



2026:AHC:196051

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 6959 of 2025

Naresh Kumar

.....Revisionist(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Revisionist(s)	: Abhishek Tripathi
Counsel for Opposite Party(s)	: G.A., Siddharth Khare

Judgment Reserved on 10.08.2026
Judgment Delivered on 18.09.2026
Judgment Uploaded on 18.09.2026

Court No. - 87

HON'BLE LAKSHMI KANT SHUKLA, J.

1. Heard Mr. Abhishek Tripathi, learned counsel for revisionist, learned AGA appearing on behalf of State-opposite party no. 1, Mr. Siddharth Khare, learned counsel appearing on behalf of opposite party no. 2 and perused the record.

2. Revisionist Naresh Kumar has approached this Court by means of present Criminal Revision assailing the impugned judgment and order dated 26.08.2025 passed by Additional Principal Judge Family Court, Court No. 3, Kanpur Nagar (hereinafter referred to as trial Court) in Case No. 95 of 2018 "Smt. Aruna Srivastav Vs. Naresh Kumar" wherein the trial court allowed the application

under section 125 Criminal Procedure Code (in short Cr.P.C.) filed by opposite party no. 2 ordered the revisionist to pay Rs. 18,000/- to opposite party no. 2 as monthly maintenance enhancing the earlier amount of maintenance Rs. 9,000/- monthly.

3. Feeling aggrieved from that order the revisionist has filed this revision on the grounds that the impugned order is bad in law, the same has been passed by ignoring the material evidence available on record. It is passed without applying judicial mind and a prayer for setting aside the impugned judgment and order allowing the criminal revision has been made.

4. Learned counsel appearing on behalf of revisionist submitted that the revisionist is a retired judicial officer and according to affidavit filed by him before the trial court (its copy occurs at page 104 of the paper book) his basic pay at the time of his retirement, i.e., 30.11.2020 was Rs. 60,310/- per month and his pension was calculated as Rs. 25,632/- per month but the trial court ordered him to pay Rs. 18,000/- per month holding his income Rs. 88,000/- per month without any reliable evidence. It is further contended by learned counsel for revisionist that the application under section 127 Cr.P.C. filed by opposite party no. 2 was based on false and baseless facts as well as by concealing material evidence that the opposite party no. 2 herself was not interested in living with the revisionist and unwilling to perform her matrimonial duties towards him. Before fixing the aforesaid amount of maintenance no finding has been recorded by the trial court. The trial court completely failed to appreciate that the opposite party no. 2 has grabbed the house of the revisionist and she is residing in same house, where all household articles and facilities are already available to her. It is further submitted that all the children of opposite party no. 2 have attained majority. Her daughter is working in Bank and both the sons are

advocates, so that the opposite party no. 2 has now able to maintain herself as she may get maintenance from her major and earning children.

5. It is next submitted that the revisionist has purchased a plot having current value of Rs. 60,00,000/- in the name of opposite party no. 2 but the same has been ignored by trial court while passing the impugned order. The revisionist tried his level best to save his matrimonial relationship with opposite party no. 2 but only due to rude, rigid and cruel behavior of the opposite party no. 2 all his efforts gone in vein. Then he filed a divorce petition against opposite party no. 2 in the Court of Civil Judge Senior Division, Unnao which was registered as R.S. No. 454 of 2005 (Naresh Kumar Vs. Smt. Aruna Srivastava) under section 13 of Hindu Marriage Act, 1955. On 17.08.2006, learned trial court passed ex-parte decree of divorce in favour of revisionist. After expiry of sufficient time the revisionsit perform his second marriage with Nishith Srivastava and from the said wedlock, he has two children and now the revisionist has responsibility of maintaining his second wife and children also and his pension is the only way of their livelihood. It is thus contended that for the aforesaid reasons the impugned order is unsustainable in the eyes of law. Accordingly, it has been prayed that the present criminal revision be allowed and the impugned order be quashed/set aside.

