

(2000) 11 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 5277 of 1997

Abdul Zahir Khan

APPELLANT

Vs

Smt. Tarranum Ara and Another

RESPONDENT

Date of Decision : 02-11-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482

Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3

Citation : (2001) 2 DMC 364

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : Qamruddin, for the Appellant; C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.—The applicant is aggrieved by the order dated 27.8.1997 passed by 3rd Addl. Session Judge, Chhatarpur in Criminal Revision No. 5/97 arising out of ex parte order dated 9.2.1996 passed in Criminal Case No. 22/1995 by Judicial Magistrate 1st Class, Chhatarpur.

2. The respondent No. 1 Smt. Tarranum Ara has filed an application u/s 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter referred to "the Act") against the applicant stating that she had married the applicant Abdul Zahid Khan on 20.4.1992. It was stated that the marriage was performed according to the Mohammedan Law at Chhatarpur and at the time of performance of the marriage Rs. 25,000/- was fixed as Mehar. It was further stated that father of the non-applicant had given articles to the applicant worth rupees one lac mentioned in the paragraph-3 of the application. Thereafter, a further demand of dowry was made on behalf of the applicant. Subsequent to non fulfilment of demand of Hero Handa, Colour T.V. etc. the applicant had turned out the non-applicant No. 1 from the house and, therefore, she was compelled to file an application u/s 125, Cr.P.C.

3. Thereafter, the applicant sent a registered letter stating that he had divorced non-applicant-1 and consequently, her application u/s 125, Cr.P.C. was dismissed by the C.J.M., Chhatarpur. The applicant consequently claimed all in all Rs. 1,26,750.00. This amount included Rs. 1,750.00 for maintenance during the period of Iddat apart from Rs. 25,000.00 for Mehar and Rs. one lac for the goods given by the father of the non-applicant No. 1 during the course of the marriage.

4. It appears that the applicant was ex-parte in the Court below, therefore, after recording the evidence a claim of Rs. 1,26,750.00 was granted by the J.M.F.C. In revision filed against the order, it was argued that ex-parte order passed was illegal. It was argued that the complaint of the applicant was that report of refusal to receive the registered summon was fraudulently obtained, by the non-applicant No. 1.

5. The grounds raised for setting aside the order of Trial Magistrate have already been considered by the Revisional Court, which rejected the application holding that prima facie there was no fraudulent attempt on the part of the non-applicant for getting an ex-parte order. It was held that there was an endorsement of the postman that the applicant had refused to receive the summons and, therefore, there is no error in the order of the Magistrate who proceeded ex parte. No other point was raised before the Revisional Court.

6. In this application u/s 482, Cr.P.C. the learned Counsel for the applicant sought to raise the point on the merit today itself that the Trial Magistrate was not authorised to pass the order of the repayment of money instead of order of returning the property which was given at the time of marriage to the applicant.

7. This point was never raised by the applicant before the Revisional Court and, therefore, at this juncture this Court will not interfere in exercise of his power u/s 482, Cr.P.C.

8. There is another reason for not interfering with the order for the, reason that the applicant was not present before the Trial Magistrate and, therefore, it was difficult to ascertain if the property delivered to him during the marriage ceremony still intact.

9. For all these reasons, this Court does not find any merits in this application u/s 482, Cr.P.C. It is hereby dismissed.