



2025:AHC:166740

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**CRIMINAL REVISION DEFECTIVE No. - 1711 of 2024**

Atul Kumar Bajpai

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite  
Party(s)

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Counsel for Revisionist(s) : Sarvesh Kumar Dubey, Swatantra Kumar Singh  
Counsel for Opposite Party(s) : Abhishek Dubey, G.A.

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**Court No. - 91**

**HON'BLE MADAN PAL SINGH, J.**

**Ref. Criminal Misc. Delay Condonation Application**

1. Heard Mr. Sarvesh Kumar Dubey, learned counsel for the revisionist, Mr. Abhishek Dubey, learned counsel for opposite party no.2 and the learned A.G.A. for the State.
2. This application has been filed for seeking condonation of delay in filing of the instant criminal revision. There is a delay of 11 days.
3. Cause shown for the delay of 11 days in filing the instant criminal revision is to the satisfaction to the Court. Delay is, hereby, condoned.
4. This application stands disposed of.
5. Office to allot regular number to the instant criminal revision.

**Order on Order-sheet**

1. Heard Mr. Sarvesh Kumar Dubey, learned counsel for the revisionist, Mr. Abhishek Dubey, learned counsel for opposite party no. 2 and the learned A.G.A. for the state as well as perused the record.
2. The present criminal revision has been preferred with the prayer to set aside the judgment and order passed by the Additional Principal Judge, Family Court, Court No. 4, Kanpur Nagar dated 26th June, 2024 in Case No. 356 of 2022 (Smt. Chandani @ Rashmi Bajpai Vs. Atul Kumar Bajpai) under Section 125 Cr.P.C. Police Station-Chakeri, District Kanpur Nagar, whereby the Additional Principal Judge has partly allowed the application under Section 125 Cr.P.C. filed by opposite party no. 2 and directed the revisionist to pay Rs. 12,000/- per month to opposite party no.2 on 10th day of each calendar

month from the date of filing of the application.

3. Learned counsel for the revisionist states that since in view of the judgment of the Hon'ble Supreme Court of India in the case of **Rajnish v. Neha** reported in (2021) 2 SCC 324, opposite party no.2 has filed false affidavit concealing her income, the revisionist has filed an application under Section 340 Cr.P.C. before the trial court and the same has also been accepted by the trial court vide order dated **27th May, 2024** i.e. nearly one month prior to the passing of the impugned judgment, a copy of which has been brought on record at page no. 105 of the paper book. He further submits that the Additional Principal Judge has passed the impugned judgment and order on **26th June, 2025** without deciding the application of the revisionist under Section 340 Cr.P.C. which is per se manifestly illegal. In the application filed by the revisionist under Section 340 Cr.P.C. it has specifically been stated that opposite party no.2 has given false affidavit regarding her monthly income and source of their livelihood.

4. Learned counsel for the revisionist then submits that first the Principal Judge should have considered the application of the revisionist under Section 340 Cr.P.C. and thereafter passed the final judgment on the application filed under Section 125 Cr.P.C. However, such procedure known to law has not been followed by the Principal Judge while passing the impugned judgment. In support of his case, he has placed reliance upon the judgment of the Lucknow Bench of this Court dated **15th December, 2023 passed in Criminal Revision No. 3760 of 2023 (Amit Bajpai Vs. State of U.P. & Another) (Neutral Citation No.-2023:AHC: 238266)**.

5. On the cumulative strength of the aforesaid, learned counsel for the revisionist states that the impugned judgment and order cannot be legally sustained and is liable to be set aside.

6. On the other-hand, learned counsel for opposite party no.2 and the learned A.G.A. for the State have initially opposed the prayer made in the present criminal revision. However, they could not dispute that the Additional Principal Judge, before passing the impugned final judgment, should have first decide the application of the revisionist under Section 340 Cr.P.C.

7. Considering the facts and circumstances of the case, the arguments advanced by the learned counsel for the parties and the records including the impugned judgment, it transpires from the records that the revisionist has filed his application under Section 340 Cr.P.C. on 27th May, 2025, whereas the impugned judgment and order has been passed by the trial court on 26th June, 2025 i.e. nearly after one month.

8. For considering the submission made by the learned counsel for the revisionist, it would be worthwhile to reproduce relevant portion of the allegations made by the revisionist against opposite party no.2 in his application under Section 340 Cr.P.C.

It is alleged in the said application that correct facts have not been mentioned by opposite party no.2 in column-C of the affidavit filed before the trial court in which details of her income have been sought at serial no.6. When as a matter of fact opposite party no.2 has received Rs. 84,000/- from Life Insurance Corporation, Kanpur Nagar through NIFT on 04.08.2023, which is clearly visible in the bank statement of account of opposite party no.2 bearing No. 40520100002777 maintained at Bank of Baroda.

It is further alleged that the opposite party no.2 operates a boutique on a large scale from which she earns Rs. 60,000/- to Rs. 70,000/- per month. Thousands of rupees have also been credited in the Saving Bank Account of opposite party no.2 from the year 2020 to 2024, which is indicative of its strong income.

On the above premise, the revisionist has stated that since opposite party no.2 has filed a false affidavit as evidence by not showing her income in the column of income statement of said affidavit and has committed forgery, punitive action should be taken against her in the interest of justice.

9. In the case of **Amit Bajpai (Supra)** relied upon by the learned counsel for the revisionist, the Hon'ble Single of Lucknow Bench has opined that in my view, if any application is moved in the pending case bringing to the notice of the court that any false evidence knowing well has been filed or fabricated in such proceedings, the court should dispose of the said application first before proceeding any further or before recording of further evidence. At the case in hand such procedure has not been adopted by the trial court while passing the impugned judgment.

10. This Court, which sits in revisional jurisdiction, cannot examine the legality or otherwise of the allegations made by the revisionist in his application under Section 340 Cr.P.C. The same may be examined only by the trial court.

11. In the opinion of the Court, in the application under Section 340 Cr.P.C., the revisionist, has levelled serious allegations against the opposite party no.2 and if the trial court decides these allegations on the basis of documentary and oral evidence then the outcome of the main case may change. However, the trial court has not decided the said applications before deciding the instant application under Section 125 Cr.P.C. finally. In the interest of substantial justice, the trial court should have first decide the application filed by the revisionist under Section 340 Cr.P.C. before deciding the instant application

under Section 125 Cr.P.C. finally.

12. Consequently, the judgment and order passed by the Additional Principal Judge, Family Court, Court No. 4, Kanpur Nagar dated 26th June, 2024 in Case No. 356 of 2022 (Smt. Chandani @ Rashmi Bajpai Vs. Atul Kumar Bajpai) under Section 125 Cr.P.C. Police Station-Chakeri, District Kanpur Nagar is illegal and hereby set aside.

13. Additional Principal Judge, Family Court, Court No. 4, Kanpur Nagar is directed to decide the application of the revisionist under Section 340 Cr.P.C. first after hearing opposite party no. 2 by means of a reasoned and speaking order, preferably within a period of six weeks from the date of production of a certified copy of this order. After disposal of the application under Section 340 Cr.P.C., the Additional Principal Judge shall decide the application under Section 125 Cr.P.C. in accordance with law, by means of a reasoned and speaking order, after affording opportunity of hearing to both the parties preferably within two months thereafter, without giving unnecessary adjournments to either of the parties, if there is no other legal impediment.

14. The present criminal revision is allowed subject to the observations made above.

15. There shall be no order as to costs.

**September 17, 2025**  
Sushil/-

**(Madan Pal Singh, J.)**