
(2012) 01 DEL CK 0338

In the Delhi High Court

Case No : Criminal M.C. 3845 of 2010

Dr. Meena Chaudhary @ Dr. Meena P.N. Singh

APPELLANT

Vs

Basant Kumar Chaudhary and Others

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Citation : (2012) 5 AD 18 : (2012) 187 DLT 264 : (2012) 1 DMC 594 : (2012) 3 JCC 1737

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : None, for the Appellant; Atul Jha, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This petition has been preferred under Article 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code (Cr.P.C.) impugning the order dated 26.08.2010 of the learned Metropolitan Magistrate dismissing the complaint u/s 200 of the Cr.P.C. filed by the petitioner of offence u/s 120-B read with Section 494 and Section 498A of the Indian Penal Code (IPC). This petition was listed before the learned Single Judge on 10.12.2010 when the petitioner appearing in person sought adjournment. The petitioner had also filed LPA No. 64/2009 and contempt case No. C-386/2010. The petitioner on 03.05.2011, while appearing before the Division Bench in LPA No. 64/2009 sought consolidation of the contempt petition as well this petition with the LPA and the matter was accordingly placed before Hon'ble the Chief Justice who vide order dated 22.05.2011 directed that the contempt petition as well as this petition be placed before the same Division Bench before which the LPA was pending. It is for this reason that the matter is before us. We may also notice that though the LPA and the contempt petition have since been disposed of but the petitioner appearing in person stated that rather than sending back this petition to the learned Single Judge, we only should hear the same. In view of the said request and for the reason that by doing so, the petitioner is not being deprived of any remedy had the matter been considered by the learned

Single Judge, we proceeded to hear the petitioner. The petitioner sought and was granted liberty to file written arguments which have also been filed.

2. The learned Metropolitan Magistrate after recording the statements of the petitioner and her witnesses held no case for summoning of the accused / respondent to have been made out for the reason of the petitioner herself having obtained decree of dissolution of her marriage with the respondent from the Court in U.K. and the respondent having so ceased to be the husband of the petitioner there being no question of his being guilty of the offence of bigamy u/s 494 of the IPC or of causing cruelty to the petitioner as wife u/s 498-A of the IPC. Qua the offence u/s 498-A of the IPC, reliance was also placed on the status report submitted by the police and on the petitioner having failed to make out any case of cruelty.

3. The argument of the petitioner before us, orally as well as in writing, is that the divorce decree obtained by her in U.K. being not a valid decree and hence not bringing to an end the relationship of husband and wife between the petitioner and the respondent. Reliance in this regard is placed on Smt. Satya Vs. Shri Teja Singh, and on Y. Narasimha Rao and Others Vs. Y. Venkata Lakshmi and Another, . The Supreme Court in both Smt. Satya and Y. Narasimha Rao (supra) was faced with a situation of the husband setting up a decree of a foreign Court of dissolution of marriage as a defence to the claim / charge of the wife in the Indian Courts for maintenance or of bigamy. In both cases, the husband was found to have obtained the decree of foreign Court fraudulently.

4. The situation here is however converse. It is the petitioner herself who had obtained the decree from the foreign Court of dissolution of marriage and who now wants our Courts to ignore the same. Obviously, no case of the foreign decree having been obtained fraudulently can be said to exist in this scenario. Rather the said foreign decree was at the sole initiative of the petitioner with the respondent having no role in the same and having not even contested the same. The question which arises is, can the petitioner, who by obtaining the said decree led the respondent to believe that his marriage with the petitioner stood dissolved and that he was free to remarry, can now be permitted to challenge the foreign decree obtained herself and charge the respondent with the offence of bigamy. In our opinion, no and the complaint has been rightly dismissed by the learned Metropolitan Magistrate. As far back as in Asanalli Nagoor Meera and Others Vs. K.M. Mahadu Meera and Others, , a division bench of the Madras High Court held that a litigant cannot be allowed to deny the jurisdiction which he himself invoked. The same principle was recently applied by a Single Judge of the same Court in Ms. Dorothy Thomas Vs. Mr. Rex Arul, in near similar facts.

5. We may also notice that u/s 13 of CPC a foreign judgment is conclusive as to any matter thereby directly adjudicated upon between the same parties except in cases specified thereunder. However the right if any to contend that the said foreign judgment is not conclusive can be only of the party who had himself / herself / itself not initiated the process of obtaining the said judgment and

cannot be of a party at whose instance such foreign judgment has been obtained. No litigant can be allowed to abuse the process of the Courts or to approbate and reprobate as per convenience. Mention at this stage may also be made of the finding recorded by the learned Metropolitan Magistrate and not disputed before us that the petitioner in the disputes with her siblings before another Indian Court sought to justify her claim by contending herself to be a divorcee by virtue of the said foreign judgment.

6. Thus, whichever way we may look, we cannot find any error in the order of dismissal of the complaint aforesaid. We had also called for the records of the Court of the Metropolitan Magistrate and have perused the pre-summoning evidence led by the petitioner. The petitioner had deposed that she was in U.K. from 1993 to 1999. She has not even whispered, alleged or made out any case of any of the grounds for the foreign judgment of dissolution of her marriage with the respondent being not conclusive. For the said foreign judgment to be not conclusive, the petitioner was required to make out a case of the same being either pronounced by a Court having no jurisdiction and / or having been not given on the merits of the case or being founded on an incorrect view of international law or the proceedings resulting therein being opposed to natural justice or having been obtained by fraud or sustaining a claim founded on a breach of any law in force in India. Moreover all the grounds specified in Section 13 of the CPC and on establishment whereof a foreign judgment can be said to be not conclusive are such which can be set up only by a party not himself/herself/itself approaching the foreign Court. The judgments cited by the petitioner cannot be read as laying down and indeed do not lay down any absolute principle that a marriage under the Hindu Marriage Act, 1955 cannot be dissolved by a foreign Court. Here the petitioner who is challenging the judgment was at the relevant time resident for a fairly long time within the jurisdiction of the foreign Court, did not approach the foreign Court under the dictates of the respondent and made out a case before the foreign Court for obtaining the judgment. Indeed in *Y. Narasimha Rao (supra)* itself the Supreme Court held matrimonial action filed in the forum where the wife is domiciled or habitually and permanently resides or where the wife voluntarily and effectively submits to the foreign jurisdiction or where the wife consents to the grant of the relief by the foreign Court although the jurisdiction of the foreign Court is not in accordance with the provisions of the Matrimonial Law of the parties, to be valid and the judgment of such foreign Court to be conclusive. We, therefore, do not find any merit in this petition.

7. Before parting with the case, we may observe that though the order of the Metropolitan Magistrate of dismissal of complaint is u/s 203 of the Cr.P.C. and is challengeable by way of Revision Petition u/s 397 read with Section 401 of the Cr.P.C. but since the matter had remained pending before this Court, though in the circumstances aforesaid for considerable time, we did not deem it appropriate to reject this petition on the said ground.

The petition is accordingly dismissed. No order as to costs.