
(2012) 02 MP CK 0082

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 2133 of 2008

Munna @ Muniraj Sahu

APPELLANT

Vs

Rambahor Sahu

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 200, 202, 482
Penal Code, 1860 (IPC) — Section 406, 494, 495, 496, 497

Citation : (2012) 02 MP CK 0082

Hon'ble Judges : Naresh Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Justice Shri N.K. Gupta

1. The applicant has moved an application u/s 482 of Cr.P.C to quash the proceedings of Criminal Case No. 3696/2007 pending before learned JMFC Rewa (Shri Ramjilal Tamrakar). Facts of the case are that the respondent Rambahor was married with one Bitti Bai. Bitti Bai moved an application for maintenance u/s 125 of Cr.P.C and vide order dated 26.7.2003, she was granted maintenance. The respondent alleged that Bitti Bai though married with the respondent, was residing with applicant and a marriage took place between the applicant and Bitti Bai and therefore, he prosecuted a criminal case for offence punishable under Sections 495, 494 of I.P.C against Bitti Bai and applicant. Ultimately, he could not prove the marriage of the applicant with Bitti Bai and therefore, that prosecution could not succeed. Thereafter, he has lodged a further complaint before the concerned JMFC against the applicant for offence punishable u/s 497 of I.P.C, which was registered by JMFC Rewa vide order dated

2. Learned counsel for the applicant submits that he was prosecuted by the respondent for offences punishable u/s 494 and 495 of I.P.C and language of the complaint is almost similar, as of the present complaint. Applicant is being harassed since last 20 years without any substance. The respondent has moved

the matter against the applicant for the third time, whereas in maintenance application it was decided by the Court that the wife of the respondent was not residing with the applicant. Similarly the criminal complaint lodged against the applicant was dismissed by the trial Court and therefore, third complaint cannot be maintained.

3. Respondent remained absent after receiving the notice of this case and therefore, his version is not available on record.

4. After considering the submissions made by learned counsel for the applicants and looking to the documents submitted before this Court it appears that order of maintenance was directed against the respondent on the basis that the wife of the respondent was not cruel to the respondent. Previous complaint filed by the respondent and divorce application filed by the respondent were dismissed by the Courts on the basis that the respondent could not prove the marriage of the applicant and wife of the respondent but, it is nowhere decided by any of the Court that the wife of the respondent was not residing with the applicant. If order dated 11.8.2006 passed by learned JMFC Rewa is perused then it would be clear that learned JMFC has discussed the entire before charge evidence and thereafter, discharged the applicant from the charges of offences punishable under Sections 494, 495 406, 498 of I.P.C. It was necessary for the Magistrate to consider as to whether offence u/s 497 of I.P.C is made out or not. At the time of framing of the charges it is the duty of the criminal Court to look as to what offence is made out against the applicant, on the basis of the evidence adduced before charge. If it was found that the complainant could not prove the second marriage of Bitti Bai then still it was found that she was residing with the applicant and therefore, charges of offence punishable u/s 497 of I.P.C could be framed in the same trial but, the respondent cannot be punished for the error left by the trial Court and therefore, if he found that Bitti Bai was not married with the applicant and still she is residing with the applicant as his wife whereas he is paying maintenance being husband then certainly he has every right to initiate a criminal complaint against the applicant for offence of adultery. At present the evidence given by the various witnesses under Sections 200 and 202 of Cr.P.C cannot be brushed aside on the basis of the findings given by the maintenance Court or the Court who was considering for divorce application etc. Under such circumstances, there is no basis shown by the applicant by which the impugned order may be quashed. Consequently, application u/s 482 of Cr.P.C is hereby dismissed. Copy of the order be sent to the trial Court with the direction that stay order dated 5.3.2008 is hereby vacated and Court may proceed with the proceedings of the Criminal Case No. 3697/2007.