
(2007) 01 CHH CK 0005
In the Chhattisgarh High Court

Roop Narayan Verma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Constitution of India, 1950 — Article 15, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 13, 5

Citation : AIR 2007 Chh 64

Hon'ble Judges : Vijay Kumar Shrivastava, J;Dhirendra Mishra, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Vijay Kumar Shrivastava, J.

1 This is the petition under Article 226/227 of the Constitution of India, for the following reliefs:

1) A writ and/or an order in the nature of writ of mandamus do issue commanding and directing the respondent State authorities to produce all the relevant files, documents and records etc. to show the steps taken by them for preventing the child marriages in the country and in the State of Chhattisgarh.

2) A writ and/or an order in the nature of writ of mandamus do issue commanding and directing the respondents State authorities to effectively implement the provision of Child Marriage Restraint Act 1929 all over the area within their jurisdiction and for that prepare a scheme and establish agency for restraining the said marriages.

2-A : A writ and/or an order in the nature of writ of appropriate nature do issue declaring the Section 13(2)(iv) of the Hindu Marriage Act, 1955 is ultra vires to the Article 15 of the Constitution of India.

3) A writ and/or an order in the nature of writ of certiorari do issue quashing the

impugned order dated 4-7-2003 (Annexure P-4) in the facts and circumstances of the case since the respondent State authorities have failed to discharge their duties for restraining the child marriages at the relevant time and which has given rise the dispute between the petitioner and respondent No. 3 and therefore, pay to the respondent No. 3 the amount of maintenance as ordered by the Court below.

2. Petitioner and respondent No. 3 are Hindus by religion. When petitioner was about 7 years and respondent No. 3 was about 4 years, they had been tied with wedlock on 21-4-1969 at village Boriakala, Tehsil and District Raipur. After a lapse of around 23 years from the date of marriage, respondent No. 3 filed an application on 6-7-1992 against the petitioner claiming maintenance of Rs. 1000/- per month, before the Court of Judicial Magistrate, 1st Class, Raipur u/s 125 of the Cr.P.C. (henceforth "the code"). Petitioner contested it on various ground inter alia, with the specific ground that the marriage was not solemnized in accordance with the mandatory provisions of Section 5 of the Hindu Marriage Act 1955 (henceforth "the Act 1955"), and it is against the provisions of Child Marriage Restraint Act 1929 (henceforth "the Act 1929"). Learned Magistrate, after enquiry and hearing to the parties, passed an order on 6-7-2002 and thereby directed the petitioner to make payment of amount of Rs. 750/- per month to respondent No. 3 towards her maintenance. Feeling aggrieved, petitioner preferred a Criminal Revision bearing No. 315/2002. Learned 4th Additional Sessions Judge Raipur exercising revisional jurisdiction after hearing the parties, dismissed the revision vide order dated 4-7-2002 (sic).

3. Both those orders are the root cause for compelling the petitioner to institute this petition, who averred that so far criteria of age as prescribed u/s 5 of the Act 1955, petitioner and respondent No. 3 were not within the age group; therefore, both of them did not acquire any legally enforceable obligation towards each other. The Act 1929 also prescribes age group; below that age group, there is a prohibition of marriage, petitioner and respondent No. 3 were below the age group; therefore, their marriage was also hit by the provisions of Act 1929. State authorities had an obligation to restrain the solemnization of child marriage and to give effect to the provisions of Act 1929, but, they utterly failed to discharge their duties; had the State Authorities took effective steps for prohibition of child marriage, petitioner would have been saved from marrying respondent No. 3. Even laches on the part of State authorities allowed so many couples to live even after a marriage tie that is in contravention of the Act 1929. In accordance with the provisions in Section 13(2)(iv) of the Act 1955, wife, who contracted the marriage under the age of 15 years has been permitted to repudiate her marriage whether consummated or not after attaining the age of 15 years, but husband has not been allowed such a right to repudiate the marriage. This discrimination on the ground of sex has been made between the petitioner and respondent No. 3 and such discrimination is not permissible within the scope of Article 15 of the Constitution of India.

