

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No.133 of 2013

Smt. Anshu Gupta

....Revisionist

Versus

Adwait Anand @ Devansh

....Respondent

Present:-

Mr. Sudhir Kumar, learned counsel for the revisionist.
Mr Bhupendra Prasad, learned counsel holding brief of Mr.
I.D. Paliwal, learned counsel for the respondent.

Judgment Reserved on: 19.05.2023
Judgment Delivered on: 09.08.2023

Per: Hon'ble Pankaj Purohit, J.

This revision is directed against the judgment and order dated 30.03.2013, passed by learned Judge, Family Court, Udham Singh Nagar, whereby the petition made by the minor son of the revisionist for maintenance under Section 125 Cr.P.C. was allowed partly and the revisionist (mother of respondent-minor) was directed to pay a sum of Rs.2,000/- as maintenance to the respondent-minor from the date of filing of the petition for maintenance till the respondent-minor attained majority.

2. The petition for maintenance was filed on 25.03.2011 by the respondent-minor through his natural guardian against the revisionist-mother in the court of learned Judge, Family Court, Udham Singh Nagar, which was registered as Miscellaneous Criminal Case No.73 of 2011, Adwait Anand @ Devansh vs. Smt. Anshu Devi, under Section 125 of Cr.P.C.

3. The facts of the case, as reflected from the petition moved by the respondent-minor through his

natural guardian-father are that respondent is son of the revisionist and Nathu Lal, who was born on 06.12.2000, out of the wedlock of revisionist and Nathu Lal, who were married on 07.05.1999, as per Hindu Rites and Rituals. On 23.09.2006, the marriage between the revisionist and Nathu Lal was dissolved, due to their differences. After dissolution of the marriage, respondent-minor was living with his father-Nathu Lal. It was alleged in the petition for maintenance that after the dissolution of marriage, revisionist was never visited the respondent-minor, which deprived the respondent-minor of love and affection of his mother. It was also pleaded in the petition for maintenance that the financial condition of father of respondent-minor deteriorated and he had no means to provide quality education, upbringing and food to the respondent-minor. According to respondent-minor, it is the duty of the mother also along with father to maintain her child. It was further pleaded that as against the financial condition of his father, revisionist-mother was a Government Teacher and was getting at the time of filing of the petition for maintenance about Rs.25,000 to Rs.30,000/- per month as she was posted in primary school Ramnagar. On the basis of the aforesaid averments, respondent prayed Rs.10,000/- from her mother (revisionist).

4. The petition for maintenance was contested by the revisionist by filing an objection on 27.03.2012, in which the factum of marriage of revisionist with Nathu Lal Gupta was admitted. It was also admitted that respondent-minor was born out of the said wedlock between them and it was also admitted that there was dissolution of marriage between them on 23.09.2006, on

the basis of a compromise before learned Judge, Family Court, Udham Singh Nagar in Case No.198 of 2005. As per the terms of compromise, whereby the marriage between the revisionist and Nathu Lal was dissolved, respondent-minor was retained by his father-Nathu Lal with him and had taken his responsibility to maintain and to bring him up. However, she had stated that after the dissolution of marriage with Nathu Lal, revisionist solemnized marriage with one Babu Lal and out of the second marriage, a son-Saubhagya was born to the revisionist, but unfortunately, after her second marriage Babu Lal died in an accident. The revisionist had to maintain son-Saubhagya born from Babu Lal and also her in-laws.

5. Apart from this, it was also stated that Nathu Lal, father of the respondent-minor was a rich man having four acres of agriculture land, four shops and house at Gularbhoj band and one house in Indira Colony. The petition for maintenance was moved only to harass the revisionist.

6. Both the revisionist and respondent-minor produced their respective evidence before the Family Court, wherein respondent-minor mainly stated that he lived with his father-Nathan Gupta; name of his mother is Smt. Anshu Gupta and he was born on 06.12.2000. He also stated that his mother is a Government Teacher and received Rs.30,000/- salary, this fact was told to him by his father. He also stated that his father run a Tempo and could not give him education in a good school and he wanted for his all round development Rs.10,000/- from his mother, which she could easily afford. In cross-

examination, he stated that his father spent Rs.1,000/- on him for his upbringing, but he could not give the amount of his school fees.

