



2026:AHC:56157

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 511 of 2026

Dinesh Kumar Sharma

.....Revisionist(s)

Versus

State of U.P. and 4 others

.....Opposite Party(s)

Counsel for Revisionist(s)	: In Person, Vikas Srivastava
Counsel for Opposite Party(s)	: G.A.

Reserved on 26.02.2026
Delivered on 19.03.2026

In Chambers

HON'BLE GARIMA PRASHAD, J.

1. Heard Sri Vikas Srivastava, learned counsel appearing for the revisionist and the learned AGA appearing for the State.
2. The present criminal revision assails the ex parte order dated 01.03.2023 passed by the learned Civil Judge (Junior Division), Fast Track Court, whereby the application filed under Section 23 of the Protection of Women from Domestic Violence Act, 2005 was allowed and the revisionist was directed to pay a sum of Rs.4,000/- per month to his wife, opposite party No.2, as interim maintenance from the date of the order. The revisionist further challenges the judgment and order dated 03.10.2023 whereby the recall application preferred by the revisionist against the ex parte order was rejected, as well as the order dated 16.07.2025 passed by the learned Additional Sessions Judge dismissing Criminal Appeal No. 207 of 2023 preferred by the revisionist.

3. The brief facts giving rise to the present revision are that the marriage of the revisionist with opposite party No.2 was solemnized on 23.02.2014 according to Hindu rites and customs. From the said wedlock, two children, namely Kumari Himanshi and Asharv, were born. The opposite party No.2 instituted proceedings under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act') and moved an application under Section 23 of the Act seeking grant of interim maintenance during pendency of the proceedings. The revisionist did not appear before the court despite service, and a Domestic Incident Report was also placed on record.

4. Upon consideration of the material available on record and being satisfied that the application disclosed a prima facie case under the Act, the learned trial court passed an ex parte interim order dated 01.03.2023 directing the revisionist-husband to pay Rs.4,000/- per month towards maintenance, covering expenses relating to food, clothing, medical needs and other basic necessities. The trial court further granted visitation rights to the mother to meet her children twice a week, i.e every Monday and Thursday.

5. Aggrieved by the said order, the revisionist moved an application seeking recall of the ex parte order, which was rejected by the trial court clearly recording that the revisionist had been duly served and had failed to appear before the court. It further observed that the revisionist had failed to demonstrate how the continuance of the ex parte order caused prejudice to him, particularly when he had not disputed that opposite party No.2 was his legally wedded wife. The revisionist thereafter preferred Criminal Appeal No. 207 of 2023 before the learned Additional Sessions Judge challenging the aforesaid orders. The appellate court, after hearing both parties, noted that the revisionist had not denied the marital relationship with opposite party No.2. The principal contention raised before the appellate court was that opposite party No.2 was residing with her parents without sufficient cause and that since the order was passed ex parte, she was not entitled to maintenance. The appellate court found no merit in the submissions and accordingly dismissed the

appeal. The revisionist has thus approached this Court challenging the aforesaid three orders.

6. The principal ground urged in the revision is that after about six years of marriage, the conduct of opposite party No.2 became strained towards the revisionist and his parents. It is alleged that she began insisting the revisionist to live separately from his aged parents and repeatedly pressurized him to seek partition of the family property. The revisionist further alleges that opposite party No.2 indulged in abusive behaviour and physical altercations with members of his family. According to the revisionist, several attempts were made by him and his family members to bring opposite party No.2 back from her parental home, however, her father and brothers allegedly refused to send her back on one pretext or another. It has also been asserted that neither the revisionist nor his family members ever demanded dowry and that opposite party No.2 was never subjected to cruelty.

7. It is further alleged that on 06.06.2020, in the absence of the revisionist, opposite party No.2 left the matrimonial home after taking jewellery, cash and clothes, leaving the children behind. It is also alleged that on 14.03.2022, opposite party No.2 along with her father behaved in an inhumane manner with the revisionist's parents and refused to resume marital obligations without any reasonable cause. Learned counsel for the revisionist submitted that opposite party No.2 had threatened to falsely implicate the revisionist and his family members in criminal cases, and therefore complaints were submitted by the revisionist through registered post to the Senior Superintendent of Police as well as to the Hon'ble Chief Minister. It is also submitted that opposite party No.2 is more educated than the revisionist and that the revisionist had supported and facilitated her further education after marriage.

8. The revisionist has further contended that the ex parte order dated 01.03.2023 passed by the trial court is illegal on account of absence of proper service of summons upon him and that the order has been passed in violation of the principles of natural justice. It is also submitted that

the revisionist is still willing to take opposite party No.2 back and resume matrimonial life through an amicable settlement.