6. *Per contra*, learned AGA as well as learned counsel appearing on behalf of opposite party no. 2 opposed the present Criminal Revision and in support of impugned order submitted that in so far as the contention of learned counsel for revisionist regarding the alleged rude, rigid and cruel behaviour of opposite party no. 2 is concerned, no such contention can be accepted at this level because the trial court after considering all such things passed the order of

maintenance in favour of opposite party no. 2 fastening the revisionist to pay monthly amount of Rs. 5,000/- on 17.11.2011. The interim maintenance of Rs. 7,000/- per month was also awarded to be paid by revisionist to opposite party no. 2 under section 24 of Hindu Marriage Act, 1955 in short "HM Act", such amount was adjustable with the maintenance amount awarded in application under section 125 Cr.P.C. It is also remarkable that when order dated 17.12.2011 was passed a maximum limit of Rs. 5,000/- was imposed by legislature towards maintenance amount under section 125 Cr.P.C. later on such limit was removed by way of an amendment by the Central Legislature and then an application for enhancement of maintenance was moved which was allowed and the amount of maintenance amount was enhanced to Rs. 9,000/- per month.

7. It is next contended that though the revisionist was in service, therefore, his income was regularly increasing by the span of time and again an application for enhancement of maintenance amount was filed on account of increase of income of revisionist. When such application was filed in the year of 2017-18 the monthly income of revisionist was Rs. 1,25,000/-. The purpose of above noted submission is only to show the Court that the allegation against the opposite party no. 2 regarding her bad behaviour is no longer relevant for consideration at this stage. The trial court has observed that the opposite party/present revisionist has admitted his monthly income to be Rs. 88,000/-, such observation has occurred at page 48 of the paper book. The impugned order has been passed on 26.08.2025 whereas the revisionist was retired on 30.11.2020 from the post of Additional District Judge. At the time of his retirement, the recommendation of the II National Judicial Pay Commission (in short II NJPC), which had come into effect from 01.01.2016 had not been implemented in respect of judicial officers

in the State of Uttar Pradesh. But before passing of the impugned order, the consequential revision of the pay of judicial officer pursuant to the implementation of the recommendation of the II NJPC had taken effect, accordingly the pension of revisionist was also revised and the revisionist was bound to admit his income because he has no opportunity to conceal the same from Court. In the aforesaid conspectus the submission of learned counsel for the revisionist that the trial court failed to take into consideration the pension of the revisionist, stated to be Rs. 25,632/- per month, does not appear to be material or worthy of consideration at this stage. So far as decree of divorce is concerned it is admitted by the revisionist that such decree was passed by the Court of Civil Judge Senior Division, Unnao while according to provision contained under the Hindu Marriage Act is entertainable by the District Court.

8. By virtue of Section 19 of Hindu Marriage Act, 1955 read with Section 3 (17) of the General Clauses Act, 1897, a petition for divorce can be filed before the Court of District Judge, so that a decree of divorce passed by a Civil Judge (Senior Division) is per incuriam having no legal sanctity even if it is not challenged before any higher Court. So the contention of learned counsel for revisionist that after getting decree of divorce he married with another lady and has two children from his second wedlock becomes immaterial for the purpose of determination of quantum of maintenance in favour of opposite party no. 2.

9. So far as contention of learned counsel for revisionist regarding capability of maintenance from earning children of opposite party no. 2 is concerned it is undisputed that parties belong to Hindu Religion and a Hindu wife feels proud if her husband left her no occasion to seek any assistance especially economic assistance from any person other than her husband. No wife can choose to seek

financial assistance even from her own children if her husband having capacity to maintain herself is alive, therefore, such contention of revisionist cannot be regarded by this Court. It is thus contended that in view of above the present criminal revision, being devoid of merit, deserves to be dismissed by this Court.

10. Having heard the rival submissions and perusal of record, there is no doubt that the revisionist was serving in judicial service and retired from the post of Additional District and Sessions Judge on 30.11.2020 certainly his basic pay at that point of time was Rs. 60,310/- per month. Though the required service of 20 years of fixation of full pension could not be completed by the revisionist due to his early superannuation certainly he was not entitled for full pension and his pension was fixed as Rs. 25,632/- per month. But the contention of learned counsel appearing on behalf of opposite party no. 2 is that during the pendency of application under section 127 Cr.P.C. filed by opposite party no. 2 the situation changed and the pay of judicial officers revised according to recommendation of the aforesaid commission constituted under the directions of the Hon'ble Apex Court in persuasion with the implementation of the II NJPC. Accordingly, the pension of revisionist obviously revised and it is admitted to the revisionist that he receives monthly pension of about Rs. 88,000/-.

