

(2012) 04 AHC CK 0028
In the Allahabad High Court
Case No : Criminal Revision No. 129 of 2010

Devaki Nandan @ Devo and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 16-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2012) ACR 2257 : (2012) 5 ADJ 760 : (2012) CriLJ 3887

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : R.V. Mishra, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Ramesh Sinha, J.—Case called out in the revised list.

Heard Sri R.V. Mishra, learned counsel for the revisionists, learned AGA for the State and perused the record.

As per office report dated 15.3.2012, fresh notices were issued to opposite party Nos. 2 and 3 in pursuance of this Court order dated 6.2.2012, but the same has not been received back after service so far, as per record. Opposite Party No. 3, Smt. Rekha, who is the wife of revisionist No. 1, Devaki Nandan alias Devo, is said to be living with the revisionist No. 1 at present. Hence notice to her is sufficient. So far as the notice to opposite party No. 2, Bhan Singh is concerned, this Court consider it desirable that the matter be proceeded as Smt. Rekha, Opposite Party No. 3, is the wife of revisionist No. 1 and she being a major girl, is residing with him, hence it appears that opposite party No. 2 is not interested in the present matter to contest it before this Court, and the matter pertains to the year 2010, it cannot be allowed to linger on.

2. This Criminal Revision has been preferred against the judgment and order dated 9.10.2009 passed by the Additional Chief Judicial Magistrate, Room No. 2,

Mathura, by which the learned Magistrate has taken cognizance of the offence and summoned the revisionists vide order dated 2.12.2009 in Criminal Case No. 1728 of 2009 (State v. Devo and others), under Sections 363, 366 I.P.C., Police Station-Gobardhan, District-Mathura.

3. The brief facts giving rise to the present revision is that a FIR was lodged by opposite party No. 2 on 27.4.2009 against the revisionists. The said FIR was challenged by the revisionists before this Court in Criminal Misc. Writ Petition No. 8600 of 2009 (Smt. Rekha and others v. State of U.P. and others) and the opposite party No. 3, Smt. Rekha, had appeared before a Division Bench of this Court alongwith the revisionist No. 1, Devaki Nandan alias Devo, and she stated that she has married to the revisionist No. 1. Pursuant to the direction issued by this Court vide order dated 15.5.2009, the victim Smt. Rekha was medically examined and her age was reported to be above 18 years and her statement was also recorded u/s 164 Cr.P.C., wherein she admitted that she has married with revisionist No. 1 and they are living as husband and wife. The copy of the statement of victim Smt. Rekha recorded u/s 164 Cr.P.C. is annexed as Annexure-7 to the affidavit filed in support of the present Criminal Revision, in which she has categorically stated that she knew the revisionist No. 1 since long and he used to come to her house frequently and on 23.4.1989 at about 3.30 in the night, she on her own free will, accompanied the revisionist No. 1 and the accused Devaki Nandan alias Devo had not enticed her from her parents' house and she had gone with him to marry and thereafter on 23.4.2009 they married in Jogni Maiya Mandir, Jaipur and they also stayed for about 21 days in Allahabad. The investigation was carried out and the Investigating Officer submitted charge-sheet against the revisionists on 11.8.2009, on the basis of which, learned Magistrate took cognizance on 9.10.2009 and further summoned the revisionists for trial on 2.12.2009.

4. Learned counsel for the revisionists argued that order taking cognizance and summoning order passed by the learned Magistrate on the basis of the charge-sheet submitted against the revisionists is bad in the eyes of law as opposite party No. 3, Smt. Rekha, had married the revisionist No. 1 on her own sweet will leaving her parents' house with revisionist No. 1 and she is a major girl, no offence under Sections 363 and 366 I.P.C. is made out, hence the cognizance order as well as summoning order passed by the learned Magistrate be quashed.

5. Learned AGA could not dispute the said submissions made by the learned counsel for the revisionists. Having considered the submissions advanced by the learned counsel for the parties, I am of the opinion that the opposite party No. 3, Smt. Rekha, being a major girl, aged above 18 years of age, had left her parents' house on her own sweet will with revisionist No. 1 and married him, hence no offence is made out against the revisionists under Sections 363, 366 I.P.C. The order taking cognizance dated 9.12.2009 and summoning order dated 2.12.2009 are not sustainable in the eyes of law, hence the same are hereby set aside. The revision is allowed accordingly.