

Section 319 Cr.P.C. after conclusion of trial, resulting in conviction and sentencing of accused persons who had already faced trial in main S.T. No. 84 of 2006, is not sustainable and thus cannot be affirmed, the impugned summoning order is in conflict with law laid down by Hon'ble Supreme Court in **Sukhpal Singh Khaira (supra)** as discussed above and thus vitiated by law, consequently the impugned order deserves to be set-aside.

20. The impugned summoning order passed against the revisionist under Section 319 Cr.P.C. is set-aside. The revision is accordingly **allowed**.

-----  
(2025) 2 ILRA 415

**REVISIONAL JURISDICTION**

**CRIMINAL SIDE**

**DATED: ALLAHABAD 07.02.2025**

**BEFORE**

**THE HON'BLE RAM MANOHAR NARAYAN  
MISHRA, J.**

Criminal Revision No. 3040 of 2023

**Nagendra Sirohi** ...Revisionist  
**Versus**  
**State of U.P. & Anr.** ...Opposite Parties

**Counsel for the Revisionist:**  
Chandan Sharma, Rahul Agarwal

**Counsel for the Opposite Parties:**  
G.A., Sanjeev Kumar

**Criminal Law — Indian Penal Code, 1860 -  
Sections 302 & 307- Criminal Procedure  
Code, 1973, Section 439-Bail — Second  
Bail Application — Prolonged  
Incarceration — Delay in Trial — Article 21  
of the Constitution of India — Accused in  
custody for over 7 years and 9 months —  
Trial remained stalled due to pendency of  
challenge to summoning order under  
Section 319 Cr.P.C. before Supreme Court**

**— Only 3 of 16 prosecution witnesses  
examined — No likelihood of conclusion of  
trial in near future — Held, prolonged  
detention without progress in trial is  
violative of right to speedy trial under  
Article 21 — Bail not to be withheld as  
punishment — Bail granted. (Paras 16,17,  
and 18)**

**HELD:**

Hon'ble Supreme Court in **Kalyan Dey Chowdhury Vs Rita Dey Chowdhury Nee Nandy** AIR (2017) SC 2383 placing reliance on a earlier judgment in **Dr. Kulbhushan Kumar Vs Raj Kumari & anr.**(1970) 3 SCC 129, in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Therefore, without disturbing the broad findings of fact given by learned court below, the amount of maintenance awarded to the applicant is being modified as below. (Para 16)

Considering the rival submissions of the learned counsel for the parties, totality of the facts and circumstances of the case, it cannot be held that due to non-compliance of mandatory directions of Hon'ble Supreme Court in **Rajnesh Vs Neha & anr.**(supra) before the court below, the impugned judgment and gets vitiated under law. This court in revisional stage has assured compliance of mandatory directions of Hon'ble Supreme Court in **Rajnesh Vs Neha & anr.**(supra) to avoid any further delay in final disposal of the matter. The purpose of filing affidavit of disclosure of assets and liabilities is to clarify the stand of the parties in maintenance case, their assets, liabilities and economic condition show that the court may be in a position to out the truth and come to just decision in the case. (Para 17)

**Revision application dismissed. (E-14)**

**List of Cases cited:**

1. Rajnesh Vs Neha & anr.2021 (1) JIC 1(SC)
2. Kalyan Dey Chowdhury Vs Rita Dey Chowdhury Nee Nandy AIR (2017) SC 2383
3. Dr. Kulbhushan Kumar Vs Raj Kumari & anr.(1970) 3 SCC 129

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Instant Criminal Revision has been preferred against the judgment and order dated 09.05.2023 passed by learned Additional Principal Judge Family Court, Amroha in Maintenance Case No.326 of 2021 under Section 125 Cr.P.C., P.S. Rajatpur, District Amroha. By the impugned order learned court below has awarded maintenance to the applicant Smt. Shalini from the date of filing of application dated 15.04.2021 to the date of judgment at the rate of Rs.8,000/- , and thereafter at the rate of Rs.15,000/- per month. It is also directed in the impugned order that maintenance will be payable on 10th of each calendar month. Original applicant is directed to furnish her bank account so that the respondents may deposit the amount of maintenance in the bank account directed. It is also clarified in the impugned Judgment that any amount obtained by the applicant as maintenance from any court shall be liable to be adjusted towards maintenance in the judgment.

