

(1999) 12 AHC CK 0134

Allahabad High Court

Case No: C.M.W.P. No. 3247 of 1996

Smt. Urmila

APPELLANT

Vs

Judge, Family Court and Others

RESPONDENT

Date of Decision: Dec. 7, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 125, 397

Citation: (2000) 1 ACR 145

Hon'ble Judges: B.K. Rathi, J

Bench: Single Bench

Advocate: K.K. Tripathi, for the Appellant; A.G.A., for the Respondent

Judgement

B.K. Rathi. J.

1. This is a petition under Article 226 of the Constitution of India for quashing the order dated 22.7.96 Annexure-7 of petition passed by the Judge, Family Court, Azamgarh and order dated 26.9.95 and 21.10.95 Annexures-3 and 5 of this petition passed by Respondent No. 2.

2. I have heard Shri K. K. Tripathi for the Petitioner and the learned A.G.A. None appeared for opposite party No. 3 at the time of hearing and, therefore, could not be heard.

3. The facts of the case are simple. The Petitioner moved an application u/s 125, Cr. P.C. against opposite party No. 3, that application was rejected by Respondent No. 2 by order dated 26.9.95 Annexure-3 of the petition in default for non-appearance of the Petitioner. The Petitioner applied for setting aside the said order which was rejected by Respondent No. 2 by order dated 21.10.95 Annexure-5. The Petitioner against that order preferred a Criminal Revision No. 402 of 1995 which was rejected by order dated 22.7.96 by Respondent No. 1 vide Annexure-7 of the writ petition. No

maintenance was awarded to the Petitioner, therefore, she had moved this application for quashing of these orders.

4. The order rejecting application u/s 125, Cr. P.C. was passed by the Judicial Magistrate Ist Class. He also rejected the application for restoration. Against that order the revision was therefore, maintainable before the Sessions Judge and not before the Judge, Family Court.

5. The contention of the Petitioner is that he preferred a revision before the Sessions Judge, Azamgarh, but on creation of the Court of Judge of Family Court, the learned Sessions Judge transferred the revision to the Court of Family Judge. The record of the case had also been summoned which supported the contention.

6. The Judge, Family Court can exercise only the powers mentioned in Family Courts Act, he cannot exercise the powers of Sessions Judge. Therefore, the Sessions Judge was not authorised to transfer the revision for hearing to the Judge, Family Court who was not competent to hear the revision. The Judge Family Court also erred in deciding the revision. He has no jurisdiction to decide the revision u/s 397, Cr. P.C. against an order of Magistrate.

7. The order of the learned Judge, Family Court dated 22.7.96 passed in CrI. Revision No. 402 of 1995 is, therefore, without jurisdiction and is set aside. The matter is sent back to the Sessions Judge, Azamgarh, who will decide the Criminal Revision No. 402 of 1995 himself within one month of the presentation of the certified copy of this order before him, as the matter is very old one.

8. The petition stands disposed of with the above direction.