

Court No. - 70

Case :- CRIMINAL REVISION No. - 209 of 2015

Revisionist :- Deepak Dwivedi And 2 Others

Opposite Party :- State Of U.P. And Another

Counsel for Revisionist :- Abhishek Tripathi

Counsel for Opposite Party :- Govt. Advocate, Amit Mishra, Krishna Kant Singh, Noori Ullah, Sanjay Pratap Singh, Siddharth Jaiswal

Hon'ble Sanjay Kumar Singh, J.

Heard Sri Abhishek Tripathi, learned counsel for the revisionists, Sri Siddharth Jaiswal, learned counsel for the opposite party no.2 and learned A.G.A on behalf of the State and perused the record.

This criminal revision under Section 397/401 Cr.P.C. has been preferred by the revisionists against the judgement and order dated 13.01.2012 passed by Additional Chief Metropolitan Magistrate in Complaint Case No.3326 of 2011 (Madhuri Dwivedi vs. Deepak Dwivedi and others), whereby application under Section 23 of the Protection of Women From Domestic Violence Act, 2005 (herein-after-referred to as Act No.43 of 2005) filed by opposite party no.2 has been allowed directing the revisionists to pay an amount of Rs.5,000/- to the opposite party no.2 as interim maintenance during pendency of Complaint Case No.3326 of 2011 under Section 12 of the Protection of Women From Domestic Violence Act, 2005 and against the judgment and order dated 17.01.2015 passed by Additional Session Judge, Court No.24, Kanpur Nagar in Criminal Appeal No.57 of 2014 (Deepak Dwivedi vs. State of U.P. and another) under Section 29 of the Protection of Women From Domestic Violence Act, 2005, whereby the appeal preferred by the revisionist No.1 has been dismissed.

This case has chequered history of litigation. The issue between the parties as raised on behalf of the revisionists is that whether the opposite party no.2 is entitled to get maintenance separately under Section 23 of the Act No.43 of 2005 as well as maintenance under Section 125 Cr.P.C. It is submitted by the learned counsel for the revisionists that by order dated 24.08.2009 passed by Principal Judge, Family Court, Kanpur Nagar, an amount of Rs.2,500/- has been awarded as maintenance to the opposite party no.2 as well as her daughter under Section 125 Cr.P.C., which was challenged by the opposite party no.2 in Criminal Revision No.3609 of 2009 but the same was dismissed by this Court by order dated 27.04.2012. The said order dated 27.04.2012 of this Court was further challenged by the opposite party no.2 in Special Leave

to Appeal (Crl) No.7401 of 2012 which was disposed of by order dated 05.07.2013 with the following direction:-

"After hearing both the learned counsel and in view of the peculiar facts and circumstances of the case, we are of the opinion that the maintenance awarded by the trial court and confirmed by the High Court requires to be modified.

Accordingly, we enhance the maintenance awarded to the petitioners from Rs.2500/- to Rs.4,000/-. The maintenance shall be payable to the petitioners from the date of filing of the application by the petitioners herein. The special leave petition is disposed of accordingly."

It is further submitted that the order dated 24.08.2009 passed by the Principal Judge, Family Court, Kanpur Nagar was also challenged by the revisionists before this Court in Criminal Revision No.4409 of 2009 which too has been dismissed by order dated 27.04.2012 as mentioned in paragraph 14 of the affidavit. It is submitted that the revisionists did not further challenge the order dated 27.04.2012 of this Court. As such, the amount of maintenance under section 125 Cr.P.C. attained finality and as per directions given by the Apex Court in case No.57 of 2013, the opposite party no.2 is entitled to get maintenance of Rs.4,000/- per month, which is regularly being paid by the revisionists to the opposite party no.2 as per direction of the Apex Court. This fact has not been disputed by the learned counsel for the opposite party no.2. On making query by this Court regarding the present status proceeding under Section 12 of the Act No.43 of 2005 initiated by the opposite party no.2, learned counsel for the parties are not able to inform the Court about the current status of the case.

In the present revision, this Court by order dated 23.01.2015 granted interim protection directing the revisionists to pay Rs.2,000/- per month to the wife keeping the rest amount under the impugned order dated 13.01.2012 in abeyance with an observation that on breach of the condition of the interim order dated 23.01.2015 passed by this Court, the order staying the operation of impugned order shall stand automatically vacated.

After having heard the counsel for the parties at length and considering the chequered history of litigation between the parties this Court feel that it would be proper to issue suitable direction to the concerned court to decide the main case under section 12 of the Act No.43 of 2005 expeditiously without granting any adjournment to the parties concerned. Learned counsel for both the parties also agree on the same and ready to give their undertaking before this Court that the parties

concerned will not take any adjournment in the proceedings.

In view of above, the court of Additional Chief Metropolitan Magistrate, Kanpur Nagar is directed to decide the case No.3326 of 2011 ((Madhuri Dwivedi vs. Deepak Dwivedi and others) under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (Act No.43 of 2005), Police Station Kalyanpur, District Kanpur Nagar positively within three months without granting any adjournment to the parties concerned. It is made clear that till the final order is passed in aforesaid case, the operation of the order dated 13.01.2012 shall be kept in abeyance subject to condition that the revisionists shall pay an amount of Rs.2500/- per month from the date of this order to the opposite party no.2 without fail.

With these observation this revision is finally **disposed of**.

Order Date :- 23.1.2019

SKD