

Reserved/AFR**Court No. - 22**

Case :- CRIMINAL REVISION No. - 4296 of 2010

Revisionist :- Ismile @ Shama

Opposite Party :- State Of U.P. & Others

Counsel for Revisionist :- A.C. Srivastava,Ashwani Kumar Srivastava

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Amar Singh Chauhan,J.

This revision has been filed against the judgement and order dated 14.9.2010 passed by the Principal Judge, Family Court, Meerut in Case No. 598 of 2006 whereby the learned Judge allowed the application under section 125 of the Code of Criminal Procedure insofar as Suhail Khan, the minor child of the revisionist was concerned.

However, by the same order learned Judge rejected the claim of the applicant-opposite party No. 1 Smt. Shaida Khan, wife of the revisionist, which is not under challenge in this revision.

The facts which are requisite to be mentioned for adjudication of this revision are that an application under section 125 of Code of Criminal Procedure was moved by Smt. Shaida Khan on behalf of herself and her minor son Suhail Khan claiming maintenance on the ground that her marriage took place about nine years

back with opposite party-Ismile alias Shama, the revisionist herein. Out of their wedlock a child namely Suhail Khan was born, who is with Smt Shaida Khan. It is mentioned in the application that revisionist-Ismile alias Shama demanded dowry and used to torture her on account of non-fulfillment of dowry demand. It is also mentioned in the application that revisionist also threatened the applicant that in case if she does not bring Rs. 50,000/- with her, he will marry another lady. The application further alleges that the revisionist is a *Kashtkar* and his income is about 20-25 thousand per month.

In his written objections the revisionist has denied the versions given in the application under section 125 Cr.P.C. and levelled allegations on the character of the applicant-opposite party No. 2. It is also mentioned in the written objections that he divorced the applicant Smt. Shaida Khan and had given her Rs. 50,000/- along with certain household articles on the conditions that she will maintain her son from this amount. The revisionist also alleges that opposite party-Smt. Shaida Khan earns Rs. 10,000/- per months.

The learned Principal Judge, Family Court, Meerut after evaluating the evidence adduced by the parties, rejected the claim of the applicant-Smt Shaida Khan on the ground that she is able to maintain herself as she is earning more than 2200/-per month. However, by the

same order learned Judge granted maintenance to the minor child-Suhail Khan by holding that the revisionist has never given any money for the maintenance of his child.

Heard learned counsel for the revisionist and learned Additional Government Advocate and perused the record of the case.

Learned counsel for the revisionist submits that by the impugned order learned Family Judge while granting maintenance to the child, rejected the claim of maintenance of wife, which goes to suggest that income of opposite party No. 2 is sufficient to maintain herself as well as her child, opposite party No. 3.

Learned counsel for the revisionist has further submitted that the learned Judge has erred in granting maintenance to opposite party No. 3, Suhail Khan as the revisionist has divorced opposite party No. 2.

Per contra, learned Additional Government Advocate supported the judgement of the Family Court and argued the the judgement is reasoned one and does not require any interference by this Court.

Before advertig to the claim of the parties, it would be useful to quote section 125 Cr.P.C.:

Order for maintenance of wives, children and parents:-

125. (1) If any person having sufficient means neglects or refuses to maintain-

(a) *his wife, unable to maintain herself, or*
(b) *His legitimate or illegitimate minor child, whether married or not unable to maintain itself, or*
(c) *his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
(d) *his father or mother, unable to maintain himself or herself,*

a Magistrate of first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct."

There can be no shadow of doubt that an order under section 125 Cr.P.C. can be passed if a person despite having sufficient means neglects or refuses to maintain the wife or child. Sometimes, a plea is advanced by the husband that he does not have the means to pay as he does not have a job or his business. These are only bald excuses and in fact they have no acceptability in laws. If the husband is healthy, able bodied and is in a position to support himself, he is

under the legal obligation to support his wife and child.

Hon'ble Supreme Court in **Chaturbhuj Vs. Sita Bai, (2008) 2 SCC 316** has held the grant of maintenance to wife is a measure of social justice. The court held as under:

*" Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in captain Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in **Savitaben Somabhai Bhatiya v. State of Gujarat (2005) 3 SCC 636.***

A Division Bench of Madhya Pradesh High Court in the case of **Durga Singh Lodhi Vs. Prembai and**

others, 1990 Cr.L.J. 2065 has held that mere absence of visible means or real estate will not entitle such a person to escape the liability to pay maintenance awarded under Section 125(1), as even at the stage of enforcement of the order under Section 125(1), an able bodied healthy person capable of earning, must be subjected to pay maintenance allowance. If, with this visible capacity to earn, he avoids payments, it has to be held that he has so done for no sufficient cause. If such a person avoids to discharge that obligations despite issuance of a distress warrant, he can be sentenced to imprisonment for a term specified in sub-section (3) of Section 125 Cr.P.C..

So far as the contention of learned counsel for the revisionist that the learned Judge has erred in granting maintenance to opposite party No. 3, Suhail Khan as the revisionist has divorced opposite party No. 2 is concerned, Bombay High Court in **Mst. Noor Jehan v. State of Maharashtra 1995 CLJ 2154** held as hereunder:

"It does not take away the right of the minor child to claim maintenance from his or her father even after his or her mother has been divorced. The right which is conferred on the minor child of claiming maintenance under Section 125 of the Cr. P.C., cannot be

said to have been taken away by the provision contained in Section 3(b) of the Act of 1986 While Section 3(b) entitles the divorced Muslim Woman to claim maintenance for the children born to her before or after the divorce from her former husband for period of two years from the respective dates of birth of the children, the said section does not take away the right of the minor Muslim child or children to claim maintenance from his or her father even if the mother has been divorced and has attained the status of divorced Muslim woman."

Madras High Court in ***Rahamatulla Vs. Piyare and others, 1996-1 LW (Crl) 206*** has held as under:

"The proper maintenance of the child is imperative. In the paramount interest of the child, laws compelling the father to maintain his child, are to be construed liberally so as to embrace all beneficial legislation in favour of the child. The welfare of the child is a paramount consideration, the child may be of any class, caste or creed. Section 125 of the Cr.P.C., entitles even the illegitimate minor child to claim

maintenance and it is the bounden duty of the father to maintain the child, whether the marriage is subsisting or not and whether the child was born from the wedlock or otherwise. The maintenance of the child being an imperative factor, the Legislature while enacting the Act of 1986, making provision for protection of rights of Muslim Women, has not taken away the right of the minor child to claim maintenance even after divorce. Thus, the right of the Muslim minor child under Section 125 of the Cr.P.C., is not taken away by Section 125 of the Act of 1986, or is not confined to claiming maintenance only up to the attainment to age of two years."

In the case in hand the learned Family Judge while allowing maintenance to opposite party No. 3, Suhail Khan, has held that at the time of filing the application under section 125(3) Cr.P.C., he was aged about seven years and that the revisionist- Ismile alias Shama has never paid any amount for his maintenance and it is the duty and responsibility of the revisionist to maintain his minor child. The learned Family Court further held that the revisionist after the marriage with opposite party No. 2, has again married for the fourth time to one Rafat, which goes to suggest that he is economically sound

persons.

In view of what has been indicated herein above, I find that the impugned order does not suffer from any illegality or impropriety.

The revision lacks merits. It is accordingly dismissed.

Interim order dated 4.10.2010 is vacated.

Dated: 22.9.2016

Ishrat