

(2014) 09 MP CK 0145
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 2286/2011

Kamal Singh

APPELLANT

Vs

Mamta Bai

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244(2), 482, 91
Evidence Act, 1872 — Section 123, 124
Penal Code, 1860 (IPC) — Section 120B, 494

Citation : (2014) 09 MP CK 0145

Hon'ble Judges : B.D. Rathi, J

Bench : Single Bench

Advocate : Rohit Mishra, Advocate for the Appellant; R.D. Agrawal, Advocate for the Respondent

Final Decision : Allowed

Judgement

B.D. Rathi, J.—Heard finally with the consent of parties.

2. By invoking the inherent powers of this Court, petitioner has preferred this petition u/s 482 of Code of Criminal Procedure, 1973 (in short "the Code") seeking the following relief:

"It is therefore humbly prayed that this Hon"ble Court may kindly be pleased to allow this petition and be further pleased to quash the order dated 9.2.2011 (Annexure P/1) passed by the court of Second Additional Sessions Judge (FTC) Ganj Basoda (M.P.) in the interest of justice."

3. Brief facts in narrow compass are that one private complaint was preferred by respondent No.1 -Mamta Bai on 02-05-2000 against the petitioner and respondent No.2. Thereafter, charge u/s 494 of IPC was framed against the petitioner and against respondent No.2 charge u/s 494 read with Section 120B of IPC was framed on 02-11-2006. After evidence of both the parties, case was fixed for final arguments on 08-01-2010 but unfortunately final arguments could

not be advanced by the counsel because of interlocutory application filed by respondent No.1 u/s 91 of the Code. Said application was dismissed by learned trial Court vide order dated 30-04-2010. Against that order Criminal Revision No.114/2010 was preferred by the complainant which was allowed vide order dated 09-02-2011 by Second Additional Sessions Judge (FTC), Ganj Basoda District Vidisha and documents were taken on record. Feeling aggrieved by the order passed by revisional Court, present petition is preferred by the petitioner.

4. Learned counsel for the petitioner submitted that the application u/s 91 of the Code was filed by the complainant just to harass the petitioner. The complaint filed by respondent No.1 before the trial Court is pending since May, 2000 and petitioner is continuously facing trial, therefore, looking to the ordeal of trial, petition deserves to be allowed and the order passed by the revisional Court be set aside. It is further submitted that some applications u/s 91 of the Code were preferred by respondent No.1 at a belated stage of final arguments while several opportunities were with the complainant but deliberately neither any document nor such kind application was filed by the complainant at appropriate stage. It is also submitted by the counsel that the application u/s 91 of the Code was not having any merit, hence it was rightly dismissed by the trial Court.

5. Combating the submissions of petitioner's learned counsel, Shri Agrawal, learned counsel for respondent No.1 submitted that just to prove the offence u/s 494 of IPC birth certificate of Ku. Payal and school register entry of Prince Raghu children of petitioner by second marriage are necessary documents and are having material bearing over the matter, therefore, the order passed by the revisional Court is in accordance with law and no interference is warranted.

6. Having regard to the arguments advanced by learned counsel for the parties, orders of both the Courts below are perused.

7. The application u/s 91 of the Code was dismissed by the trial Court but the complainant/respondent No.1 has not availed the remedy available u/s 244(2) of the Code. By filing the application, under discussion, at the belated stage, complainant has not preferred to explain the delay that what was the reason which has compelled her to file such application at the stage of final arguments. By passing the order dated 30-04-2010, learned trial Court had decided three applications (dated 08-01-2010, 05-02-2010 and 15-03-2010) filed u/s 91 of the Code.

8. On revision, learned revisional Court has set aside the order of dismissal of aforesaid applications passed by learned trial Court merely on the ground that the applications were not filed in order to harass the petitioner but those were filed to call the documentary evidence in relation to second marriage of petitioner.

9. Admittedly, the complaint is pending since May, 2000 and several opportunities have been availed by the complainant even then deliberately she has not preferred such application. She has also not exercised her right as envisaged u/s 244(2) of the Code. Complainant/respondent No.1 has formally

filed the application u/s 91 of the Code without touching the aspect of delay occurred in filing of such application. Moreover, only on the basis of certificate and school register entry which have been prayed to be produced by the complainant, it cannot be presumed that second marriage was solemnized by the petitioner because birth of child may be due to illicit relationship.

10. Since pivotal point of whole case is Section 91 of the Code, therefore, it would be proper to reproduced it:

"91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

11. On bare perusal of aforesaid provision, it is clear that the question whether production of any document or thing is necessary or desirable, is one to be decided by the Court before issuing summon. Meaning thereby, it is the Court only which can decide whether the documents are necessary or not. In other words, it is the discretion of the trial Court to decide whether the documents are necessary or not. In this case, learned trial Court was right to hold that the applications were filed with an ulterior motive of lingering the trial and harassing the petitioner while there was no necessity to produce the documents and deliberately such documents were not filed by the complainant.

12. In view of the aforesaid discussions, this Court is of the considered opinion that the order passed by the revisional Court suffers from illegality and deserves to be and is hereby set aside upholding the order passed by learned trial Court.

13. In the result, the petition filed by the petitioner succeeds and is hereby allowed as indicated above. Taking in view the fact that complaint was filed in the year 2000, learned trial Court is directed to decide it within a period of one month from the date of receipt of copy of this order.

14. Copy of this order be sent to the trial Court for information and necessary compliance.