



2025:AHC:157969

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 819 of 2024

Mohammad Rizwan Khan

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Ahsan Ahmad, Daya Ram Yadav
Counsel for Opposite Party(s) : Ayub Khan, G.A., Irfan Alim Siddiqui

Court No. - 91

HON'BLE MADAN PAL SINGH, J.

1. Heard Mr. Ahsan Ahmad, learned counsel for the revisionist, Mr. B.A. Khan, Mr. Ayub Khan and Mr. Irfan Alim Siddiqui, 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 No.3, Aligarh dated 18th November, 2023 in Case No. 826 of 2019 (Old No. 764/11/15) (Smt. Shabana Khan Vs. Mohammad Rizwan Khan), under Section 125 Cr.P.C., Police Station-Civil Lines, Aligarh, whereby the Additional Principal Judge has allowed the application under Section 125 Cr.P.C. filed by opposite party no. 2 and directed the revisionist to pay Rs. 30,000/- per month to opposite party no.2 from the date of filing of the application.

3. Facts in short are that the marriage of the revisionist was solemnized with opposite party no.2 on 1st May, 2005 in accordance with the Muslim Rites and Rituals. From the aforesaid wedlock, two daughters were born. After some time of marriage, the relationship between the revisionist and opposite party no.2 became stained and incompatible. Consequently, opposite party no. 2 filed Case No. 826 of 2019 (Old No. 664/11/15) under Section 125 Cr.P.C., Police Station Civil Lines, District Aligarh on 27th July, 2015 seeking monthly maintenance allowance from the revisionist at Rs. 75,000/- per month. After that, the revisionist filed his objection on 26th September, 2016. On 30th October, 2018, the Additional Principal Judge has passed interim order directing the revisionist to pay Rs. 15,000/- per month to opposite party no.2 towards interim monthly maintenance allowance. In July, 2022, the revisionist has filed his affidavit before the trial court. After that, the revisionist, with regard to living in adultery by opposite party no.2, filed an application on 14th November, 2023 under Section 125 (4) Cr.P.C. before the trial court and the

same has also been accepted by the trial court vide order dated 14th November, 2023. On 17th November, 2023, the revisionist has also filed his written statements before the trial court. In the written statements, the revisionist has stated that he has also filed an application under Section 340 Cr.P.C. before the trial court. Without deciding the application filed under Section 340 Cr.P.C. and application under Section 125 (4) Cr.P.C., the Additional Principal Judge vide impugned judgment and order dated 18th November, 2023 has allowed the application of the opposite party no. 2 under Section 125 Cr.P.C. and directed the revisionist to pay Rs. 30,000/- per month to opposite party no.2 towards monthly maintenance allowance.

4. Learned counsel for the revisionist states that the Additional Principal Judge has passed the impugned judgment and order without deciding the applications of the revisionist under Section 340 Cr.P.C. and 125 (4) Cr.P.C. which is per se manifestly illegal. The Additional Principal Judge while passing the impugned judgment has not considered the written statements filed by the revisionist on 17th November, 2023 before the trial court. Learned counsel for the revisionist next submits that in the application filed under Section 125 (4) Cr.P.C. on 14th November, 2023 which has also been accepted by the trial court on the same day i.e. 14th November, 2023 which is at page 183 of the paper book, it has been alleged that opposite party no.2 is a lady of bad character and she has physical relations with many persons and that allegations made by the revisionist have also been supported by her daughter Nadiya Khan as D.W.-1 in her affidavit i.e. examination-in-chief filed before the trial court in the instant proceedings under Section 125 Cr.P.C. as also in the cross-examination, who is living with the revisionist along with her younger sister. By means of the said application under Section 125 (4) Cr.P.C., the revisionist has prayed that since opposite party no.2 is living in adultery. therefore, she is not entitled to any monthly maintenance allowance. Learned counsel for the revisionist further submits that in the application filed by the revisionist under Section 340 Cr.P.C. it has specifically been stated that for getting illegal benefit, opposite party no.2 has prepared fake documents including agreement papers by scanning them from computer on 20-8-2015, which would completely affect the instant case under Section 125 Cr.P.C. and other cases under the provisions of Protection of Women from Domestic Violence Act. Therefore, the revisionist has filed the said application in the instant proceedings under Section 125 Cr.P.C. and it has been connected with the instant case. By means of the said application, the revisionist has prayed that since the application under Section 340 Cr.P.C. is also related to the instant case, it would be necessary and just to decide the said application first before deciding the instant case under Section 125 Cr.P.C.

5. Learned counsel for the revisionist then submits that first the Principal

Judge should have considered the applications of the revisionist under Section 340 Cr.P.C. and application under Section 125 (4) 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 Additional 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)**. 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 vehemently opposed the present criminal revision by contending that there is no illegality or infirmity in the judgment passed by the trial court while allowing the instant application of opposite party no.2 under Section 125 Cr.P.C. Besides the above, learned counsel for opposite party no.2 submits that both the applications filed by the revisionist under Section 125 (4) Cr.P.C. and Section 340 Cr.P.C. has only been filed to delay the proceedings under Section 125 Cr.P.C.

7. I have considered the facts and circumstances of the case, the arguments advanced by the learned counsel for the parties and have perused the records of the present revision.

8. For deciding to the present criminal revision, it would be worthwhile to refer to the allegations made in the applications filed by the revisionist under Section 125 (4) Cr.P.C. and Section 340 Cr.P.C.

