

**Devendra Singh Vs. State of U.P. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/471976](http://sooperkanoon.com/471976)

**Court :** Allahabad

**Decided On :** Jul-10-1990

**Reported in :** I(1991)DMC91; [1991(63)FLR227]

**Judge :** S.I. Jafri, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

**Appeal No. :** Criminal Revision No. 242 of 1990

**Appellant :** Devendra Singh

**Respondent :** State of U.P. and ors.

**Advocate for Pet/Ap. :** Sri. A.C. Nigam

**Judgement :**

**S.I. Jafri, J.**

1. The instant revision has been filed by .applicant Devendra Singh impugnaing thereby the judgment and order dated 1-12-1989 passed by Sri K.C. Agarwal, Sessions Judge Deoria awarding maintenance allowance of Rs. 400/- per month to Km. Vibha, Shikha and Km. Bindu respondents 3 to 5.

2. The aforesaid revision was admitted by this Court on the question of quantum of maintenance on 14-2-90.

3. I have heard Sri M. Islam and Sri A.C. Nigam, learned counsel for the applicants, as well as the learned counsel for the State.

4. The facts of the case are that Smt. Vimla Devi, mother of respondents 3 to 5 initially filed an application under Section 125 Cr.P.C. praying therein to award maintenance to the tune of Rs. 700/- for herself and Rs. 500/- per month for the aforesaid minor daughters which were born out of the union of the applicant and respondent No. 2 recoverable from her husband Devendra Pratap Singh, applicant in the instant revision. In the application, it was alleged by respondent No. 2 that the monthly income of the applicant works out to be Rs. 3000/- per month. The trial court upon a conspectus of the facts and circumstances and taking into account the evidence adduced by the parties, came to the conclusion that respondent No. 2 was not the legally wedded wife of the applicant. At the same time, the trial court also held that Km. Vibha, Km. Shikha and Km Bindu respondents 3 to 5 were born out of extra-marital union of the applicant with respondent No. 2 and to reword, they were the illegitimate daughters of the applicant Devendra Pratap Singh. Consequently, the trial court rejected the claim of maintenance on behalf of Smt. Vimla Devi. At the same time, trial court considered the claim for maintenance on behalf of respondents 3 to 5 and awarded maintenance to the tune of Rs. 400/- per month recoverable from Sri Devendra Pratap Singh on monthly basis. It was also held by the court below that applicant admittedly was drawing salary to the extent of Rs. 1800/- per month. Ultimately, it was also observed by the court below that there shall be no bar in realising the aforesaid maintenance allowance from the ancestral property belonging to Devendra Pratap Singh.

5. Aggrieved by the aforesaid order passed by the Magistrate, Devendra Pratap Singh, applicant preferred a revision before Sessions Judge, Deoria which Sri K.C. Agarwal, Sessions Judge Deoria. Upon reappraisal of the facts and circumstances and the evidence adduced in the case, dismissed the same vide judgment and order dated 1st December 1989. While affirming the order of maintenance granted by the court below, the lower revisional court also observed that there shall be no bar in recovering the said amount of maintenance the ancestral landed property.

6. I have glanced through the findings arrived at by the courts below and I find myself in complete agreement with the aforesaid findings. Both the courts below have concurrently held that Km. Vibha, Km. Shikha and Km. Bindu are born of illegitimate union of the applicant with the respondent No. 2 and hence they are the illegitimate daughters of the applicant Devendra Pratap Singh. In this view of the matter, both the courts below were fully justified in awarding maintenance allowance to the aforesaid minor daughters of Devendra Pratap Singh. The findings which I have traversed on carefully do not wear the taint of any infirmity and consequently, no interference is warranted by this Court in the findings arrived at by the courts below. However, as an abundant caution, I have re-appraised the evidence on record and upon a consideration, I do not find any merit in the petition and hence, the revision petition is liable to be dismissed.

7. At this stage, the learned counsel for the applicant commiseratingly submitted that in view of the fact that the applicant was already married with a Christian lady namely, Smt. Alluwati before his association with Smt. Vimla Devi the amount of maintenance from Rs. 400/- awarded by the court below to the three minor daughters be reduced to Rs. 300/- per month. I have devoted my careful thought to this submission of the learned counsel. Admittedly, the applicant is drawing Rs. 1800/- per month and he has himself got a family to support out of the aforesaid income, upon a careful consideration, I feel that the amount of maintenance deserves to be scaled down from Rs. 400/- to Rs. 300/- per month.

8. In the result, the amount of maintenance allowance to the tune of Rs. 400/- P.M. awarded to the three minor daughters respondents 3 to 5, is reduced to Rs. 300/- per month and with the above modification, the revision petition filed by the applicant is accordingly dismissed and the judgments and orders passed by both the courts below are affirmed.

9. Let a copy of this judgment be sent to the court below for compliance within a month from today.