

(2001) 05 RAJ CK 0038

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 11 of 2001

Nandlal

APPELLANT

Vs

Smt. Shankari

RESPONDENT

Date of Decision : 02-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 399, 482

Citation : (2002) 2 DMC 530 : (2002) 3 RCR(Criminal) 14 : (2001) WLC 814

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : Anil Kaviraj, for the Appellant; I.R. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Sethna, J.—The respondent wife filed a maintenance application against the petitioner husband before the learned Magistrate wherein she had filed an application for interim maintenance for herself and for her minor son Narayan aged 2 years. The learned Civil Judge and Chief Judicial Magistrate, Kapasan by his order dated 5.7.2000 awarded Rs. 350/- per month to the wife and Rs. 200/- per month to minor son Narayan by way of interim maintenance. Against such interlocutory order, no revision lies still the revision petition was filed by the petitioner before the Sessions Court which was dismissed by the learned Additional Sessions Judge No. 2, Chittorgarh on 20.12.2000 on both grounds of maintainability as well as on merits. These orders are challenged by the petitioner in this misc. petition.

2. There is a bar of second revision petition u/s 399(3), Cr. P.C. therefore, to circumvent it, this misc. petition u/s 482, Cr. P.C. is filed.

3. Ordinarily this Court would not entertain such misc. petition u/s 482, Cr. P.C. when there is clean bar of second revision. These powers can only be exercised where the orders passed by the Courts below have resulted into gross miscarriage of justice which is none in the present case. Even otherwise there is

no substance in this petition.

4. Learned Counsel Mr. Kaviraj for the petitioner husband submitted that due to local politics, a false maintenance application is filed against him, who is 65 years old and father of four daughters. He submitted that there was no legal valid marriage nor there was a Nata marriage with the wife and the minor son Narayan is not his son for which he has also made an application before the Trial Court for DNA test because according to him, the respondent wife is wife of Shanker.

5. It is difficult for this Court to appreciate this contention at this stage because it is matter of evidence. Not only that, from the order of the Trial Court, it appears that in support of her case, the respondent wife has examined as many as 5 witnesses to show she had Nata marriage with the present petitioner.

6. In that view of the matter, this Court cannot take a different view in this misc. petition when both the Courts below have concurrently found against the petitioner.

7. It was then submitted by learned Counsel Mr. Kaviraj that from 20.12.1994 to 22.12.1995 for a period of more than one year, he was in judicial custody at Pratapgarh and minor Narayan was born on 28.6.1996. He, therefore, submitted that admittedly Narayan was six months old when he was released from judicial custody. Therefore, it cannot be said that Narayan was his son.

8. At first look, such an argument looks attractive but on close scrutiny of the record of the case and the fact pointed out by learned Counsel Mr. Choudhary for the respondent wife that when the petitioner was in judicial custody, the respondent wife used to regularly go to jail to look after her husband. Now-a-days, nothing is impossible and sexual relations between them in judicial custody cannot be ruled out. This type of submitting application before the Trial Court for carrying out DNA test would be nothing but to unnecessarily prolong the case. Ordinarily, a Hindu lady would not go to such an extent by making such false accusations against a person that he was father of her child.

9. When both the Courts below at this stage have not accepted the case of the petitioner that Narayan was not his son, then this Court would certainly not exercise its powers u/s 482, Cr. P.C.

10. Before parting, I must state that a submission was tried to be raised by learned Counsel Mr. Kaviraj which was never raised before the Courts below namely that the maintenance application was not filed by the wife claiming maintenance for her minor son also. He submitted that the maintenance application was to be filed by wife as a mother and natural guardian of minor son Narayan, therefore, in absence of it, the Courts below have committed an error in awarding maintenance to minor son.

11. Apart from the fact that it is a hypertechnical submission, there is no substance on merits also in this submission because the prayer is already made

in the maintenance application to award maintenance to minor son. When this contention was never raised before the Courts below, then such a contention cannot be allowed to be raised for the first time. Even otherwise also, it has no substance.

12. In view of the above discussion, this petition is dismissed with a special costs of Rs. 1,000/-. The said costs shall be paid within one month from today.

13. Stay of petition is also dismissed.