

(1997) 03 AHC CK 0211**Allahabad High Court****Case No:** Criminal Revision No. 2418 of 1988

Israel

APPELLANT

Vs

Nafisa Begum and Another

RESPONDENT

Date of Decision: March 11, 1997**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 401

Citation: (1997) 21 ACR 571**Hon'ble Judges:** P.K. Jain, J**Bench:** Single Bench**Judgement**

P.K. Jain, J.

List has been revised. Heard Shri Z.K. Husain holding brief of Shri R.K. Jain, learned Counsel for the revisionist and learned A.G.A. for the State. None appears for opposite party No. 1.

2. Opposite party No. 1 claiming to be wife of the revisionist moved an application u/s 125, Code of Criminal Procedure claiming maintenance allowance for herself and for her minor child being son of the revisionist. The trial court rejected the application holding that, wife left the house of the husband out of her own free will. Revision preferred by the wife was allowed by the revisional court and maintenance allowance of Rs. 100 per month was awarded to the wife and at the rate of Rs. 150 per month was awarded to the minor son, Shamshad. It is this order of the revisional court which is being challenged in this revision.

3. The main contention of the learned Counsel for the revisionist is that the trial court having carefully considered the evidence of the parties arrived at the finding that the wife was living separately but of her own free will and, therefore, she was not entitled to claim maintenance allowance. The revisional court disturbed this finding of fact and substituted its own finding which was not permissible while hearing and disposing of the criminal revision.

4. Learned A.G.A. contended that, so far as son is concerned there is no finding of the trial court that the son was not entitled to maintenance allowance and the revisional court awarded maintenance allowance on cogent grounds. Shamshad, the son has not been impleaded as party to the present revision before this Court hence the order of the revisional court against Shamshad has become final.

5. There cannot be dispute about the legal position that while hearing and disposing of the criminal revision, the revisional court cannot substitute its own findings of fact after disturbing the findings of fact arrived at by the trial court. The revisional court has, therefore, committed error in substituting its own findings of fact. If the revisional court was of the view that findings of fact arrived at by the trial court were perverse, the revisional court could have remanded the case for decision afresh.

6. As regards the order of the revisional court in respect of maintenance allowance awarded to Shamshad, the minor son, I agree with learned A.G.A. that the order of the revisional court has become final as the son has not been impleaded as party to the present revision. The order of the revisional court cannot be disturbed unless Shamshad was heard as provided u/s 401, Sub-clause (2), Code of Criminal Procedure which provides as follows:

No order under the section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

7. In view of the foregoing discussion, the order of the revisional court awarding maintenance allowance to Shamshad is confirmed subject to modification that in view of the provisions of Section 125(1)(c), Code of Criminal Procedure he would be entitled to maintenance allowance till he attains majority. As regards the order of the revisional court allowing maintenance allowance to Smt. Nafisa Begam the judgment and order of the revisional court to this extent is set aside and the case is remanded for hearing and disposal of the revision afresh in the light of the observations made in the body of the judgment.

The stay orders dated 24.11.1983 and 22.5.1984 are vacated.