2. Heard learned counsel for the revisionist, leaned counsel for the respondent No.2 and learned A.G.A. for the State-respondent and perused the material on record.

From perusal of record it appears that during the pendency of present revision this Court vide order dated 12.10.2023 directed the revisionist and respondent No.2 to file their respective affidavits regarding

disclosure of the assets and liabilities in the proforma prescribed in the judgment of Hon'ble Supreme Court in **Rajnesh Vs. Neha and another 2021 (1) JIC 1(SC)**

3. The revisionist has filed an affidavit of disclosure of assets and liabilities through the supplementary affidavit dated 24.04.2024. The respondent No.2 has also filed her affidavit of disclosure of assets and liabilities on 05.11.2023. This Court on 09.07.2024 passed an order, which is reproduced as under:-

*“Learned counsel for opposite party no.2 has stated that the maintenance awarded in favour of the wife has not been paid by the husband, who is in arrears of approximately Rs.4,50,000/-.*

*Let the arrears of maintenance be cleared positively before the next of haring.*

*Further, the revisionist husband is directed to file his salary slip.*

*Put up this case on 7th August, 2024, as fresh.”*

4. Revisionist has assailed this order before Hon'ble Supreme Court, by way of SLP (Special Leave Petition) which was registered as Diary No. S 34992/2024. Hon'ble Supreme Court disposed of said SLP vide order dated 08.11.2024 with following observations:-

*“We dispose of this Special Leave Petition by giving liberty to the petitioner herein either in seeking modification of the impugned order or for seeking early disposal of the revision petition.*

*It is needless to observe that if such a request is made by the petitioner herein, the same shall be considered expeditiousness and in accordance with law.*

*Pending applications, if any, shall stands disposed of.”*

5. Now at this stage parties are agreed with the revision may be disposed of on merits after hearing the submissions of respective parties.

6. Learned counsel for the revisionist submits that this is admitted fact that learned court below decided the maintenance application filed by respondent No.2 without complying the directions of Hon’ble Supreme Court in **Rajesh Vs. Neha and another** (supra) wherein it is directed that the party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the concerned court, as a mandatory requirement.

7. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.

(a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrate’s Court, as the case may be, throughout the country;

(b) The applicant making the claim for maintenance will be required to

file a concise application accompanied with the Affidavit of Disclosure of Assets;

(c) The respondent must submit the reply alongwith the Affidavit of Disclosure within a maximum period of four weeks. The Courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent.

8. Learned counsels for the revisionist submitted that Hon’ble Court also addressed issue of overlapping jurisdiction held that to overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding; it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

9. Learned counsel for the revisionist further submitted that in the present case also the original applicant/revisionist has filed complaint under provisions of Protection of Women from Domestic Violence Act, 2005, wherein, inter-alia, maintenance has also been claimed from opposite party, the husband. He further submitted that although it is admitted case that none of the parties had filed an affidavit of disclosure of assets and liabilities before the court below, yet it was

incumbent on the part of the court below to direct the parties to file their affidavit of disclosure of assets and liabilities as per guidelines of Hon'ble Apex Court in **Rajnish Vs. Neha and another** (supra).

10. He next submitted that respondent No.2 is a qualified lady, she did M.Com., B.Ed. and passed TET examination for appointment in Government schools as per information of the revisionist, she gives home tuition and teaches in coaching institutes and whereby she earns Rs.1 lakh per month. He next submitted that revisionist has concealed nothing in his affidavit of disclosure of assets and liabilities filed before this Court and has stated that he is B.Tech in Electronic and Communication his monthly emoluments are Rs.78,400/-, he has also attached his salary slip in the affidavit before this Court.

11. He also submitted that revisionist was not given proper opportunity of hearing before the court below, but he could not appear for cross examination on some dates for inevitable reasons and the learned court below closed his cross-examination and when the revisionist had filed an application after opening of his cross-examination before the court, the same was dismissed.