7. The revisionist by filing an affidavit narrated the similar facts, as given in her objection, to the petition for maintenance. In cross-examination, she admitted that she was getting Rs.27,000/- per month as salary. She further admitted in her cross-examination that she did not file any document of education of his son-Saubhagya born out of the second marriage and also regarding the shop and properties of Nathu Lal.

8. One witness-Avinash Gupta was also produced by the revisionist, who filed his affidavit, in evidence narrating the same facts, as given in the objection to the petition for maintenance. But, this witness admitted in his cross-examination that he is a maternal uncle of the revisionist and also admitted that the revisionist had a double story house in her name.

9. Learned Family Judge after hearing both the parties decided the claim petition by reason of the impugned judgment and order dated 30.03.2013. The learned Family Judge recorded the finding on the basis of the oral and documentary evidence that respondent-minor was son of revisionist, who was living with his father-Nathu Lal Gupta. It was also recorded by learned Family Court both Nathu Lal Gupta (father) and revisionist-Smt. Anshu Gupta (mother) were competent enough to maintain respondent-minor but since respondent-minor was living with his father, it was the duty of the revisionist to contribute in maintenance and

education of the respondent-minor. It was also opined by the learned Family Judge that revisionist and Nathu Lal cannot enter into agreement about the right of respondent-minor.

10. Having considered the case of the revisionist that she equally have the responsibility to maintain Saubhagya (minor son) born out of second marriage and other expenses, learned Family Judge directed the revisionist to pay only a sum of Rs.2,000/- for maintenance of the respondent-minor.

11. So far as the factual aspect of the matter is concerned, the same was admitted to the counsel for the revisionist like respondent-minor is the son of the revisionist, born out of the wedlock with Nathu Lal Gupta and he was living with his father, coupled with the fact that the revisionist is a Government Teacher.

12. The impugned judgment and order was assailed mainly on the ground by learned counsel for the revisionist that under the provisions of Section 125 Cr.P.C., a duty to maintain the minor children is only upon the father and not on the mother, therefore, the impugned order by which the revisionist-mother was wrongly fastened with the liability to pay the maintenance for her minor son i.e. respondent-minor.

13. In order to substantiate his argument, it is submitted that in Section 125 (1) Cr.P.C. it is provided that **“any person”** having sufficient means, neglects or refused to maintain, (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself; a Magistrate of the first class may, upon proof of

such neglect or refusal, order **“such person”** to make a monthly allowance for the maintenance of such child, 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. **“Such person”** or **“any person”** means father and not the mother, according to the learned counsel for the revisionist. Thus, the direction for maintenance cannot be passed upon the revisionist, who is the mother of respondent-minor.

14. Learned counsel for the revisionist in order to buttress his argument placed reliance upon two judgments- (1) *Raj Kumari vs. Yashoda Devi and another*, reported in (1978) Cri.L.J. 600 decided on 20.07.1977 and (2) *Mst. Dhulki vs. State* reported in (1960) RLW 127 decided on 14.05.1959. On the strength of aforesaid two judgments, it is submitted by learned counsel for the revisionist that under Section 125 Cr.P.C. only father of a minor child, is liable to maintain his legitimate or illegitimate minor child, not the mother.

15. Learned counsel for the respondent-minor supported the judgment passed by learned Family Court saying that there is no illegality in the impugned judgment and order by which a meagre sum of Rs.2,000/- was awarded, as maintenance, from the date of application, against the revisionist, who admittedly is a Government Teacher.

16. In order to appreciate the argument advanced on behalf of the revisionist, the provisions of Section 125 (1) Cr.P.C. is quoted hereunder:-

“125. **Order for maintenance of wives, children and parents.**—(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 the 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.”

