
(2009) 04 UK CK 0017
In the Uttarakhand High Court

Paripurnanand

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2010) 1 NCC 232 : (2009) 3 UC 1596 : (2009) 2 UD 297

Hon'ble Judges : J.C.S.Rawat, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.

2. This petition under Article 227 of the Constitution of India has been filed for seeking the following reliefs:

To quash the order dated 04-10-2004 passed in Case No. 45 of 2004 passed by Judicial Magistrate, 1st Class, Tehri Garhwal, order dated 12-08-2004 passed in Criminal Revision No. 73 of 2004 and second part of Criminal Revision No. 83 of 2004 in which the learned Sessions Judge directed to Education Director Uttarakhand Govt. for the necessary action against the petitioner.

Or any other such order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

3. The respondent Nos. 2 to 4 filed an application u/s 125 Cr.P.C. before the Judicial Magistrate, Tehri on 03/01/2003 praying for the maintenance of Rs. 3,000/- each and Rs. 4,00,000/- for the purpose of marriage of respondent Nos. 3 & 4.

The petitioner/revisionist filed objection before the learned Magistrate and stated that the respondent No. 2 Smt. Pritma Devi is not his legally married wife. He further averred that respondent Nos. 3 and 4 are residing separately without any

reasonable ground. He further alleged that the petitioner is not only ready to look after respondent Nos. 3 and 4 but also ready to provide better education to them but the respondent No. 2 is misguiding and misleading to respondent Nos. 3 and 4.

4. The learned Magistrate after taking the entire evidence and hearing the parties awarded an amount of Rs. 1,500/- each to respondent Nos. 3 and 4 from the date of application, i.e. 03/01/2003 and the application of respondent No. 2 was dismissed. Feeling aggrieved by the said order, both the parties preferred revision petitions before the learned Sessions Judge, Tehri and the learned Sessions Judge, Tehri dismissed both the revision petitions filed by the parties vide its order dated 12/08/2005.

5. Feeling aggrieved by the said order, the petitioner has challenged the order of the learned Sessions Judge.

6. Learned Counsel for the petitioner contended that the petitioner has only income from his salary. He has no income either by way of rent of the houses or agricultural. He further alleged that he was a Lecturer in Government Inter College and was receiving a sum of Rs. 7,240/- after deduction, as such the amount which has been awarded against him is too exorbitant. There is no representation on behalf of private respondents inspite of sufficient service of notice. Mr. H.C. Pujari, the learned Addl. G.A. for respondent No. 1/State supported the findings recorded by the learned trial court. The learned Sessions Judge after going through the entire evidence found that the appreciation of the evidence made by the learned Magistrate is not perverse. The learned Sessions Judge further held that the petitioner has stated in his statement that he was a Lecturer of Hindi in the Inter College having pay scale of 5,500 to 10,500.00. He has further stated that he had been getting D.A. of 61%. He has further stated that he was only getting Rs. 7,000/- after deduction. The learned Sessions Judge also held that the petitioner has suppressed the latest pay slip which was in the possession of the department or in his possession. He did not produce it before the Court. If the facts as alleged in his statement and quoted in the judgment are correct, that should have been verified from the pay slip given to him by the department. Thus, the best evidence was suppressed. The learned Sessions Judge finds that the appreciation of evidence made by the trial court was correct. The learned Sessions Judge as well as the learned Magistrate also came to the conclusion that in para 10 of the objection filed by the petitioner, he has admitted that he has 30-40 nali of lands. In para 10 it has been admitted that he has four houses in village. 1st house is in occupation of respondent No. 2; 2nd house is in his possession; 3rd house is closed; and 4th house is in dilapidated condition. He has also a house at Uttarkashi City in which he lives with his family. After appreciating the evidence, the learned Magistrate as well as the learned Sessions Judge came to the conclusion that the petitioner is liable to pay a sum of Rs. 1,500/- each to respondent Nos. 3 and 4 from the date of the order. I have gone through the entire evidence with the help of learned Counsel for the petitioner as

well as the learned Addl. G.A. I do not find that the learned trial court has committed error in appreciation of the evidence. There is no fault in the appreciation of the evidence. I do not want to interfere with the findings recorded by the learned trial court.

7. Learned Counsel for the petitioner further contended that Section 125(2) Cr.P.C. provides that any allowance for the maintenance or interim maintenance and expenses for proceedings shall be payable from the date of the order, or, if the order has been passed from the date of the application, then the special reason should be recorded. Before I proceed to consider this question, it would be proper to examine the relevant provisions of Section 125(2) Cr.P.C. which reads as under:

125. Order for maintenance of wives, children and parents.-[(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceedings, as the case may be.]

8. Perusal of this section clearly reveals that such maintenance can be made payable from the date of the order if so ordered from the date of the application of the maintenance. This section itself denotes that if it is directed to be paid from the date of the application, it should be paid. It is not provided by the legislation that special reasons should be recorded. Thus, the learned trial court has rightly considered the provision of Section 125(2) Cr.P.C. The learned trial court has rightly directed that the amount should be paid from the date of filing of the application.

9. Learned Counsel for the petitioner further contended that the learned Revisional Court has directed in 2nd part of its order to send the copy of the order for the necessary action to the Education Director, Uttarakhand Government against the petitioner. The 2nd part of the order of the Revisional Court seems to be quite coercive against the petitioner. As such, the 2nd part of the order is liable to be quashed.

10. In view of the above, the writ petition is liable to be dismissed and is hereby dismissed with the above modification.