4. From the facts, stated above and the relief prayed for, it is conspicuous, that in a single petition petitioner has claimed the reliefs firstly i.e. against his wife, secondly against the State authorities and thirdly against law makers. For the first relief, petitioner has right to challenge the orders passed by the Judicial Magistrate 1st Class and the Additional Sessions Judge for which independent cause of action arose. Second relief is in the nature of public interest i.e. against State authorities for not performing obligations in appropriate manner for which time to time as and when State Authorities did not perform their duties in accordance with law cause of action arose and thirdly cause of action arose when Section 13(2)(iv) of the Act 1955 came into existence. All the reliefs are distinct and for those reliefs, High Court is required to invoke its distinct jurisdiction i.e. provided in accordance with criminal law, marriage law and Constitution. We are afraid to accept that such a jumbled reliefs could be sought by a single petition.

5. Learned Counsel for the petitioner contended that while incorporating amendment in the Act 1955 by marriage law amendment Act and providing following amendments, discrimination has been caused, and that being the discrimination on the ground of sex, cannot be allowed to remain in the statute.

Section 13(2)(iv) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground:

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of 15 years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation :-- this clause applies whether the marriage was solemnized before or after the commencement of the Marriage laws (Amendment) Act, 1976 (68 of 1976)

6. On the oppugnation, learned Counsel for the opposite side contended that since Article 15(3) of the Constitution of India itself promotes to enact such a provision. Therefore, the amendment does not suffer from any vires. Article 15(3) of the Constitution of India reads as below

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

7. Hon"ble Apex Court in the matters of Partap Singh Vs. Union of India (UOI) and Others, ; Toguru Sudhakar Reddy and another Vs. The Govt. of Andhra Pradesh and others, and Government of Andhra Pradesh v. P.S. Vijay Kumar and Anr. AIR 1995 SCC 1648 also approved State competence to make special provisions for women. In the instant case, for the benefit of women, special provisions have been enacted and those provisions squarely covered within the scope of Article 15(3) of the Constitution of India. Therefore, the whole amendment is legal and not ultra vires,

8. Learned Counsel for the petitioner contended that the Act 1929 prohibits marriage below the prescribed age, and when petitioner and respondent No. 3

were married, at that time, the age group was 18 and 15. Petitioner was below 18 years and respondent No. 3 was below 15 years. Had the State authorities prevented the marriage, the petitioner would not have been compelled now, to pay maintenance to respondent No. 3, set apart, segment of the prohibited marriage would not have been faced consequences of child marriage. On the other hand, learned Counsel for the State submits that the Act 1929 prescribed modes for injunction, taking cognizance of offence, making report punishment etc., and State authorities are bound to implement those provisions in accordance with law. State authorities wilfully did not allow child marriages to be performed. Petitioner failed to demonstrate instances where, despite any person being approached the State authorities, they wilfully disobeying the law denied redressal to him. No doubt, this is a special enactment and non-compliance of the same gives rise to a number of evils, therefore, if, for want of sufficient provisions in the enactment, State is unable to check the evil. State should ensure to come through it by appropriate legislation, or by making other legal devices.

9. Learned Counsel for the petitioner further contended that he was married to respondent No. 3 in violation of the Act 1955 and 1929; therefore, he cannot be compelled to pay maintenance and it is the State who should maintain respondent No. 3. On the other hand, it is contended by the State that till marriage is valid and requirements for providing maintenance as envisaged u/s 125 of the "Code" exists, petitioner is bound to pay maintenance and the State cannot be directed to maintain petitioner's wife. Petitioner, who did not take care for so many years when asked to maintain his wife by legal order by legal forum, has approached this Court to escape it that too on those ground, which are not available to him for avoiding payment of maintenance to his own wife.

10. Learned Counsel for the petitioner relying on judgment rendered in M.S. Grewal and Another Vs. Deep Chand Sood and Others, . contended that Courts have social obligation to respond the need of people, but, in the instant case by inaction of the State social reforms are disrupted. Therefore, Court must invoke its jurisdiction by stepping in Article 226 of the Constitution of India. On the other hand, it is contended that the said case law does not cover the present case. We have gone through it. We do not find any exigency involved in the instant case, so as to require this Court to step in under Article 226 of the Constitution for issuing any direction.

11. In the result, the petition being devoid of merit, it is liable to be dismissed, and is accordingly dismissed. No costs.