, as a decision under Section 125 Cr.P.C. is tentative in nature, subject to the decision in any civil proceeding, as has been held in Santosh Vs. Naresh Pal (1998) 8 Supreme Court Cases 447. The court is expected to pass appropriate order after being prima facie satisfied about the marital status of the parties. Even the definition of wife provided in Explanation (b) to Section 125 (1) of Cr.P.C is inclusive, which reads as follows:

> "125(1)(b) - „Wife‟ includes a woman who has been divorced by or has obtained a divorce from, her husband and has not remarried"
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> The above inclusive definition of wife suggests that a divorced woman who cannot be technically

called a wife has been treated as wife for the purposes of proceeding under Section 125 Cr.P.C.

9. The Apex Court in the case of Rajathi Vs. C. Ganesan (1999) 6 Supreme Court Cases 326 held that in a case under Section 125 Cr.P.C. the Magistrate has to take prima facie view of the matter and it is not necessary for the Magistrate to go into matrimonial dispute between the parties in detail in order to deny maintenance to the claimant wife. Section 125 Cr.P.C. proceeds on de facto marriage and not marriage de jure. Thus, validity of the marriage will not be a ground for refusal of maintenance if other requirements of Section 125 Cr.P.C. are fulfilled.

10. Perusal of above stated pronouncements shows that if from the evidence which is led, the Magistrate / court is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 Cr.P.C. which are of summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125, Cr.P.C. can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties. The nature of proof of marriage required for a proceeding under Section 125 Cr.P.C. need not be so strong or conclusive as in a criminal proceeding for an offence under Section 494 IPC, since, the jurisdiction of the Magistrate under Section 125 Cr.P.C. being preventive in nature, the Magistrate cannot usurp the jurisdiction in matrimonial dispute possessed by the Civil Court. The object of the Section being to afford a swift remedy, and the determination by the Magistrate as to the status of the parties being subject to a final determination by the Civil Court, when the husband denies that the applicant is not his wife, all that the Magistrate has to find, in a proceeding under Section 125 Cr.P.C., is whether there was some marriage ceremony between the parties, whether they have lived as husband and wife in the eyes of their neighbours, whether children were born from the union.

11. Further, it has also to be kept in mind that while exercising the revisional jurisdiction it is not required to enter into re- appraisal of evidence and the court can not substitute its own findings in place of which are recorded in the order granting maintenance. Under the revisional jurisdiction, the question whether the O.P. No. 2 is a married wife of petitioner, being pre-eminently questions of fact, cannot be re-opened in exercise of the revisional jurisdiction, as has been held in the case of Pyla Mutyalamma @ Satyavathi Vs Pyla Suri Demudu and another reported in 201(3) ACR 3538 (SC), wherein it has been held as under:-

> ".....it is well-settled that the revisional court can interfere only if there is any illegality in the order or there is any material irregularity in the procedure or there is an error of jurisdiction. The High Court under its revisional jurisdiction is not required to enter into re-appreciation of evidence recorded in the order granting maintenance; at the most it could correct a patent error of jurisdiction. It has been laid down in a series of decisions including Suresh Mondal vs. State of Jharkhand AIR 2006 Jhar. R 153 that in a case where the learned Magistrate has granted maintenance holding that the wife had been neglected and the wife was entitled to maintenance, the scope of interference by the revisional court is very limited. The revisional court would not substitute its own finding and upset the maintenance order recorded by the Magistrate.
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> In revision against the maintenance order passed in proceedings under Section 125, Cr.P.C., the revisional court has no power to re-assess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/illegitimate, being pre-eminently questions of fact, cannot be reopened and the revisional court cannot substitute its own views. The High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and

> come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both child and the woman. This was the view expressed by the Supreme Court in the matter of Santosh (Smt.) vs. Naresh Pal , as also in the case of Parvathy Rani Sahu vs. Bishnu Sahu. Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under Section 125, Cr.P.C. is that it should not be disturbed while exercising revisional jurisdiction."

12. Keeping the aforesaid position of law in mind, in the instant matter it may be stated that the case of respondent no. 2 is that her nikah was solemnized with revisionist on 07.05.1980 and out of that marriage, she has given birth to a daughter, but she was killed by revisionist by administering some poisonous injection, whereas the case of the revisionist is that his marriage/nikah has never been solemnized with respondent no. 2 and they have never lived as husband and wife together. So far as this contention of revisionist is concerned that at the time of alleged marriage, revisionist was a minor and he was aged merely 14 years, it may be observed that as per high school mark sheet, date of birth of revisionist has been shown as 10.06.1966 and in the Nikahnama, the date of marriage/nikah has been shown as 09.01.1979 and that in Nikahnama, age of groom Irshad Ali has been shown as 16 years and age of bride Akhtari Begun has been shown as 14 years. Two persons, namely, Mohd. Ibrahim and Mohd. Akhlaq have been shown as witnesses in the Nikahnama and it has also been signed by Vakeel and Qazi. It is correct that in her application under Section 125 Cr.P.C., the respondent No. 2 has stated date of Nikah as 07.05.1980, whereas in Nikahnama, the date of Nikah has been shown as 09.01.1979, but such type of error cannot be given much importance in proceedings under Section 125 Cr.P.C. Such type of error may crept in due to lapse of time or by mistake. The document relied by the respondent No. 2 in support of her claim is said Nikahnama, wherein date of Nikah of revisionist has been shown as 09.01.1979. The

statement of APW 1 Smt Akhtari to the effect that her Nikah was solemnized with revisionist is quite clear and cogent and no such important fact could emerge in her cross-examination so as to affect her credibility. Her version is supported by her brother APW-2 Mohd. Ali. Though her version is denied by revisionist/ OPW-1 Irshad Ali (revisionist) but the over all view of evidence shows that at the time of his Nikah on 09.01.1979 with respondent no. 2, the revisionist was aged about 16 years and thus, the contention of learned counsel for the revisionist that at the time of Nikah, revisionist was aged merely 14 years cannot be accepted.

