

(2014) 09 AHC CK 0084

Allahabad High Court

Case No: Criminal Revision No. 5438 of 2010

Sanjeev Pathak

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Sept. 26, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125

Citation: (2015) 4 ALJ 172

Hon'ble Judges: Ranjana Pandya, J

Bench: Single Bench

Advocate: S.M.A. Abdy, Advocate for the Appellant; Sudama Ji Shandilya and Sudhir Shandilya, Advocate for the Respondent

Judgement

Ranjana Pandya, J.

This revision has been preferred against the judgment and order dated 25.09.2010 passed by the Principal Judge, Family Court, Jhansi in Case No. 43 of 2009, u/s 125 Cr.P.C.

2. Brief facts of the case are that the opposite party No. 2 filed a petition u/s 125 Cr.P.C. before the Principal Judge, Family Court, Jhansi stating that she was married to the revisionist on 04.12.2007. The revisionist and his family members were not satisfied with the dowry and they demanded Rs. 5,00,000/-(rupees five lacs) as additional dowry. When the opposite party No. 2 was pregnant, her mother-in-law gave her some medicines to abort her child due to which she fell sick. After that the opposite party No. 2 started living with her husband in Bombay where she was medically examined and it revealed that she had one month's dead foetus in her womb. Again when the opposite party No. 2 fell sick on 01.09.2008 her mother came to her home at Bombay. Later on the parents of the revisionist also came to Bombay. The revisionist and his father turned out the opposite party No. 2 from

their house. The opposite party No. 2 is dependent on her mother. The revisionist is Software Engineer at Delhi. He earns Rs. 60,000/-per month. Hence, the opposite party No. 2 has filed application u/s 125 Cr.P.C.

3. The revisionist objected to the application and filed his written objection, in which he has stated that he has never demanded dowry, the opposite party No. 2 was never ill-treated by the revisionist and his family members. He has further stated that the opposite party No. 2 always misbehaved at the house of the revisionist. She used to use filthy language against the revisionist and his parents and also used to assault and abuse them. He has further stated that opposite party No. 2 stated that she was married against her wishes and she does not want to live with the revisionist. The opposite party No. 2 went to her parents house on 28.9.2006 on her sweet will along with her belonging and she is living with her parents. Ultimately when the opposite party No. 2 was not ready to live with the revisionist, the revisionist filed a suit for divorce. The revisionist had to leave his job. Presently he is unemployed, whereas opposite party No. 2 is doing legal practice since 2003 and she earns Rs. 15,000/-per month.

4. The opposite party No. 2 examined herself as A.W.-1, whereas the revisionist examined himself as O.P.W.-1 before the learned lower court. After perusing all the evidence on record, the learned lower court awarded maintenance of Rs. 15,000/-per month to the opposite party No. 2 from the date of order.

5. Feeling aggrieved the revisionist has preferred the present revision.

6. I have heard Mr. S.M.A. Abdy, learned counsel for the revisionist, Mr. Ali Hasan, learned counsel for the opposite party No. 2 and learned AGA for the State.

7. Learned counsel for the opposite party No. 2 has argued that the revisionist is well placed. He is earning Rs. 60,000/-per month and Court has only awarded Rs. 15,000/-per month as maintenance, which is not a heavy amount, which this Court may not interfere in the judgment of the Principal Judge, Family Court, Jhansi. It has further been stated that the amount of maintenance granted by the Principal Judge, Family Court, Jhansi can be paid by the revisionist easily. He has further argued that the case for demand of dowry was filed by the opposite party No. 2, which is pending. It is further submitted that the opposite party No. 2 Smt. Suchita Pathak passed her LL.B. Examination and was enrolled as an Advocate in the Bar Council of Uttar Pradesh, but that does not mean that each and every degree holder, whose name is registered under the Bar Council of Uttar Pradesh is doing practice as lawyer in the Court unless the same is proved. There is nothing on record to show that she has conducted some cases in civil court of Jhansi.

8. Learned counsel for the revisionist has argued that the provisions of section 125 Cr.P.C. are designed to help the needy and not the greedy as has been laid down in the case of Santosh Malhotra vs. Ved Prakash Malhotra and others, (decided on 18th May, 2012) reported in [Santosh Malhotra Vs. Ved Prakash Malhotra and Others,](#)

9. Learned counsel for the revisionist has also argued that in the petition u/s 125 Cr.P.C., the opposite party No. 2 has not come with clean hands. She has purposely concealed that she is enrolled as an Advocate. In this regard, he has argued that since the opposite party No. 2 is able to maintain herself, she is not entitled to maintenance.

10. In support of his argument he has placed reliance upon the judgment reported in [Chaturbhuj Vs. Sita Bai](#), in which it has been held that whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband.

11. In the same context, learned counsel for the revisionist has argued that the opposite party No. 2 is a practising Advocate. After concealing the fact of her enrollment as an Advocate has obtained an order for maintenance, which cannot be sustained because the stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State.

12. It has further been held by the Hon'ble Supreme in the judgment reported in [Chandra Shashi Vs. Anil Kumar Verma](#), that anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with administration of justice.

13. Perusal of the judgment of the lower court states that it is an admitted fact that the opposite party no. 2 was registered as an Advocate on 30th November, 2003. The factum of the opposite party No. 2 practicing as an Advocate has not been specifically denied anywhere, but the perusal of the lower court's judgment shows that during the arguments, the opposite party No. 2 has argued that after getting herself registered, she was preparing for competitive examinations. The lower court has further opined that having regard to the number of junior Advocates, it cannot be admitted that the opposite party No. 2 earned anything. Specially when junior-ship is admitted straightaway and the junior takes training under the seniors, I do not understand how the learned lower court arrived at this conclusion that junior advocate do not earn anything. Thus, this opinion and finding of the lower court is based on surmises and conjectures, which cannot be permitted to stand. The learned lower court further stated that the revisionist has not specified his professional qualification and his income. Thus, the statement of the opposite party No. 2 that the revisionist is Software Engineer earning Rs. 60,000/-per month should be believed.

14. When both the parties were standing on the same footing why equal treatment was not given to the parties is not clear from the judgment. The Court has also not considered the matter that opposite party No. 2 concealed the factum of registration in the Bar Council since the year 2003. Both the parties to the litigation should be dealt with equally. It appears that the learned lower court was swayed

away by the arguments of the opposite party No. 2 that she was preparing for competitive examination and was not earning anything. Thus, the revision is liable to be allowed.

16. The revision is allowed. The order dated 25.09.2010 passed by the Principal Judge, Family Court, Jhansi is hereby set aside. The learned lower court shall decide the application u/s 125 Cr.P.C. afresh after giving opportunity of evidence and hearing to the parties.