9. The record reveals that opposite party No.2 had filed objections in the appeal stating that the revisionist and his father were habitual consumers of alcohol and used to abuse family members after consuming liquor. It has been alleged that within two years of marriage, two children were born and that opposite party No.2 performed all her matrimonial duties and looked after the children and family for about six years. According to her, when she objected to the excessive alcohol consumption of the revisionist after the children had grown older, the revisionist began abusing and assaulting her and ultimately expelled her from the matrimonial home, thereby subjecting her to physical and mental cruelty. It is further alleged that on 14.04.2022, the revisionist forcibly took away both the children from opposite party No.2 and drove her out of the house. Opposite party No.2 thereafter approached the court seeking visitation rights and the court directed that she be permitted to meet the children twice a week. However, the revisionist allegedly did not comply with the said directions.

10. The Opposite party No.2 has further alleged that she was repeatedly sent back from her matrimonial home on several occasions and was beaten and expelled once again the fifth time. It has also been stated that the revisionist used to call her late at night in an intoxicated condition several times in a month. According to her, the revisionist assaulted her, deprived her of the custody of the children, took away all her stridhan, confined her in a room and even threatened to hang her and falsely declare her mentally unstable while claiming himself to be an advocate of the High Court. It is also alleged that the revisionist retained her educational certificates and other documents. The District Probation Officer had allegedly informed the revisionist both telephonically and by registered post, yet he deliberately avoided appearing before the court. It has also been alleged that the appeal filed by the revisionist was itself filed after about eight months, beyond the prescribed period of limitation. According to opposite party No.2, the revisionist had full

knowledge of the order and had earlier filed an application under Section 25(2) before the trial court, yet deliberately delayed filing the appeal without any valid justification.

11. It has further been alleged by opposite party No.2 that the revisionist extracted Rs.3,00,000/- from her father under pressure and used the said amount for purchasing a plot by executing simultaneous registration in the name of his sister-in-law through a firm using his father's cheque. Upon dispute with the vendor, the plot was cancelled through court proceedings and approximately Rs.1,07,000/- was refunded to opposite party No.2. According to her, the revisionist subsequently withdrew the refunded amount by forcibly obtaining her signatures on certain documents in installments.

12. It is also stated that mediation proceedings were conducted in a case under Section 125 CrPC, but the revisionist refused reconciliation. When opposite party No.2 was first expelled from the matrimonial home in the year 2020, she had initiated proceedings under the Domestic Violence Act. However, in order to avoid those proceedings, the revisionist took her back through a compromise dated 16.04.2021, but again expelled her from the matrimonial home on 14.03.2022.

13. From perusal of record, it appears that the trial court allowed the application under section 23 of the Protection of Women from District Violence Act 2005 on the basis of unrebutted averments made by the opposite party no. 2 in the proceedings which had proceeded ex parte against the revisionist. The trial court, being satisfied that the prima facie case for grant of interim relief was made out, awarded interim maintenance to the legally wedded wife. Subsequently, an application filed by the revisionist seeking recall of the ex parte order was rejected by the trial court, primarily on the ground that the relationship between the parties was not disputed and the revisionist had failed to demonstrate any prejudice caused by the continuance of interim maintenance. The appellate court, while considering the challenge to the aforesaid orders, upheld the finding of the trial court that the revisionist had been duly

served in the proceedings before the trial court and that no sufficient ground had been made out to interfere with the interim order passed on the basis of un rebutted material. Consequently, the criminal appeal was dismissed.

14. The principal contention raised by the revisionist is that opposite party No.2 is residing with her parents without sufficient cause and that since the order was passed ex parte, she is disentitled to maintenance. However, the order dated 01.03.2023 clearly records that the revisionist had been duly served and had failed to appear before the court. The trial court awarded only Rs.4,000/- per month as interim maintenance. The contention that the order was passed without proper service is therefore not borne out from the record. Once the revisionist admits that opposite party No.2 is his legally wedded wife, it is his legal as well as moral obligation to provide for her maintenance.

15. Another contention advanced on behalf of the revisionist is that both minor children are residing with him and that he alone is bearing the expenses of their upbringing and education, while opposite party No.2 has not contributed towards their welfare. It has further been alleged that opposite party No.2 has concealed her true financial position, including the fact that she had more than Rs.3,00,000/- in her bank account, and falsely claimed that she had no source of income. It is also submitted that the courts below passed the impugned orders without granting an effective opportunity of hearing to the revisionist and without considering the income affidavit filed by him in accordance with the guidelines laid down by the Supreme Court. According to the revisionist, opposite party No.2 is well educated and capable of maintaining herself but has deliberately chosen not to work and to claim maintenance by suppressing material facts.

16. It is further submitted that the revisionist has no movable or immovable property in his name and is facing financial hardship while discharging his responsibilities towards the minor children through borrowed funds, as reflected from his loan accounts and credit card bills.

