

(1997) 03 AHC CK 0222

Allahabad High Court

Case No: Criminal Revision No. 139 of 1996

Smt. Sita Devi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: March 27, 1997

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397

Citation: (1997) 21 ACR 527

Hon'ble Judges: G.S. Tripathi, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

G.S. Tripathi, J.

This is a revision u/s 397, Code of Criminal Procedure against an order dated 21.12.1995 passed by the learned Family Court, Varanasi in Sita Devi v. Banarasi Criminal Case No. 494 of 1995. The contention of Smt. Sita Devi was that she was ill treated by her husband and his family members. She was turned away for non-fulfilment of the demand of dowry. Therefore, she prayed for sufficient means to maintain herself.

2. The opposite party Respondent No. 2 filed a written statement in which he specifically stated that Smt. Sita Devi has illicit relations with Gopal. Gopal was seen visiting his house on several occasions. The civil litigation started on the same question, i.e., divorce petition. The main thrust is that the lady was leading an adulterous life and has illicit relations with Gopal. The Family Court Judge relied upon the judgment of the High Court in civil matters. In First Appeal No. 103 of 1996, decided by a Division Bench of this Court on 28.2.1996, at the preliminary stage of the admission, the operation of the lower court's order was stayed, in which a finding on the point of adultery has been arrived. However, the matter has been finally decided by another Division Bench of this Court on 24.9.1996 in which it

has been held that the charge of adultery levelled against the wife by the husband has not been proved.

3. Since the Family Court has passed order on the basis of finding of fact given by the civil court in holding that the lady was unchaste and was leading an adulterous life, she was not entitled to get maintenance allowance. She did not prove the financial status of her husband nor her inability to maintain herself. These are the questions of fact which are to be decided on the basis of evidence as without positively considering these facts and the financial status of the Petitioner no amount can be fixed by this Court. Therefore, in the interest of justice, I allow the revision and remand the matter before the Family Court who shall register the case on its original number and decide the related points enumerated above.

4. A copy of the judgment of Division Bench dated 24.9.1996 mentioned above shall be filed before the Family Court. Thereafter, the Family Court shall take evidence of the parties and then give findings by taking into consideration (sic) the status of her husband and wife and what amount should be as the maintenance allowance. As this is a very old matter and it should be disposed of at an early date. Costs easy.

Parties shall appear before the learned Family Court on 15.4.1997 positively.