17. The provisions of Section 125 (1) Cr.P.C. makes it clear that the liability to maintain a minor child is always on **“any person”**, if he has sufficient means neglects and refuses to maintain a minor child and such **“person”** is directed to give the monthly allowance as maintenance at the rate deemed fit to the Magistrate.

18. **“The person”** word denotes not only the male but a female gender and it cannot be said that such person can only qualify father and not the mother. Section 2 (y) of Cr.P.C. provides as under:-

“(y) words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.”

19. According to Section 2(y) of Cr.P.C., the words and expressions used in the Cr.P.C. but have not been

defined in the Cr.P.C., shall have the same meanings assigned to them as defined in the Indian Penal Code. Section 8 of IPC is quoted hereunder:-

“8. **Gender**.—The pronoun “he” and its derivatives are used of any person, whether male or female.”

20. This definition of gender gives an indication that “**he**” and its derivatives are used of any person whether male or female.

21. Under Section 11 of the IPC, the “**person**” has also been defined, which includes any company or Association or body of persons, whether incorporated or not.

22. From the meticulous examination of these words having been defined in the Indian Penal Code, it can safely be inferred that any “**person**” use in the provisions of section 125(1) Cr.P.C. includes both mother and father.

23. I have given thoughtful consideration to the case laws referred by learned counsel for the revisionist, since the facts in the case of *Raj Kumari vs. Yashodha Devi & another (supra)*, the married daughter was directed to maintain her mother, the facts are being different and, therefore, the aforesaid case law is of no assistance to the revisionist. In the case of *Mst. Dhulki vs. State (supra)*, the reliance was placed on sub-Section (6) of Section 488 Cr.P.C. (Old Cr.P.C.) wherein it was provided that “all evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be.” According to this provision of sub-Section

(6) of Section 488 Cr.P.C., the Rajasthan High Court arrived at a conclusion that the action contemplated under Section 488 of Cr.P.C. is only against the husband or the father and not against the mother.

24. But, now after the new Cr.P.C. 1973 enacted, there is no such sub-Section (6) in Section 125 Cr.P.C. The "Procedure" is given under Section 126 of the Cr.P.C., in place of sub-section (6) of Section 488 of old Cr.P.C. Section 126 (2) appears to have been replaced which is quoted below:-

"(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases."

25. It is clear from the aforesaid sub-Section (2) of Section 126 Cr.P.C. that there is no such word "**father**" or "**husband**" in the aforesaid sub-section, as it was there in the old Cr.P.C. Section 488 sub-Section (6). Now, in place of "**father**" or "**husband**", "**person**" has been incorporated and it is provided that "all evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made....." Thus, this case law is also of no help to the revisionist and the same is distinguished by this Court on the aforesaid reasons.

26. There is yet another aspect for not relying upon these case laws by this Court is that both the judgments had been passed in the backdrop of the fact, when women

were mostly uneducated and unemployed. The judgment in the case of *Mst. Dhulki vs. State Raj* (**supra**) was passed on 14.05.1959, while the judgment in the case of *Kumari vs. Yashodha Devi & another* (**supra**) on 20.07.1977. Now, there is a sea-change in the educational and economic status of the women. In the 21st century, most of the women now are well educated and are in gainful employment.

27. The revisionist herself is a Government Teacher, who at present, would be getting a minimum Rs.1,00,000/- as salary and as such, there is no illegality and impropriety in the impugned judgment and order dated 30.03.2013 passed by learned Judge, Family Court.

28. The provisions of Section 125 Cr.P.C. has already been changed, as discussed above and according to the language of the present Section 125 Cr.P.C., in the opinion of this Court **“person”** would include both male and female and in reference to a minor child whether legitimate or illegitimate mother or father having sufficient means if neglects and refuses to maintain such minor child would be held liable to pay the maintenance of such child.

29. In this view of the matter, this criminal revision has no force and the same is accordingly dismissed. The judgment and order dated 30.03.2013, passed by learned Judge, Family Court, Udham Singh Nagar is accordingly, affirmed.

(Pankaj Purohit, J.)
09.08.2023