
(1995) 07 RAJ CK 0023

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 205 of 1995

Prem Singh

APPELLANT

Vs

Madhu Bala

RESPONDENT

Date of Decision : 03-07-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397
Family Courts Act, 1984 — Section 19(4)

Citation : (1995) 2 DMC 603 : (1995) 2 RLW 24 : (1996) WLC 309

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : K.K. Kumbhat, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—This revision petition is directed against the order of Judge, Family Court, Jodhpur dated 31.5.1995 in Case No. 75/94 Madhu Bala v. Prem Singh, where the proceedings u/s 125, Cr.P.C. has been decided by way of compromise.

2. The learned Counsel for the petitioner strenuously urged before me that the factum of compromise recorded in the impugned judgment of the Family Court is incorrect.

3. The aforesaid argument of the learned Counsel for the petitioner is not acceptable to me for the reason that the Court of law is expected to accept the statement of a Judge recorded in his judgment. This Court cannot afford to allow the statement of a Judge to be contradicted by the statement at the Bar or by affidavit or by any other evidence adduced by litigant public.

4. In my humble opinion, if the Family Court Judge has recorded in his judgment that a compromise was entered into between the parties and reconciliation took place regarding amount of maintenance between the parties then such statement of fact recorded in the judgment impugned is to be taken to be the last word on

the subject. This Court is not able to ascertain at revisional stage as to what transpired at the hearing, regarding the fact recorded in the judgment of the Court. Hence, the facts stated by the learned Family Court Judge must be taken to be conclusive for exercise of revisional jurisdiction.

5. However, it is made clear that if the petitioner thinks that the happenings in the Court have been wrongly recorded in the judgment of the Family Court Judge, then it is incumbent upon the petitioner while the matter still fresh in the mind of the Family Court Judge, to call the attention of that very Judge who has made the record of the fact about reconciliation between the parties regarding maintenance amount. This is the only way to have the record corrected.

6. I am fortified in taking the aforesaid view by a decision rendered by the Apex Court in the case of State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another,

7. The petitioner would be at liberty to move a review petition, if so advised, before Family Court Judge within seven days from today and if such review petition is moved by the petitioner, the Family Court Judge is hereby directed to dispose it of finally preferably within two months.

8. Learned Counsel for the petitioner has expressed an apprehension that after disposal of his review petition, the petitioner would not be entitled to file a fresh revision.

9. In my humble opinion, the aforesaid apprehension is misplaced in view of the mandatory provision contemplated under Sub-section (4) of Section 19 of the Family Courts Act, 1984, newly inserted by Act No. 59 of 1991. Wherein it is clearly provided that the High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973, for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceedings.

10. In my considered opinion, the aforesaid connotation is wide enough to make the petitioner entitled to invoke the revisional jurisdiction of this Court after disposal of review petition by the Family Court.

11. This revision has been filed u/s 397, Cr.P.C. while it ought to have been filed under Sub-section (4) of Section 19 of the Family Courts Act. It is true that the present revision cannot be thrown out because of mentioning of wrong Section 397, Cr.P.C. instead of mentioning Sub-section (4) of Section 19 of Family Courts Act. Due to oversight or for any other reason if present revision has been filed u/s 397, Cr.P.C., it will not affect the maintainability of the instant revision, inasmuch as the phraseology of Sub-section (4) of Section 19 of the Family Court Act are pan materia to the phraseology used u/s 397, Cr.P.C.

12. As a result of aforementioned discussion, the instant revision is hereby

dismissed on a preliminary ground and the learned Judge, Family Court, Jodhpur, is hereby directed to dispose of the review petition, if so made before him, by the petitioner preferably within two months.