

Anil Kumar Arya vs Hemlata And Another on 23 August, 2022

Author: Ravindra Maithani

Bench: Ravindra Maithani

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 445 of 2022

Anil Kumar Arya

.....Revisionist

Vs.

Hemlata and another

..... Respondents

Present : Mr. Karan Anand, Advocate for the revisionist.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral) The challenge in this revision is made to the order dated 25.05.2022, passed in Criminal Case No.26 of 2021, Smt. Hemlata and another vs. Anil Kumar Arya, passed by the court of Judge, Family Court, Tehri Garhwal (for short, "the case"). By the impugned order, the revisionist has been directed to pay `5,000/- per month to the respondent no.1 and `2,000/- per month to the respondent no.2, who are wife and son of the revisionist respectively, as an interim maintenance.

2. Heard learned counsel for the revisionist and perused the record.

3. Facts are in a very short compass. It appears that the respondent no.1 filed an application under Section 125 of the Code of Criminal Procedure, 1973 (for short, "the Code") seeking maintenance from the revisionist. According to the respondent no.1, after marriage she was harassed, taunted and tortured for the demand of additional dowry. On 01.03.2020, she was abused and assaulted by the revisionist, she left her matrimonial house and started staying with her maternal uncle. At that time, according to the respondent no.1, the revisionist lodged a missing report of her.

4. It is the case of the respondent no.1 that she is not able to maintain herself whereas, the revisionist is a Lecturer, who is getting `90,000/- per month salary.

5. These allegations have been denied by the revisionist. According to him, the respondent no.1 was in the habit of leaving the house along with the minor child. On 01.03.2020, she left the house

without informing him, therefore, missing report was lodged. The revisionist has also filed a suit under Section 9 of the Hindu Marriage Act, 1955 (for short, "the Act") for restitution of conjugal rights. Thereafter, the respondent no.1 filed an application under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, "the Domestic Violence Act"), in which, the respondent no.1 was granted `5,000/- per month and the respondent no.2 was granted `3,000/- per month as maintenance.

5. Learned counsel for the revisionist would submit that under the provisions of the Domestic Violence Act, the respondents had already been granted maintenance. It is argued that if the respondents were not satisfied with the amount that has been granted to them in the proceedings under the provisions of the Domestic Violence Act, they would have appealed against the order, which was not done.

6. It is argued that once application under Section 9 of the Act was moved by the revisionist, it is thereafter, only that application under the provisions of the Domestic Violence Act was made by the respondent no.1.

7. On the question of salary, it is argued on behalf of the revisionist that he gets `66,000/- per month salary after deduction. He has to maintain his mother and wife. He has taken some loans, as well.

8. Learned counsel for the revisionist would also submit that, in fact, the respondent no.1 had concealed the factum of the maintenance, which, she was getting under the provisions of the Domestic Violence Act in her affidavit, which was filed pursuant to the judgment in the case Rajnesh vs. Neha, (2021) 2 SCC 324. Therefore, it is argued that she is not entitled for maintenance.

9. Learned counsel for the revisionist would also submit that if the wife is called in this proceeding, perhaps the parties may amicably settle the dispute.

10. The order impugned is an order granting interim maintenance. It is a revision, the scope is much restricted to the extent of examining the correctness, legality and propriety of impugned judgment and order. The Court puts a question to the learned counsel for the revisionist i.e. whether an application under Section 125 of the Code is not maintainable after grant of monetary relief under the Domestic Violence Act? Learned counsel for the revisionist fairly concedes that such application is maintainable.

11. In so far as concealment of the facts in an affidavit filed by the respondent no.1 is concerned, the court below may take action as permissible under law and that will not be a ground to interfere in an impugned order. In so far as filing of a petition under Section 9 of the Act is concerned, it has less relevance in so far as the legality of the impugned order is concerned.

12. Fact remains that according to the respondent no.1, she was beaten up on 01.03.2020 and the fact also remains that on the same date, the revisionist filed a missing report. Perhaps these reasons would be discussed in detail, while the application under Section 125 of the Code would find final

disposal.

13. In the impugned order at para 26, the court has taken note of the dependency of the other family members of the revisionist and had noted that, in fact, the father of the revisionist is a retired official, who gets pension and his sister is not minor. Having considered all these facts, the court granted total `7,000/- per month interim maintenance to the respondents. It has been so done keeping in view the fact that the respondents are already getting `8,000/- per month in a proceeding under the provisions of the Domestic Violence Act. The Court does not want to observe that if a person gets `66,000/- per month and none is dependent on him, how is `15,000/- per month interim maintenance is adequate for his wife and child, perhaps when the matter gets final disposal this aspect may be agitated.

14. Having considered the submissions, this Court is of the view that there is no reason to interfere in this revision and it deserves to be dismissed at the stage of admission itself.

15. The revision is dismissed in limine.

(Ravindra Maithani, J.) 23.08.2022 Sanjay