

(2001) 07 RAJ CK 0036

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 145 of 2000

Narayan Lal

APPELLANT

Vs

Kumari Leela

RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

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

Citation : (2002) 2 DMC 26 : (2002) 2 RCR(Criminal) 419 : (2001) WLC 763

Hon'ble Judges : N.P. Gupta, J

Bench : Single Bench

Advocate : S.N. Trivedi, for the Appellant; I.R. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—Heard learned Counsel for the parties. This 482 petition has been filed by the husband against the order of the learned Addl. Sessions Judge No. 2, Chittorgarh dated 10.3.2000, whereby the petitioner's revision was dismissed. The learned Trial Court in the proceedings u/s 125, Cr.P.C. awarded maintenance to the tune of Rs. 500/- to two minor children Leela and Mukesh, however award of maintenance was refused to wife Bhagwani. The learned Trial Court in para 12 held that Bhagwani is not entitled to maintenance as at the time of her alleged marriage with the petitioner Narain Lal, he had already a wife alive.

2. The main controversy involved in the matter is as to whether the two children are the children out of loins of the petitioner or not ? The controversy arose because the petitioner Narain Lal had taken a positive stand about his having not contracted any sort of marriage with Bhagwani, and has also denied paternity of two children. On the other hand it has positively been contended that the applicant Bhagwani was married in accordance with Hindu rites with one Narain s/o Magna Jat r/o Shambhupura and that the present petitioner Narain Lal was married with one Goga Bai d/o Dalchand Ji Jat and since this marriage of the present petitioner with Goga Bai did not yield any children, around the year 1985-86 he contracted a Nata marriage with one Pushpa Bai d/o Mithu Lal and

from this union he has two children.

3. Both the learned Courts below, after considering the evidence led by the parties came to the conclusion that the two children are from the loins of the petitioner and held him liable for the maintenance.

4. Assailing the impugned order, two-fold submissions have been made by the learned Counsel for the petitioner. Firstly being that the learned revisional Court has relied upon the Ration Card showing Bhagwani to be the wife of the present petitioner, while Ration Card is not proved on record by any evidence whatever, nor has it been marked an exhibit. It is contended that every document sought to be tendered into evidence has to be marked exhibit, and has to be proved in accordance with law, and therefore, the learned Revisional Court was in error in relying upon this piece of evidence for the purpose of arriving at a conclusion against the petitioner to the effect that Bhagwani was married with him. The next submission made is that a bare perusal of the statements of the witnesses examined on the side of the wife would show that there are glaring contradictions inter se between their evidence, the witnesses are interested witnesses, the witnesses produced being residents of village Sundari are inimical or in any case indisposed towards the petitioner and thus the learned Courts below were in error in coming to the conclusion about paternity of two children.

5. On the other hand, the learned Counsel for the non-petitioner contended that even if the Ration Card is not proved in accordance with law, at best that piece of evidence may be excluded from consideration, however, according to the learned Counsel even after excluding the evidence consisting of Ration Card, there is sufficient amount of other evidence to establish the liability of the petitioner for maintenance of the two children and no interference is required to be made in exercise of 482 jurisdiction.

6. I have considered the submissions and have gone through the record.

7. True it is that the Ration Card has not been proved on record nor has it been marked exhibit, however, a look at the judgment of the learned Trial Court would show that in para 15 the learned Trial Court after referring to the oral evidence of the parties has relied upon the voter list of the year 1988 (which is proved on record as Ex. 1) and has observed that since this voter list is of the year 1988, it cannot be assumed that five years before she started making preparations with intention to lodge claim for maintenance. It is significant to note that the learned Trial Court has not referred to nor relied upon this Ration Card, of course the learned Revisional Court in para 7 has made reference to this Ration Card, but then the fact also does remain that in para 7, the learned Revisional Court has appreciated the evidence of both the parties. In para No. 6, the learned Revisional Court has also referred to the voter list Ex. 1 and has also referred to Ex. 2 a certificate of Anuvrat Bal Bharti Vidhyalya Kapasan, issued in the year 1994-95, wherein two children have been shown to be the issues of the petitioner Narain Lai, and learned Revisional Court has observed that there is no

reason to disbelieve these documents, and that the petitioner has not led any evidence to discredit the reliability of these documents. A perusal of the record shows that these documents Ex. 1 and Ex. 2 were filed by the non-petitioner in the learned Trial Court much prior to petitioner filing documents in support of his defence, which he filed on 5.9.1995. In such circumstances, it has but to be assumed that the petitioner had sufficient opportunity to produce appropriate documents to discredit the reliability of Ex. 1 and Ex. 2. The fact remains that as found by the learned Revisional Court that no such document has been produced. There could also be much more other material evidence which could be produced by the petitioner to discredit the wife's version about paternity of two children. Be that as it may, taking into account the fact that the learned Trial Court even without relying upon the Ration Card, which is not proved document, has come to the conclusion in favour of the children about their paternity being that of the petitioner, simply because the learned Revisional Court has considered this additional circumstance, even exclusion thereof cannot be said to be material circumstance to adversely affect the findings recorded by the learned Courts below against the petitioner.

8. In this view of the matter, even after excluding the evidence of Ration Card, I do not find any sufficient ground to interfere with the findings of the learned Courts below about the two children being the children of the petitioner. Thus the petition has no force and is hereby dismissed.