

Allahabad High Court

Smt. Urmila Devi vs State Of U.P. & Another on 22 January, 2010

AFR
Reserved

CRIMINAL REVISION NO. 702 of 2006

Smt. Urmila Devi
Versus
State of U.P. & Another

Hon'ble Virendra Singh, J.

1. Smt. Urmila Devi has preferred this Criminal Revision against the impugned order dated 22.11.2005 passed by learned Judge, Family Court, Bareilly in Criminal Misc. Application No. 1613/2003 for enhancement of maintenance as per provisions under Section 127 Cr.P.C, insofar as it relates to enhancing the quantum of maintenance and directing OP No. 2 Sri Brij Mohan Lal to pay merely a sum of Rs. 1,500/- per month against the claim of enhancement of maintenance made by the revisionist to the tune of Rs. 15,000/- per month.

2. I have heard both the parties and perused the records.

3. It is contended on behalf of the revisionist that admittedly in view of the material evidence brought on record, OP No. 2 had taken voluntary retirement from the post of Manager in Allahabad Bank and accordingly, under the Voluntary Retirement Scheme, he had received ex-gratia payment to the tune of Rs. 10,00,973.68, gratuity to the tune of Rs. 2,99,325/- and contributory fund to the tune of Rs. 6,40,754/- on 31.05.2001. Apart from this, the opposite party is having 40 bighas of agricultural land in his name. Not only this, rather he is also having regular income of Rs. 50,000/- per month from the sale of building material besides other investments, i.e. fixed deposits in the name of his two sons from his said second wife and other landed property which was recently purchased by him on 02.01.2004. On the contrary, the revisionist is not having any source of income of her own, nor she had anything in her name except one dilapidated and small house constructed over 40 sq. yard which was given to her by her father and that was the only place where she had taken shelter ever since she was deserted by OP No. 2 in the month of June 1978.

4. It is also contended that earlier there was a ceiling of maximum limit to the extent of Rs. 500/- per month for the compensation to be awarded under Section 125 Cr.P.C. and therefore, a sum of Rs. 400/- per month was awarded to the revisionist. But with the passage of time, since not only the cost of living has increased, the said monthly maintenance awarded to the revisionist is not sufficient for her maintenance and accordingly, she had moved an application for enhancement of maintenance awarded to her as per provisions of Section 125 Cr.P.C. before the learned Judge, Family Court, Bareilly on 18.12.2003, thereby praying that the earlier maintenance awarded to her @ Rs. 400/- per month may be enhanced and OP No. 2 who was having sufficient money besides other regular sources of income, may be directed to pay monthly maintenance to the revisionist @ Rs. 15,000/- per month.

5. It is also contended on behalf of the revisionist that the court below has erred while enhancing the monthly maintenance from Rs. 400/- per month merely to the tune of Rs. 1,500/- per month only.

6. In view of the aforesaid circumstances, having regard to the financial capacity of OP No. 2, the maximum amount awardable as per provisions under Section 125 Cr.P.C. after the amendment in the Act should be the amount of maintenance to be paid by the opposite party to the revisionist, is finally contended by Revisionist.

7. It is contended on behalf of the respondent that there is no illegality either on the facts or in the eyes of law in the impugned order and the learned Lower Court has elaborately discussed the entire facts and circumstances brought on record and has passed a reasoned and reasonable order for enhancement of maintenance from Rs. 400/- per month to the tune of Rs. 1,500/- per month against which this Revision has no force and is liable to be dismissed.

8. In the light of the contentions of both by the parties, I have gone through the facts and circumstances brought on record. The law regarding this issue is very well known. Section 127 Cr.P.C. empowers the court to alter or modify the order of maintenance on account of the change in the circumstances of the party paying or receiving the maintenance. The party is entitled to move for alteration of the order when there is a change of circumstances. The changes of circumstances as is stated in this Section, covers the changes in primary circumstances as well as changes in other circumstances. The changes may be in the circumstances of the paying party or of the receiving party. Rise in the cost of living is certainly a change in the circumstances. The changes must be in the circumstances themselves and not in the proof of already existing circumstances on record. A wife can claim enhancement in the amount of maintenance in the light of increments which the husband has been getting in his service, particularly because the wife had no other income and she had been granted very minimum maintenance. Change of financial circumstances is very much material for the application under Section 127 Cr.P.C. Even the husband may also claim the modification in the maintenance order where the wife has become an earning member with salary of more than the compensation awardable under Section 125 Cr.P.C. in the change of circumstances of such event.

9. In the light of law as aforesaid, the contentions of both the parties and the facts and circumstances of this case, learned counsel for the revisionist took recourse to the law laid down by this court in the case of Shyam Sunder Sharma vs. Smt. Saroj Sharma reported in 2007 (3) JIC 663 (All) in which the maintenance for a wife and children was enhanced on the ground that the husband contracted second marriage and refused to maintain herself and the husband was a Government Employee who was getting salary of Rs. 3,000/- per month. The court below had rightly granted the maintenance and rightly enhanced the amount of maintenance from Rs. 600/- per month to Rs. 1,200/- per month considering the devaluation of money due to inflation. Contrary to it, the respondent took recourse of the decision by this court in between the parties of this Revision (Brij Mohan Lal vs. State of U.P. and Others in Criminal Revision No. 1274/2006), in which this court has not found any illegality or infirmity in the impugned order passed in the aforesaid Revision preferred by Brij Mohan Lal.

10. Looking into this fact that this court has already decided on 03.02.2009 that the impugned order is well reasoned, in which the entire income of the revisionist has been assessed and taken into consideration regarding the annual income of the revisionist of that Revision who is the respondent in this Revision, and the amount of maintenance is found very much perfect in the eyes of law as is enhanced by the learned Lower Court, therefore, I do not find any substance in this Revision, the facts of which have already been taken into account for deciding the Revision.

11. Therefore, this Revision has no force and is liable to be dismissed and is hereby dismissed accordingly.

Date: 22.01.2010 Jaideep/-