12. Learned counsel for the revisionist further submitted that revisionist has filed present petition under Section 125 Cr.P.C. and has also initiated other criminal proceedings against the revisionist at Amroha, wherein shes resides in Ghaziabad, just to harass the revisionist. In fact the revisionist as well as respondent No.2 both are residing in Ghaziabad and it would be convenient for the revisionist to pursue the legal proceedings initiated by the respondent No.2 against him in Ghaziabad. He also submitted that it is wrong to say that revisionist has neglected to

maintain the revisionist, the marriage of the parties was solemnized on 04.08.2014 in District Pune, Maharashtra as Marriage Certificate was issued by Special Marriage Officer a copy of Marriage Certificate has been filed as Annexure No.1 to the affidavit. The marriage was dowryless, just after the marriage respondent No.2 started pressurizing the revisionist to fulfill her expensive expensive monetary demand . The respondent No.2 became pregnant after marriage, but due to her carelessness and inappropriate life style complications occurred, it resulted in miscarriage. The respondent No.2 used to demand money from revisionist, who offered the same to her parents and when the revisionist refused to oblige her she became aggressive and started misbehaving him and matrimonial discord took place between the parties in course of time, due to objectionable conduct of the respondent No.2.

13. The revisionist had never ill treated his wife nor any demand of dowry was made. It is wrong to say that she was subjected to matrimonial cruelty. The amount awarded by the court below is exorbitant and unreasonable as no basis has been given for the same. The revisionist is consciously willing and is ready to settle the matrimonial dispute, but respondent No.2 is not forthcoming to cooperate him when he pursued to settle the matrimonial issue between the parties.

14. Per contra, learned counsel appearing for the respondent No.2 submitted that this is admitted fact that monthly emoluments of the revisionist are more than Rs.78,000/-, as amount awarded in the judgment and order is less than 25% of the monthly income of the revisionist. Therefore, in no manner the amount awarded as maintenance in the impugned judgment and order can be said to be exorbitant, unreasonable or unjust.

15. Learned counsel for the respondent No.2 further submitted that respondent No.2 was compelled to take shelter at her parental place due to maltreatment, harassment and torture given to her by the revisionist. She is a qualified lady, but she is not working women, she is not having any independent source of income and she had dependent on her parents for her necessary expenses. The revisionist being husband of the respondent No.2 is under obligation to maintain her, but he has neglected to pay maintenance to her, which resulted in filing of present petition under Section 125 Cr.P.C. before the Hon'ble Court.

16. Hon'ble Supreme Court in **Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy AIR (2017) SC 2383** placing reliance on a earlier judgment in **Dr. Kulbhushan Kumar vs. Raj Kumari and Anr. (1970) 3 SCC 129**, in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Therefore, without disturbing the broad findings of fact given by learned court below, the amount of maintenance awarded to the applicant is being modified as below.

17. Considering the rival submissions of the learned counsel for the parties, totality of the facts and circumstances of the case, it cannot be held that due to non-compliance of mandatory directions of Hon'ble Supreme Court in **Rajnesh Vs. Neha and another (supra)** before the court below, the impugned judgment and gets vitiated under law. This court in revisional stage has assured compliance of mandatory directions of Hon'ble Supreme

Court in **Rajnesh Vs. Neha and another (supra)** to avoid any further delay in final disposal of the matter. The purpose of filing affidavit of disclosure of assets and liabilities is to clarify the stand of the parties in maintenance case, their assets, liabilities and economic condition show that the court may be in a position to out the truth and come to just decision in the case.

18. After giving a thoughtful consideration on submissions of learned counsel for the parties and on meticulous examination material available on record, I find no illegality, irregularity or perversity in the impugned judgment and order passed by learned court below, the revision is devoid of merit and deserves to be **dismissed**.

19. However, revisionist is given a leverage to pay the arrear of maintenance in installments, it is directed that the arrear of maintenance from date of filing of application to date of impugned judgment will be paid in three monthly installments, and first installment will be payable on 27.02.2025 and other two installments will be payable in subsequent months.

20. The revisionist will pay and continue to pay the post judgment maintenance at the rate of Rs.15,000/- per month as directed in the impugned order on regular basis.

-----  
(2025) 2 ILRA 419

**ORIGINAL JURISDICTION**

**CRIMINAL SIDE**

**DATED: ALLAHABAD 06.02.2025**

**BEFORE**

**THE HON'BLE MS. NAND PRABHA SHUKLA, J.**

Transfer Application (Criminal) No. 672 of 2024

**Smt. Kavita Chaudhary                      ...Applicant**  
**Versus**  
**State of U.P. & Ors.                      ...Opposite Parties**