

S.B.CRIMINAL MISC. PETITION No. 1347/2008

Satish vs. Smt.Yoglata & Anr.

22.10.2008

HON'BLE MR. JUSTICE G.S. SARRAF

Mr.Puran Chander Sen, for petitioner
Mr.Satish Khandelwal on behalf of Mr.D.D. Khandelwal,
for respondents.

Reportable:-

The brief and relevant facts of the present case are that the respondents nos.1 and2 filed an application under Section 125 Cr.P.C. against the petitioner wherein Judicial Magistrate, First Class, Kaman, district Bharatpur by order dated 6.5.2004 awarded interim maintenance to the respondent no.1 @ Rs.500/- per month and to the respondent no.2 @ Rs.300/- per month. Thereafter, on an application no.59/2002 filed by the petitioner under Section 9 of the Hindu Marriage Act Additional District Judge, Laxamangarh, district Alwar by judgment dated 8.3.2006 passed a decree of restitution of conjugal rights in favour of the petitioner. The petitioner then submitted an application under Section 125(4),(5) read with Section 127 (2) Cr.P.C. before learned Judicial Magistrate, First Class, Kaman enclosing therewith a certified copy of the decision dated 8.3.2006 passed by Additional District Judge, Laxmanarh, district Alwar under Section 9 of the Hindu Marriage Act praying for cancellation of the order of interim maintenance. Learned Judicial Magistrate, Kaman dismissed the application vide order

dated 2.4.2008. The petitioner filed a revision which was also dismissed by order dated 7.7.2008 passed by Additional District and Sessions Judge no.2, Deeg. Aggrieved the petitioner has filed this misc. petition under Section 482 Cr.P.C.

Heard learned counsel for the petitioner and learned counsel for the respondents nos.1 and 2.

Learned counsel for the petitioner submits that by judgment dated 8.3.2006 passed by a competent civil court namely, Additional District Judge, Laxmangarh it has become clear that the respondent no.1 has refused to live with the petitioner without any sufficient reason and, therefore, the petitioner is entitled for cancellation of the order of interim maintenance passed in favour of the respondents. He places reliance on 1975 Cr.L.J. 137 (Raj.), 1985 Punjab Law Reporter 219 & A.I.R 1949 Calcutta 87.

Learned counsel for the respondents submits that a second revision is not maintainable. He also submits that the petitioner has thereafter filed an application under Section 13 of the Hindu Marriage Act and as such the petitioner has no intention to live with the respondent no.1. He, therefore, prays that the petition be dismissed. He places reliance on 2003 (2) R.C.C. 751 and 1987 Cr.L.J.525.

The decision in a suit against the wife for restitution of conjugal rights is equivalent to a decision by a competent civil court that the wife had no sufficient reason for refusing to live

with her husband. What could possibly be a just ground for a wife to refuse to live with her husband would ordinarily also provide an answer to the suit for restitution of conjugal rights. Where a civil court, after considering the plea raised by the wife as against demand of the husband for restoring to him his conjugal rights, comes to the conclusion that the wife must render society to her husband as is expected by law then the provisions contained in sub-sections (4) and (5) of Section 125 Cr.P.C. come into operation and the order of maintenance to the wife is liable to be cancelled because a final determination of a civil right by a civil court must prevail. I am supported not only by a judgment of a Division Bench of Punjab and Haryana High Court reported in 1981 Punjab Law Reporter 219 and a S.B. Judgment reported in AIR 1949 Calcutta 87 but also by a judgment of the Rajasthan High Court reported in 1975 Criminal Law Journal 137 (Raj.).

I have gone through the judgment reported in 2003 (2) RCC 751 very carefully. In that case the decree of restitution of conjugal rights was passed *ex parte* whereas in the present case the decree is not *ex parte*. Therefore, 2003 (2) RCC 751 is clearly distinguishable.

The decree of restitution of conjugal rights passed in favour of the petitioner does not lose its legal value because the petitioner thereafter files an application under Section 13 of the Hindu Marriage Act.

It is true that second revision is not maintainable but this court can and must interfere under Section 482 Cr.P.C. to prevent abuse of the process of any court or otherwise to secure the ends of justice. Here is a case where it is obligatory for this court to interfere to secure the ends of justice.

Consequently, the petition as against the respondent no.1 is allowed, the orders of both the courts below with respect to the respondent no.1 are set aside and the original order of interim maintenance passed in favour of the respondent no.1 by learned Magistrate under Section 125 Cr.P.C. is cancelled. As regards the respondent no.2, the original order passed by the Magistrate will remain in force till the final disposal of the application under Section 125 Cr.P.C.

(G.S. Sarraf), J.

Sanjay
Item No.s/8

S.B.CRIMINAL MISC. STAY APPL.No.810/2008
IN
S.B.CRIMINAL MISC. PETITION No. 1347/2008

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HON'BLE MR. JUSTICE G.S. SARRAF

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Mr.Satish Khandelwal on behalf of Mr.D.D. Khandelwal,
for respondents.

The misc. petition filed by the petitioner has already been disposed of by this court by order dated 22.10.2008, therefore, the stay application stands dismissed.

(G.S. Sarraf), J.

Sanjay
Item No.s/8