

(1999) 01 AHC CK 0102
In the Allahabad High Court
Case No : Criminal Revision No. 939 of 1996

Dinesh Chandra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 127(3)

Citation : (1999) 3 ACR 2514

Hon'ble Judges : R.K. Singh, J

Bench : Single Bench

Advocate : Devendra Dehma, for the Appellant; N.K. Trivedi and Patanjali Misra, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Singh, J.—Heard Mr. Devendra Dehma, learned Counsel for the revisionist and Mr. N.K. Trivedi, learned Counsel for the opposite party No. 2 Smt. Bimla Devi and Mr. Patanjali Misra, learned A.G.A. for the opposite party No. 1.

2. By the impugned judgment and order the learned Additional Sessions Judge, Aligarh, has remanded back the petition u/s 125, Code of Criminal Procedure for reconsideration after hearing both the parties on the point raised in the impugned judgment--if the statement of Bimla Devi in divorce suit in the Court of Addl. District Judge, Delhi, operates against her u/s 127(3)(c) of Code of Criminal Procedure.

3. Mr. Dehma has very strenuously tried to convince the Court that the maintenance application was itself not maintainable so the order of remand was unwarranted. For this support, he has cited two cases Shrawan Sakharam Ubhale v. Smt. Durga Shrawan Ubhale 1989 CriLJ 211 and Teja Singh Vs. Smt. Chhoto, Mr. Trivedi and Mr. Misra have not argued this case on merit rather they, have produced the counter-affidavit of Bimla Devi against the revision petition. The revisionist has filed rejoinder-affidavit which has been sworn on 11th October,

1998, a copy which has been served on the opposite party on 28.10.1998.

4. Since the learned Additional Sessions Judge has not passed any orders on merit, this Court does not think it proper to consider the maintenance application on merit and pass any order. Without expressing any comment on the argument of Mr. Dehma which is likely to prejudice the case of the parties in the Court below where the maintenance petition has been remanded back for reconsideration this Court does not pass this order on merit of the maintenance petition.

5. Since the matter has been left subjudice and it is going back to the Chief Judicial Magistrate for hearing the parties afresh and to decide the question raised by the learned Additional Sessions Judge, there is no point in assailing the same in revisional jurisdiction. The revision petition is totally misconceived. The ground taken by the revisionist in this revision petition can very well be taken before the Chief Judicial Magistrate where the maintenance petition will be reconsidered and that order is again to be assailed if the revisionist is aggrieved in the proper legal Forum. Accordingly this revision is dismissed. However there is no order as to cost.

6. The office is directed to return back the lower court record within three days positively. The learned Chief Judicial Magistrate will try to decide the maintenance petition within six months as it has remained pending for several years causing human problem to the opposite party.