(1999) 02 AHC CK 0046

Allahabad High Court

Case No: C.M.W.P. No. 6925 of 1999

Har Pal Singh		APPELLANT
	Vs	
Additional Sessions Judge/Special Judge, Rampur and another		RESPONDENT

Date of Decision: Feb. 25, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Hindu Marriage Act, 1955 - Section 13, 24, 26

Citation: (1999) 2 AWC 1172

Hon'ble Judges: O.P. Garg, J

Bench: Single Bench

Advocate: A.N. Srivastava, P.K. Srivastava and N.K. Srivastava, for the Appellant;

Judgement

O.P. Garg, J.

Heard Sri Amar Nath Srivastava, learned counsel for the petitioner. Respondent No. 2. Smt. Nanhi had filed a petition No. 33 of 1996 u/s 13 of the Hindu Marriage Act (hereinafter referred to as ''the Act'') for dissolution of marriage against the present petitioner. During the pendency of the said Matrimonial petition, respondent No. 2 moved an application u/s 24 of the Act claiming pendente life alimony and litigation expenses. This application was registered as Misc. Case No. 36 of 1997. Learned trial court, by the impugned order dated 13.1.1999, has awarded a sum of Rs. 2,000 as litigation expenses and Rs. 600 In total as pendente lite alimony (Rs. 400 for the maintenance of Smt. Nanhi, wife and Rs. 200 for the maintenance of the daughter). This order has been challenged by the petitioner primarily on the ground that his marriage was never solemnized with the respondent No. 2 and. therefore, question of payment of any pendente lite and litigation expenses to a woman, who is stranger to him, does not arise. Sri A. N. Srivastava, learned counsel for the

petitioner pointed out that in proceedings u/s 125, Cr. P.C., initiated by respondent No. 2, it has been held that she is not legally wedded wife of the petitioner and that the daughter for whom pendente lite was claimed was not born out of the wed-lock in between the petitioner and the respondent No. 2. It was urged that the finding recorded in proceedings u/s 125, Cr. P.C., would operate as res judicata in the application u/s 24 of the Act and, therefore, the trial court was not justified in awarding the amount of litigation expenses and pendente lite.

2. So far as the question of findings of fact recorded by the criminal court in proceedings u/s 125. Cr. P.C. is concerned, they are irrelevant for the purpose of the petition u/s 24 of the Act. Whatever has been said in a criminal case about the relationship of the petitioner and the respondent No. 2 is of no consequence. A finding, if at all, given in a criminal case does not operate as res judicata in a civil suit/petition. Even otherwise, it would appear that there is no concrete finding recorded by the Criminal Court in proceeding u/s 125. Cr. P.C. that the respondent No. 2 is not wife of the petitioner. By order dated 11.1.1994, Judicial Magistrate concerned has awarded a sum of Rs. 250 and Rs. 1,250 respectively as maintenance for the wife and the daughter under the provision of Section 125, Cr. P.C. The present petitioner filed a revision application No. 11 of 1994 which was allowed on 8.11.1996 and the case was remanded for recording of fresh evidence on the concession made by the parties and their counsel. As it is, therefore, no concluded finding has been recorded by the criminal court that the respondent No. 2 was not married to the petitioner.

3. The mere fact that the respondent in a matrimonial petition denies the factum of marriage is no bar to the power of the Court to make an order u/s 24. Of course, a good prima facie case about the marriage would have to be made out by the petitioner before any such order could be made by the Court in case of any such contention being raised by the respondent. In this connection a reference may be made to Jain v. Jain, (68) AC 405.

4. On the basis of the material available on record, the trial court has recorded a finding that the petitioner has married respondent No. 2 and out of their wedlock a daughter, who is living with respondent No. 2, was given birth. There is an entry in the family register in which Smt. Nanhi Devi- respondent No. 2 and her daughter Sunita have been shown as wife and daughter of the present petitioner. The trial court has, therefore, rightly come to the conclusion that prima facie there subsists a relationship of man and wife between the petitioner and the respondent No. 2 and Km. Sunita as their daughter. The order for the grant of Rs. 2.000 as maintenance and Rs. 400 as pendente life alimony passed by the trial court is quite justified, apt and equitable taking into consideration the means of the present petitioner.

5. Another point raised by learned counsel for the petitioner--Sri A. N. Srivastava is that u/s 24 of the Act, grant of pendente lite alimony can be made only to the wife and not to the children. In support of his contention, he placed reliance on the

decision of the Apex Court in Capt. Ramesh Chand Kausha1 v. Mrs. Veena Kaushal and others 1978 SCC (Cri) 508. I have thoroughly studied the said ruling and find that the point which learned counsel for the petitioner wants to make out, does not find support from the decision aforesaid.

6. u/s 26 of the Act, interim orders for custody and maintenance of children may be passed in proceedings under the Act. The petition for dissolution of marriage u/s 13 is a proceeding under the Act. There is some difference of judicial opinion on the question as to whether in an application for interim maintenance by the wife, the Court has power to grant maintenance not only for the wife but also for the children although there may be no separate application u/s 26 of the Act. In this connection, a reference may be made to the decisions in Baboolal Vs. Smt. Prem Lata, ; Usha v. Sudhir Kumar, ILR (1973) P & H 248 ; Balbir Kaur v. Raghubir Singh, (1974) AP& H 255 : Akasam Chinna Babu Vs. Akasam Parbati and Another, ; Chandrakant v. Shardabai, (1977) 2 Karnatak LJ 29 and Bankim Chandra Roy Vs. Smt. Anjali Roy, . In Mulla''s Hindu Law, Fifteenth Edition by S. T. Desai at page 874, it is stated that where there is no possibility of any injustice being done to the husband the Court may make such an order for the benefit of the wife as well as the children of the marriage living with her without insisting on a separate application. I am also of the view that in order to claim maintenance for children as contemplated u/s 26, no separate application is required to be made and on the application of the wife moved u/s 24 in the proceeding for dissolution of marriage u/s 13 of the Act, interim mandamus may be granted for the children also. This view has the merit of doing away with the multiplicity of the applications required to be moved under Sections 24 and 26 separately.

7. In the conspectus of the above factual and legal position, it is not a fit case for interference in writ jurisdiction under Article 226 of the Constitution. The writ petition is dismissed.