9. In the application filed by the revisionist under Section 125 (4) Cr.P.C., it has been alleged that since the marriage, the behaviour of the opposite party no.2 towards the revisionist and his family members was very bad. She used to abuse the revisionist and always ready to fight and quarrel. It is also alleged that she used to receive dirty and obscene messages and videos through her mobile phone and she also exchanged obscene conversations and messages with so many persons like Shakeel Ahmed, Nikhil Varshney, Haider, Ashwin etc. In support of said allegations, the revisionist has enclosed the list of names along with mobile numbers along with the said application. The daughters of the revisionist also disclosed to the revisionist that in his absence, some persons come to his house to meet opposite party no.2 and she used to get them locked in another room along with herself and used to spend one or two hours with that person in that room. At that time, the daughters used to hear dirty words and sounds from inside the locked room. It is then alleged that seeing obscene acts of opposite party no.2 and thinking

about the future of his children, the revisionist was forced to take both his daughters to his ancestral home at Lucknow and got them admitted in a good school there and both the daughters of the revisionist are getting their education there.

10. It is further alleged in the said application that opposite party no.2 makes nude videos of her body and sends them to other persons. A person made a C.D. of nude videos of the opposite party no.2 and gave it to the revisionist. Opposite party no.2 watches donkey sex videos. The nude videos and voice recordings of the opposite party's conversations are captured in the said C.D., which has also been enclosed along with the said application. It is pertinent to mention here that daughter of opposite party no.2, namely, Nadiya Khan as D.W.-1 in her affidavit i.e. examination-in-chief filed before the trial court in the instant proceedings under Section 125 Cr.P.C. as also in the cross-examination, who is living with the revisionist along with her younger sister has supported the aforesaid allegations as made by the revisionist in his application under Section 125 (4) Cr.P.C. against opposite party no.2.

11. It is also alleged that the opposite party no.2 is an educated woman, having degrees of B.Tech and M.B.A. She has also worked in Dubai and there too the opposite party no.2 had illicit relations with other men. Despite being married and mother of two daughters, she used to talk vulgarly with other men, which is clearly proved by the audio recording.

12. It is lastly alleged that the revisionist has filed a Suit No. 2321 of 2016 (Md. Rizwan Khan vs. Mrs. Shabana Abbas) in the Family Court, Lucknow for grant of the decree of their divorce on 9.06.2015 which is still pending. On the basis of such allegations, revisionist has prayed that opposite party no.2 is not entitled to get maintenance from the applicant/plaintiff under Section 125 Cr.P.C. as she is living in adultery with other men. As such, in the interest of justice, the application under Section 125 Cr.P.C. is liable to be dismissed.

13. While in the application under Section 340 Cr.P.C. filed by the revisionist before the trial court in the proceedings under Section 125 Cr.P.C., it has been stated that for getting illegal benefit, opposite party no.2 has prepared fake documents including agreement papers by scanning them from computer on 20-8-2015, which would completely affect the instant case under Section 125 Cr.P.C. and other cases under the provisions of Protection of Women from Domestic Violence Act.

14. It is admitted case that without deciding the aforesaid two applications of the revisionist under Sections 125 (4) Cr.P.C. and Section 340 Cr.P.C., the impugned judgment has been passed by the trial court while allowing the application of opposite party no.2 under Section 125 Cr.P.C. It is also

transpires from the record that the application under Section 125 (4) Cr.P.C. has been filed by the revisionist on 14th November, 2023 and the same has also been accepted by the trial court vide order dated 14th November, 2023 and the instant case was directed to be put up on 16th November, 2023. When as matter of fact, the impugned judgment has been passed on 18th November, 2023 without deciding the said application under Section 125 (4) Cr.P.C

15. Similarly, the application under Section 340 Cr.P.C. has filed by the revisionist much before the passing of the impugned judgment by the trial court and the same has also not been decided before passing of the same.

16. The Lucknow Bench of this Court in the case of **Amit Bajpai (Supra)** referring to the another judgment of the Lucknow Bench dated 9th January, 2023 passed in Writ Petition No.- (M/S) of 2002 has specifically held 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.

17. This Court, which sits in revisional jurisdiction, cannot examine the legality or otherwise of the allegations made by the revisionist in his applications under Section 125 (4) and Section 340 Cr.P.C. The same may be examined only by the trial court.

18. In the opinion of the Court, in both the applications 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 applications filed by the revisionist under Section 125 (4) and 340 Cr.P.C. before deciding the instant application under Section 125 Cr.P.C. finally.

19. Consequently, this Court is of the considered view that judgment and order passed by the Additional Principal Judge, Family Court No.3, Aligarh dated 18th November, 2023 in Case No. 826 of 2019 (Old No. 764/11/15) (Smt.Shabana Khan Vs. Mohammad Rizwan Khan), under Section 125 Cr.P.C., Police Station-Civil Lines, Aligarh cannot be legally sustained and is liable to be set aside. Accordingly, the same is set aside.

20. The Additional Principal Judge, Family Court, Court No.3, Aligarh is directed to decide the applications of the revisionist under Section 340 Cr.P.C. and under Section 125 (4) Cr.P.C. first after affording opportunity of 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 applications under Section 340 and under Section 125 (4) Cr.P.C., the Additional Principal Judge shall decide the application under Section 125 Cr.P.C. finally, 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 any unnecessary adjournments to either of the parties, if there is no other legal impediment.

21. The present criminal revision is partly allowed.

September 8, 2025
Sushil/-

(Madan Pal Singh,J.)