
(2014) 01 AHC CK 0208

Allahabad High Court

Case No: Crl. Revision No. 258 of 2007

Smt. Kamini and Others

APPELLANT

Vs

State of U. P. and
Another

RESPONDENT

Date of Decision: Jan. 17, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(4)

Citation: (2014) 1 ACR 409 : (2014) 2 ADJ 287 : (2014) 85 ALLCC 119

Hon'ble Judges: Bharat Bhushan, J

Bench: Single Bench

Advocate: Pawan Kumar Shukla, Abhishek Tripathi, Dr. S. K. Tiwari, Jayant Prakash Singh, Santosh Kumar Tiwari and Sanjay Srivastava, Advocate for the Appellant; Om Prakash Singh and Prakash Singh, A.G.A, Advocate for the Respondent

Judgement

Bharat Bhushan, J.

Revisionists Smt. Kamini wife of opposite party No. 2 and her two children have preferred this criminal revision against the judgment and order dated 13.12.2006 passed by the Principal Judge, Family Court, Moradabad, in Case Crime No. 35/11/2004 whereby their application u/s 125, Cr. P.C. has been rejected.

2. Revisionists filed an application u/s 125, Cr. P.C. for maintenance against her husband. Brijesh Kumar, opposite party No. 2 on the ground of their desertion by opposite party No. 2 without any rhyme or reason; that the claimants are unable to maintain themselves while husband is earning more than Rs. 8.000 per month.

3. Revisionist, Smt. Kamini claims that she was turned out of her matrimonial home alongwith her two children because her parents could not fulfil the dowry demands of her husband and that; she had been subjected to cruelty on non-fulfilment of this dowry demand.

4. O.P. No. 2 has refuted these allegations while admitting the factum of marriage solemnized on 22.11.1986. He has alleged that after few years of marriage revisionist developed unhealthy physical intimacy with one Sameer @ Sunil. Once he found revisionist in compromising position with Samir @ Sunil and this adulterous relation between revisionist and Sameer @ Sunil created a matrimonial discord between husband and wife.

5. O.P. No. 2 has further stated that he tried to dissuade the revisionist from this relationship but the revisionist did not pay any heed and ultimately on 19.3.1997 the revisionist finally eloped with Sameer @ Sunil and carried her personal Jewellery . first information report was lodged by husband at Police Station, Kanpur, a copy of which is filed with written statement. He alleges that revisionist-wife continued to live in adultery with Sameer @ Sunil till his death. She has moved application for maintenance only after the death of her paramour, although even today she is not ready to live with her husband.

6. The evidence of both parties was recorded by the trial court. The trial court agreed with the contentions of husband that it was revisionist-wife who had left the matrimonial home of her own volition and that; she continued to live in adultery with Sameer @ Sunil till the death of her paramour and, therefore, the trial court rejected the application of revisionist. Aggrieved revisionist has preferred the present revision.

7. Heard Sri Sanjay Srivastava brief holder of Sri J. P. Singh, learned counsel for revisionist. Sri O.P. Singh, learned counsel for opposite party No. 2 and learned A.G.A. on behalf of State.

8. Ordinarily in exercise of the revisional jurisdiction, it is beyond the power and jurisdiction of Court to reassess the evidence. Hon"ble Supreme Court in [State of Kerala Vs. Putthumana Illath Jathavedan Namboodiri](#), has held that the Court while hearing revisions does not work as an appellate court and should not re-appreciate the evidence unless some glaring feature is pointed out which may show that injustice has been done.

9. As a broad proposition, the interference may be justified where the judgment is grossly erroneous; where there is no compliance with the provisions of law; where the finding of fact affecting the judgment is not based on the evidence; where the material evidence of the parties have not been considered: and where the judicial discretion is exercised arbitrarily or perversely. Failure to exercise the jurisdiction may also be a ground for Interference by the revisional court.

10. It is therefore, clear that revisional court does not have unlimited jurisdiction to reassess the entire evidence available on record. Considering the narrow compass available to this Court, it is clear that judgment of trial court cannot be upset for two reasons. First there is sufficient material on record to show that the revisionist left her matrimonial home of her own volition. Admittedly, the marriage was solemnized on 22nd November, 1986 and the revisionist left her matrimonial home on 19.3.1997. Present

revision was filed in the year 2004 after the death of the alleged paramour of revisionist. Desertion of matrimonial home by the revisionist has been proved by sufficient evidence including the testimony of eldest daughter of revisionist.

11. Secondly conclusion of trial court regarding adulterous relationship of revisionist with Sumeer @ Sunil cannot be termed perverse. There is reasonable evidence to support this conclusion. The fact that the application for maintenance has been filed after 7 years and subsequent to the death of Sumeer @ Sunil, the alleged paramour of revisionist is also significant. The F.I.R. lodged by husband in the wake of departure of revisionist from her matrimonial home is also revealing. It is pertinent to point out the allegations of adultery have not come up merely to contest the application for maintenance. The F.I.R. filed in the year 1997 supports the allegation of O.P. No. 2. These allegations have been reinforced not only by the daughter of revisionist but also by the wife of late Sumeer @ Sunil who testified as P.W. 2. The wife of late Sumeer @ Sunil, has also alleged that she had seen the revisionist in compromising position with her husband. Other witnesses have also supported these allegations. The trial court has noted that the husband has been looking after their children.

12. It is pertinent to point out that the proceedings u/s 125 Cr.P.C. are summary in nature and considering the nature of proceedings, the husband has been able to satisfy the trial court; that not only revisionist had been living in adultery but she had deserted the matrimonial home of her own free will. The wife has also admitted during the course of her cross-examination that she is not willing to live with her husband even today. Section 125(4). Cr. P.C. provides that wife shall not be entitled to receive any allowance for maintenance from her husband under this provision if she is living in adultery or if she refuses to live with her husband without sufficient reason. The trial court concluded that revisionist not only left matrimonial home of her own volition, she also lived in adultery with a married man. The revisionist has tried to justify her separate living on the ground of second marriage of defendant-husband. The husband has denied this fact and wife has not placed any credible evidence on record in support of this allegation. In fact even her witnesses have not mentioned this fact in their testimonies. On the other hand their elder daughter has emphatically denied the factum of second marriage of her father.

13. I have carefully perused all material available on record. It is clear that verdict of the trial is supported by facts and law. The present revision is liable to be rejected and is, accordingly, dismissed.

14. Let a copy of this order and record of lower court be sent to the concerned court within fifteen days for compliance.