11. Apart from that it is a matter of general prudence that though the recommendations of the Pay Commission were implemented from 01.01.2016 but it was not effected on the date of retirement of revisionist meaning thereby a huge amount of arrears of pay was also received by the revisionist. But he conceals all these things from trial court. The revisionist/opposite party no. 2 is not only a simple litigant of family dispute but he is a retired judicial officer and it is recognized that a Judge always a Judge and a Judge cannot

be expected that he conceals any material facts or misrepresents any fact. It is beyond the expected nature of judicial officer. So far as the contention of learned counsel for opposite party no. 2 regarding divorce petition and the decree of divorce between the parties is concerned, Section 19 of Hindu Marriage Act read with Section 3(17) of the General Clauses Act is relevant. Section 19 Hindu Marriage Act, 1955 provides forum of petition under this Act:-

"19. Court to which petition shall be presented.- Every petition under this Act shall be presented to the district Court within the local limits of whose ordinary original civil jurisdiction-

(i) the marriage was solemnized, or

(ii) the respondent, at the time of the presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of a being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive."

Section 3 Clause 17 of General Clauses Act, 1897 defines "District Judge" which means Judge of a Principal Civil Court of original jurisdiction. Section 3 Clause 17 of the General Clauses Act, 1987 is as under:-

"(17) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction."

12. As per provision contained in Section 19 of the Hindu Marriage Act, 1955 any petition under this Act can be filed only before the District Judge. District Judge means the court of District Judge but not a single court of Civil Judge Senior Division. So the decree of divorce passed by Civil Judge Senior Division is decree passed by incompetent Court, therefore, such divorce of decree has no legal sanctity. Accordingly, the second marriage of revisionist and children from that wedlock cannot be considered as his valid liability while considering the quantum of maintenance in favour of opposite party no. 2. In the case of *Kalyan Dey Chowdhury Vs. Rita Dey Chodhury Nee Nandy (2017) 14 SCC 200*, the Hon'ble Apex Court has held that 25% of income of husband may be awarded to wife as maintenance but such direction of Hon'ble Apex Court applicable in normal course. It is remarkable that when a person earns performing his duty he/she has more expenses which has being compulsorily borne on such employee to maintain himself/herself according to his/her employment norms. On other hand the person claiming maintenance has no extra expenses other than basic needs so the person claiming maintenance cannot be benefitted more than basic needs or more than status of family but in present case it is evident that revisionist is withdrawing pension and for that he is not compelled to maintain himself as per norms of his office.

13. So in such matter the maintenance claiming wife is entitled not only up to 25% of income but her maintenance amount may be above than 25% of pension amount of her husband. But the trial court has passed an order of monthly maintenance less than 25% of income of revisionist/husband. Accordingly, we do not find any good reason to interfere with the aforesaid amount of maintenance in negative side. So the learned counsel for revisionist in this context is not sustainable while contention of learned counsel

appearing on behalf of opposite party no. 2 finds substance. So far as the contention of learned counsel for revisionist regarding bad behaviour of opposite party no. 2 is concerned, such fact has been determined by the trial court while passing order of maintenance at the initial stage. Thereafter, the maintenance amount was enhanced at least twice by the trial court meaning thereby the finding of trial court in this regard had attained finality and no challenge against such finding can be raised at this stage. Accordingly, the submissions of learned counsel appearing on behalf of revisionist and learned counsel appearing on behalf of opposite party no. 2 are unsustainable and sustainable respectively.

14. In the light of aforesaid observations, we do not find any good ground to interfere with the impugned order whereby the maintenance amount payable to opposite party no. 2 has been enhanced. The impugned order does not suffer from any illegality, infirmity or jurisdictional error warranting interference by this Court in exercise of its revisional jurisdiction. Accordingly, the present criminal revision, being devoid of merit, is hereby dismissed.

15. The impugned order is affirmed.

(Lakshmi Kant Shukla,J.)

September 18, 2026
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