
(2012) 05 RAJ CK 0039

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 287 of 2012

Brahmanand and Another

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 91
Dowry Prohibition Act, 1961 — Section 4
Evidence Act, 1872 — Section 136, 76, 77, 78
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 323, 406, 498A

Citation : (2012) 3 Crimes 557 : (2013) 1 RLW 173

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Vishal Sharma, for the Appellant; Mahipal Bishnoi, Public Prosecutor for the State, for the Respondent

Final Decision : Dismissed

Judgement

Sandeep Mehta, J.—The instant revision petition has been filed by the petitioners challenging the order dated 22.02.2012 passed by the learned Judicial Magistrate First: Class, Merta in Criminal Case No. 163/2005, whereby the learned trial court, on the basis of an application filed by the respondent-complainant No. 2., has permitted a certified copy of the proceeding initiated by the petitioner No. 1 u/s 9 of the Hindu Marriage Act, to be taken on record. The petitioners are facing trial in the Court of the learned Judicial Magistrate, First Class, Merta for the offences under Sections 498-A 406 and 323 IPC and Section 4 of the Dowry Prohibition Act upon a charge-sheet filed after investigation of an FIR filed by the respondent No. 2 Smt. Sunita. The charge-sheet was filed in the matter in the year 2005 and when the complainant was about to appear for giving evidence before the learned trial court, she submitted an application for being permitted to prove, the certified copy of the application u/s 9 of the Hindu Marriage Act which was moved by the petitioner No. 1 Brahmanand. The said application was

allowed vide impugned order dated 22.02.2012 and now the instant revision petition has been filed seeking quashing of the order dated 22.02.2012 passed by the learned Judicial Magistrate, First Class, Merta allowing the application filed by the respondent No. 2, as mentioned above.

2. Assailing the impugned order, learned counsel for the petitioner submits that there is no provision in law, as per which the complainant can be permitted to file a document on record of a criminal case subsequent to the charge-sheet having been filed. He submits that the only procedure for submission of a document, in a case instituted upon a police report, is that the police should file an application u/s 173 (8) Cr.P.C. for placing the document on record. Learned counsel submits that Section 91 Cr.P.C. is not the provision, whereby, the complainant can be permitted to submit document(s) before the trial court. In support of his arguments, learned counsel for the petitioners has placed reliance upon a decision of this Court in the case of Bhagwan Singh & Ors. v. State of Rajasthan & Anr. S.B. Criminal Revision Petition No. 1138/2007, decided on 29.5.2008.

3. Having considered the arguments advanced at the bar and upon going through the impugned order as well as the decision of this Court in the case of Bhagwan Singh & Ors. v. State of Rajasthan & Anr. (supra), this court is of the opinion that ex facie the arguments advanced by the learned counsel for the petitioners are not tenable. During the course of trial of a criminal case, the trial court is empowered to take the documents on record if they are tendered in evidence. An affected person cannot be shut-out or restrained from producing material document(s) during the course of the evidence if the police chooses not to place the same on record. The modes of proving documents are provided in Chapter VI of the Evidence Act. Section 76 of the Evidence Act provides that certified copies of public documents can be provided to a party concerned, who make a request for being provided the copy thereof and such document can be proved u/s 77 of the Evidence Act by producing the certified copy before the court. Section 78 of the Evidence Act provides for the mode for proving the other official document.

4. In view of the aforesaid provisions, this Court has no hesitation in arriving at the conclusion that there is no restriction on the complainant to tender a document in evidence whilst appearing in the witness box. The document, which is sought to be proved is an application filed by the accused No. 1 Brahmanand u/s 9 of the Hindu Marriage Act. The said application is said to have been filed subsequent to the FIR being registered and, therefore, police could not have collected the document during the course of investigation. In view of the above facts, the complainant was very much entitled to prove the document by tendering the same in evidence when appearing in the witness-box.

5. That apart, it is the trial Judge, who, u/s 136 of the Evidence Act, has to decide as to whether the document, which the complainant/witness desires to prove is relevant or not and if the document is found to be relevant, then the

trial Judge very much has jurisdiction, by virtue of Section 136 of the evidence Act, to permit evidence to be led for Proving the document.

6. In this view of the matter, this Court is of the opinion that the learned trial Judge by the impugned order has committed no error in allowing the application filed by the complainant-respondent No. 2 for taking the document on record. The impugned order is perfectly legal and calls for no interference. Resultantly, the revision petition, being bereft of any force, is hereby rejected. The stay petition also stands rejected.