
(2003) 02 PAT CK 0005
In the Patna High Court
Case No : L.P.A. No. 34 of 2003

Punam Mishra

APPELLANT

Vs

The Bihar Electricity Board and Others

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 494

Citation : (2003) 2 PLJR 767

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : D.K. Sinha and Jay Shankar Pd. Singh, for the Appellant; Mohit Kr. Shah, for Board, for the Respondent

Final Decision : Dismissed

Judgement

1. The delay in filing the appeal is condoned.
2. After the matter was considered at some length, learned Counsel for the Appellant made a request that the appeal be permitted to be withdrawn. In the normal case, if it was a similar matter of a lis between two parties and one party does not desire to press its cause, the court permits the withdrawal of the petition. But the facts in the present case are unusual and bad circumstances should not make binding precedents.
3. After having heard learned Counsel for the Appellant, counsel for the Bihar State Electricity Board and having perused the record of the writ petition as well as the letters patent appeal, the court came across an observation of the learned Judge in the impugned order dated 20 August, 2002 (C.W.J.C. No. 9903 of 1999: Punam Mishra v. The Bihar State Electricity Board and Ors.). The observation is to the following effect:

In the facts of the case, this Court finds sufficient merit in the submission advanced on behalf of the Board and there is no difficulty in holding that Petitioner's marriage has to be treated as void ab initio and hence she cannot be

paid the death-cum-retiral benefits as a spouse of the deceased employee.

4. The court is of the opinion that the order should have stopped after this observation once the learned Judge became conscious of the fact that the Petitioner Punam Mishra, in fact, has no status under the law to make any claim on the death-cum-retiral benefits of the deceased Shashi Bhushan Mishra. But it appears that the order went a little further. It grants certain benefits to those who may not be entitled for it.

5. On the record of the writ petition is a circumstance that Shashi Bhushan Mishra was facing a complaint for marrying again during the life time of the first wife and faced an action u/s 494 of the Indian Penal Code, 1860. This complaint was made by his first wife Veena Mishra. As a result of this complaint, Shashi Bhushan Mishra was sent to jail. As dual marriage is not recognised by law, the service conditions of the Board were violated. The Board suspended Shashi Bhushan Mishra from his service.

6. Thus, one thing is clear and is an aspect on record beyond reasonable doubt that Shashi Bhushan Mishra took in another woman while his wife was alive and was living in adultery.

7. In the circumstances, the court fails to understand how the District and Sessions Judge, Vaishali at Hajipur did not examine all these aspects while he was proceeding to grant a succession certificate under the Indian Succession Act, 1925 in the matter relating to the estate of late Shashi Bhushan Mishra when Punam Mishra, who was not married, was laying claim to the estate.

8. Was Punam Mishra an heir under the Succession Act? The High Court cannot go into this question in a certiorari action. What was the status of the children? This is an aspect which has to be considered. The entire record of Succession Case No. 14/1983 is not before the High Court. But what has been placed before the court, as a certified copy, apparently seems to be a hurried exercise which carry the signature of the District Judge, the Shrishtedar and the Muharrir. This appears to be a very cursory exercise to a proceeding of original jurisdiction where a claim has to be certified before a succession certificate or for that matter letters of administration is granted. On the writ petition the learned Judge also certified, by a certiorari, that the status of the Petitioner to seek any relief was just not there as her marriage has to be treated as void ab initio.

9. Today, it is of no consequence that the late Shashi Bhushan Mishra may not have any other heir. One thing is clear that the grant of estate is a question which directly involves heirs. Whether these heirs are Class-I or Class-II is a matter which has to be examined. When there is a claim, if the claim be resisted, then the claimant has to seek a succession certificate. It is entirely up to the court of original jurisdiction, where the claim had been tiled for a succession, to examine these matters.

10. Thus, this Court is of the opinion that the writ petition clearly should have

been thrown out as the Petitioner Punam Mishra was not so clean when she was seeking reliefs from the High Court. The record is, thus, certified.

11. The appeal is dismissed.