
(1996) 05 P&H CK 0150

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 990-M of 1993

Rajinder Singh

APPELLANT

Vs

Presiding Officer, Addl.Chief Judicial Mag., Kapurthala

RESPONDENT

Date of Decision : 14-05-1996

Acts Referred:

Citation : (1997) 1 RCR(Criminal) 589

Hon'ble Judges : V.K.Jhanji, J

Advocate : S.K. Bhanot, Rajiv Trikha, Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

1. In this petition under Section 482 Cr.P.C. prayer has been made for quashing of order dated 23.12.1992 passed by Additional Chief Judicial Magistrate, Kapurthala, ordering an enquiry as contemplated under Section 10 of the Child Marriage Restraint Act, 1929.

2. In brief, the facts are that petitioner was married to Rose Bala @ Shelly in September, 1990 according to the Sikh rites. It is the case of petitioner that he and his wife cohabited as husband and wife in his house near Sabzi Mandi, Sultanpur Lodhi. No child was born out of the wedlock. Some time after the marriage, the wife of the petitioner allegedly deserted him. A report to this effect was lodged with the police station at Sultanpur Lodhi. After about a month of the desertion, petitioner came to know that his wife is living with her parents at Jalandhar. Petitioner and his parents along with other respectable persons approached the parents of petitioner's wife and requested them to send the wife of petitioner with them, being legally wedded wife of petitioner, but the parents of the petitioner's wife refused to send her back. On 18.4.1991, petitioner filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The petition was marked to the Senior Sub Judge, who was also exercising the powers of District Judge and was competent to try the petition under Section 9 of the Act. After notice of the petition under Section 9 of the Act, petitioner's wife, Rose Bala @ Shelly filed an application for maintenance

pendente lite and litigation expenses. In that application it was averred that application was being filed through her mother as Rose Bala @ Shelly was minor at the time of marriage. The learned Senior Sub Judge in his capacity as Addl. Chief Judicial Magistrate formed a prima facie opinion that Rose Bala was a minor when she was married with the petitioner and that being an offence under the Child Marriage Restraint Act, he ordered for a preliminary enquiry under Section 10 of the Child Marriage Restraint Act, to be conducted by the Judicial Magistrate II Class, to ascertain the circumstances leading to solemnisation of the said child marriage. Petitioner, his father and also the mother of Rose Bala were directed to appear before the Enquiring Magistrate. This order was challenged before the Additional Sessions Judge, Kapurthala who dismissed the revision petition in limine on finding that he had no jurisdiction to entertain and dispose of the petition as that order had been passed in proceedings under Section 9 of the Hindu Marriage Act by the Magistrate exercising the powers of District Judge. The present petition has been filed for quashing order dated 23.12.1992.

3. After hearing the learned counsel, I am of the view that the impugned order deserves (under) to be quashed as the Court was not competent to take cognizance of any offence the Child Marriage Restrainat Act, 1929 after expiry of one year from the date the offence is alleged to have been committed. Admittedly, the marriage in question took place in September, 1990 and the petition under Section 9 of the Hindu Marriage Act was filed on 18.4.1991 and the cognizance of the offence was taken on 23.12.1992 when the Additional Chief Judicial Magistrate ordered for holding of preliminary enquiry by Judicial Magistrate II Class. While passing the order, the learned Magistrate failed to notice the provisions of Section 9 of the Child Marriage Restraint Act which provides that no court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed. Section 9 raises a judicial bar on taking cognizance after a lapse of period of more than one year of the alleged offence.

4. Consequently, this petition is allowed and order dated 23.12.1992 is quashed.