It has also been submitted that due to financial constraints the revisionist was unable to contest the elections of the Allahabad High Court Bar Association, which according to him indicates his genuine financial hardship. The revisionist further contends that he has obtained a decree for restitution of conjugal rights dated 05.08.2025, yet opposite party No.2 has deliberately avoided compliance with the same and is therefore not entitled to claim maintenance. It is also submitted that in cross-examination in proceedings under Section 125 CrPC, opposite party No.2 had admitted that she was capable of maintaining herself. According to the revisionist, opposite party No.2 has voluntarily deserted the matrimonial home and is living separately without reasonable cause. It is also stated that the revisionist is handling only about two to three cases per year before the Allahabad High Court. The affidavit of income filed by the revisionist discloses his monthly expenditure of Rs.9,000/- towards credit card payments and approximately Rs.1,27,181/- per annum towards expenses of the children.

17. Considering the rival submissions and the material on record, it is evident that the impugned order merely grants interim maintenance of Rs.4,000/- per month to the legally wedded wife. The affidavit of income filed by the revisionist himself discloses that he is incurring expenses of Rs.9,000/- per month towards credit card payments and approximately Rs.1,27,181/- annually towards the expenses of the children, which indicates that he is not without financial capacity. In such circumstances, the award of a modest amount of Rs.4,000/- per month towards interim maintenance cannot be said to be excessive or arbitrary.

18. Both the courts below have recorded a categorical finding of fact that the revisionist was duly served with notice of the proceedings and that the ex parte order was passed only after such service and upon his failure to appear before the court. The said concurrent finding is based upon the material available on record and does not suffer from any apparent illegality. In such circumstances, while challenging an ex parte order, it is not permissible for the revisionist to raise grounds which

would otherwise be available to him in a contested proceeding on merits. Once the revisionist, despite service, chose not to appear before the trial court, he cannot now be permitted to assail the order by advancing substantive defences relating to the merits of the dispute. The scope of challenge to an ex parte order in such circumstances is confined to demonstrating absence of service or sufficient cause for non-appearance. Since both the courts of fact have already recorded a finding that the revisionist was duly served and had failed to appear, no interference with the impugned orders is warranted in revisional jurisdiction.

19. Learned counsel for the revisionist has placed reliance upon the judgments in **Vikas Pandey v. Vandita Gautam**, 2012 Supreme (Allahabad) 2672, **Sanjay Bhardwaj v. State**, Lawsuit (Delhi) 1718, and **Rajnish v. Neha**, (2021) 2 SCC 324. The said authorities, however, do not advance the case of the revisionist in the facts of the present matter. In **Vikas Pandey (supra)**, the Court was dealing with a situation where the facts relating to the financial capacity and conduct of the parties were materially different and the claim of maintenance was examined on the basis of specific evidence regarding the earning capacity of the wife. The ratio of the said judgment turned on its own peculiar facts and does not lay down any proposition that a legally wedded wife can be denied interim maintenance merely because she is educated or alleged to be capable of earning. Similarly, in **Sanjay Bhardwaj (supra)**, the Delhi High Court emphasized that where the wife is gainfully employed and capable of maintaining herself, grant of maintenance may not be warranted. In the present case, there is no cogent material on record to establish that the opposite party No.2 is gainfully employed or has an independent source of income sufficient for her sustenance.

20. The reliance placed upon **Rajnish (supra)** is also misplaced. In the said judgment, the Supreme Court primarily laid down comprehensive guidelines for determination of maintenance and filing of affidavits of income, assets and liabilities by both parties in maintenance proceedings. The decision reiterates the principle that the husband has a legal and moral duty to maintain his wife who is unable to maintain herself. The

guidelines contained therein are intended to ensure fairness and transparency in adjudicating maintenance claims and do not support the proposition that a wife can be denied even modest interim maintenance in circumstances such as the present case.

21. It is well settled that a husband cannot avoid his responsibility to maintain his wife and cannot be permitted to leave her without means of sustenance. The purpose of interim maintenance under the Protection of Women from Domestic Violence Act, 2005 is to ensure that the wife is not left destitute during the pendency of proceedings. Moreover, the order impugned is only interim in nature, passed to provide immediate relief until the rights and liabilities of the parties are finally adjudicated upon. In such circumstances, this Court finds no illegality, perversity or jurisdictional error in the orders passed by the courts below warranting interference in revisional jurisdiction.

22. Accordingly, the criminal revision fails and is dismissed. No order as to costs.

23. It is, however, clarified that the dismissal of the present revision shall not preclude the revisionist from participating in the proceedings before the trial court. The revisionist shall remain at liberty to appear before the trial court and pursue the case on merits in accordance with law. The trial court, while deciding the main proceedings, shall adjudicate the matter independently on the basis of the evidence and material placed on record and shall not be influenced by any observations made in the present order, which are confined only to the adjudication of the interim issue.

(Garima Prashad, J.)

March 19, 2026

Kuldeep