
(2006) 02 UK CK 0033

In the Uttarakhand High Court

Case No : Writ Petition No. 500 of 2001 (S/S)

Santosh Kumar Jaiswal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 498A, 504, 506

Citation : (2006) 2 UC 1218

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Sri P.S. Adhikari and Sri B.S. Adhikari, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble Rajesh Tandon, J.—Heard Sri P.S. Adhikari, Sr. Advocate assisted by Sri B.S. Adhikari, Advocate for the Petitioner and Standing Counsel for Respondents.

2. By the present writ petition, the Petitioner has prayed for a writ of certiorari quashing the order dated 11-4-2000, annexure 1 to the writ petition and further quashing the charge sheet dated 29-4-2000 annexure-2 to the writ petition.

3. Briefly stated the Petitioner at the relevant time was posted as Sub Inspector in Civil Police. He was married with Mamta Jaiswal on 12-11-1987. After three years of marriage, when the wife of the Petitioner was not able to conceive a child, he got her medically examined and it was found that there was some problem with fallopian tube of the lady and doctor advised operation. The wife of the Petitioner was not ready for operation and due to this reason relations between the parties had become strained. The Petitioner filed a suit u/s 13 of the Hindu Marriage Act for divorce in the Court of Civil Judge, Haridwar, which was contested by his wife. In her counter claim his wife prayed for restitution of conjugal rights and for refund of Stridhan etc. She also alleged that the Petitioner had illicit relations with S.I. Km. Kamlesh Sharma.

4. The trial Court dismissed the suit of the Petitioner vide judgment and decree dated 8-10-1998 against which the Petitioner filed a Civil Appeal No. 68 of 1998 before the District Judge, Haridwar which was also dismissed vide order dated 25-2-2000. The Petitioner filed second appeal before Allahabad High Court, according to the Petitioner which is still pending.

5. The wife of the Petitioner made a complaint to the higher authority of the Petitioner alleging that the Petitioner had illicit relation to one Km. Kamlesh Sharma who was also posted as Sub Inspector in Civil Police. The Senior Superintendent of Police entrusted inquiry to the Additional Superintendent of Police, Dehradun under U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991 and directed him to submit report within 45 days vide order dated 11-4-2000. The Additional Superintendent of Police framed charge against the Petitioner on 29-9-2000. Feeling aggrieved the Petitioner filed the present writ petition.

6. The charge framed against the Petitioner in the departmental enquiry was as under:

7. The contention of the Petitioner is that the Civil Court in Original Suit No. 108 of 1996 u/s 13 of the Hindu Marriage Act has not found any illicit relationship in between Km. Kamlesh Sharma and the Petitioner and the issue was finally decided, therefore, departmental inquiry cannot be proceeded on the similar charge.

8. Civil Judge (S.D.), Haridwar in Original Suit No. 108 of 1996 has framed as many as six issues. Issue No. 2 was framed regarding illicit relations in between Kamlesh Sharma and the Petitioner. Issue No. 2 is quoted below:

9. Both the parties adduced evidence in support of their respective allegations and the Civil Judge (Senior Division) has given his findings on this issue vide judgment and decree dated 8-10-1998 as under:

10. The District Judge, Haridwar in Civil Appeal No. 88 of 1998 vide judgment and order dated 25-2-2000 also confirmed the findings of the trial court on issue No. 2. He held as under:

11. Thus from the findings recorded by the trial Court as well as by the appellate Court it has become clear that the Petitioner has neither remarried Km. Kamlesh Sharma nor there was illicit relationship between them. There is no evidence at all that the Petitioner was living in adultery with Km. Kamlesh Sharma.

12. Under Rule 29 of the U.P. Government Servants Conduct Rules, 1956 only bigamous marriage is a misconduct punishable in the departmental inquiry. Rule 29 reads as under:

29. Bigamous marriages- (1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible

under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government.

13. In the charge framed against the Petitioner in the departmental enquiry there is no allegation that the Petitioner has conducted second marriage and he is guilty of bigamy under Rule 29 of U.P. Government Servants Conduct Rules 1956. The charge against the Petitioner is that during his posting at Haridwar in the year 1992 to 1996 there were adulterous relationship in between the Petitioner and Km. Kamlesh Sharma who was also posted as Sub Inspector there. There is no allegation that due to the alleged adulterous relationship with Km. Kamlesh Sharma the Petitioner had become negligent in discharge of his official duty. There is even no whisper of negligence in discharge of official duty by the Petitioner in the charge sheet filed against the Petitioner.

14. The Petitioner filed a supplementary affidavit in this Court and has stated that a criminal case was registered against him u/s 498-A, 504 and 506 I.P.C. before the Chief Judicial Magistrate, Dehradun. In that case his wife was examined as prosecution witness and she disowned her allegation of illicit relation of the Petitioner with Km. Kamlesh Sharma. She also stated in her statement that she filed the complaint against the Petitioner on persuasion by other people. The Petitioner filed copy of the statement of his wife alongwith the copy of judgment and order dated 11-10-2004 passed by the Chief Judicial Magistrate, Dehradun as annexure SA-1 and SA-2 with the writ petition.

15. Thus the Civil Court as well as the criminal court has given concurrent findings regarding alleged illicit relation of the Petitioner with Km. Kamlesh Sharma. Departmental enquiry is a quasi-judicial proceedings and finding of Civil Court is binding for criminal as well as quasi-judicial proceedings as well. Smt. Mamta Jaiswal, who is the wife of the Petitioner, on whose complaint departmental as well as criminal proceedings were initiated, has become hostile and declined to support her allegations in the Court of Chief Judicial Magistrate which resulted in the acquittal of the Petitioner. The same fate will be the departmental proceedings, if permitted to be continued.

16. Sri P.S. Adhikari, Senior Advocate, counsel for the Petitioner has submitted that the relations of the Petitioner with his wife were become strained in the year 1996 as the wife was not able to conceive a child but since then more than ten years have elapsed and now they are living happily and have two children.

17. In view of the observations made above, writ petition is allowed. A writ of certiorari is issued quashing the orders dated 11-4-2000 and 29-4-2000, (annexures 1 & 2 to the writ petition) passed by Respondent No. 2 and 3 respectively.

18. No order as to costs.