13. It was further contended by learned counsel for the revisionist that the court below did not get examine the signature shown on alleged Nikahnama and specimen signature of revisionist by handwriting expert, rather the court itself compared the signatures and concluded that signature of revisionist shown on papers filed in proceeding of case have similarity with the signature shown on Nikahnama. Learned counsel has submitted that the approach of the court below in comparing the signatures by itself is not in accordance with law and thus, it cannot be said that the said Nikahnama bears signatures of revisionist. It is correct that the court below itself has compared the purported signatures of revisionist shown on Nikahnama and signatures of revisionist shown on documents application 3-K/1, affidavit 6-K, objection 18-K and statement 32-K and concluded that signatures of revisionist on these documents find similarity with the signatures shown on Nikahnama but it can not be said that this approach was not permissible under law. The court below has correctly observed that in accordance with Section 73 of Indian Evidence Act, Court can compare the disputed and admitted signatures of a party/person. Thus, it cannot be said that the course adopted by court below in comparing the said signatures is not in accordance with law. It would be pertinent to mention here that, as stated above, proceedings under Section 125 Cr.P.C. are of summary nature and thus, it cannot be said that the conclusion reached by the court below is against law or facts.

14. Learned court below has made detailed discussion of entire facts and evidence of both the parties and concluded that respondent no. 2 has established that her nikah with revisionist. Learned court below has also referred Section 251 of “Principles of Mahomedan Law” authored by Sri Mulla, wherein it has been stated that a Mohamedan, who is a person of sound mind and attained the age of puberty can enter into contract of marriage. The court below also referred case of Mohd. Idarish vs. State of Bihar (criminal law 764), wherein it has been held that the age for Muslim entering into contract of marriage is 15 years. Section 270 of “Principles of Mohamedan Law” has also been referred, wherein even a minor can enter into the contract of marriage through his guardian.

15. As discussed above, the position of law is that if from the evidence which is led, the Magistrate / court is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 Cr.P.C. which are of summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125, Cr.P.C. can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties. Here it may again be reiterated that proceedings under Section 125 Cr.P.C. are summary proceeding and the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 IPC. In proceedings under Section 125 Cr.P.C the court does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. In fact this provision is a measure of social justice and that the factum of marriage has to be prima facie considered. In the instant case there is prima facie material on record to suggest that the parties have married and they had relationship in the nature of marriage. Further, in the instant proceedings of criminal revision, it is not required to enter into re- appraisal of evidence and the court can not substitute its own findings in place of one recorded by trial court in the order granting maintenance. The question whether the respondent No. 2 is a married wife

of revisionist, is a question of fact and thus, this court can not upset the finding of the trial court by entering into re-appreciation of evidence, unless it is shown such a finding is not based on evidence or some patent error of jurisdiction is shown. In instant case no such eventuality could be shown. In fact if the wife had been neglected and the wife was entitled to maintenance, the scope of interference by the Revisional Court is very limited.

16. So far this aspect is concerned that respondent no. 2 is unable to maintain herself and that the revisionist has neglected her maintenance, there is ample evidence on record which shows that respondent no. 2 has no source of income to maintain herself. She has also stated that her father has passed away and mother is suffering from serious illness and she has no source of income to maintain herself. Regarding income of revisionist, she has alleged that revisionist is working as a doctor and he is running his own clinic and earning Rs. 30,000 to 50,000/- per month and besides that he has also income from rent and agricultural land. Though revisionist has alleged that he merely looks-after land of one Sanjay Shrotriya and he is getting Rs. 4,000/- per month for the same but the court below has noticed that revisionist has not made any such categorical statement in his examination-in-chief that he is not practising as a doctor or he has no land or income from rent. Further, the respondent no. 2 has filed a khatauni, paper no. 34-Kha, wherein name of revisionist is recorded as a tenure-holder of transferable rights. Considering entire evidence, trial court has determined the income of revisionist is 10,000/- per month. Perusal of record also shows that respondent no,. 2 has instituted this case under Section 125 Cr.P.C. in the year 2012, but it was continuously delayed by the revisionist and it could be decided after eight years in the year 2020. In view of these facts and evidence on record, the court below has granted maintenance at the rate of Rs. 3,000/- per month from the date of application to the date of order and Rs. 2,000/- per month from the date of order.

17. In view of evidence on record, the grant of maintenance from the date of application cannot be said arbitrary or against law. The quantum of maintenance also appears reasonable and appropriate. If a party deliberately delays the proceedings for long period, such party must not be allowed to take advantage of such tactics.

18. After considering averments and evidence of parties, it is apparent that court below has considered entire relevant facts and evidence and that findings of the court below are based on evidence. No illegality, perversity or error of jurisdiction could be shown in the impugned order. The quantum of maintenance awarded by the court below can also not be said excessive or arbitrary.

19. At this juncture it may be stated that recently in case of State of Madhya Pradesh Vs. Deepak [Criminal Appeal No. 485 of 2019] decided on 13.03.2019, Hon'ble Apex Court has laid down that object of section 397 CrPC is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. The revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. In the instant case no such contingency could be shown so as to call any interference by this court in revisional jurisdiction.

20. Thus, in view of the aforesaid facts and circumstances of the case, present criminal revision lacks merit and, accordingly, the revision is **dismissed**.

Order Date :- 08.01.2021
Anand