

(2005) 11 AHC CK 0213

In the Allahabad High Court

Case No : Civil Miscellaneous Contempt Petition No. 2960 of 2002

Shail

APPELLANT

Vs

Manoj Kumar Yadav, D.I.G. and The Family Court

RESPONDENT

Date of Decision : 30-11-2005

Acts Referred:

Constitution of India, 1950 — Article 227
Contempt of Courts Act, 1971 — Section 12, 20
Criminal Procedure Code, 1973 (CrPC) — Section 125, 482
Family Courts Act, 1984 — Section 11, 12, 21, 9
Penal Code, 1860 (IPC) — Section 328, 376

Citation : (2005) 11 AHC CK 0213

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; S.M.A. Kazmi, R.G. Padia, Public Prosecutor Yadav, S.K. Garg, R.B. Pradhan, Prem Prakash, Ram Singh, C.B. Yadav, P. Padia and S.C., for the Respondent

Judgement

Sunil Ambwani, J.—This contempt petition was filed on 18.11.2002, impleading Shri Manoj Kumar Yadav, a Head Constable in civil police posted at Jalaun (now under suspension), D.I.G., Head Quarter, Allahabad and Family Court Kanpur Nagar with the allegations that the Family Court has not complied with the order dated 4.9.2002, to decide her application u/s 125 Cr.P.C. for maintenance against her husband Shri Manoj Kumar Yadav By the order dated 4.9.2002 in Criminal Misc. Application No. 7688/2002, the Court directed the Family Judge, Kanpur Nagar to decide case No. 535/2002 u/s 125 Cr.P.C, within four month from the date of presentation of the certified copy of the order. On 3.12.2003 following orders were passed:

This contempt petition tells a pathetic story of the functioning of Family Courts in the State of Uttar Pradesh. The facts giving rise to this contempt-petition demonstrate the manner in which Family Judges are, dealing with the sensitive issues arising before them. The object and purpose of the establishment of the

family Courts was to promote conciliation in, and secure speedy settlement of disputes, relating to marriage and family affairs and for matters connected therewith. The law commission in its 59th report (1994) stressed that in dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts of settlement before commencement of the trial. The 1976 amendment to CPC providing for special procedure in such matters concerning the family, did not achieve the desired result. The Courts continued to deal with family disputes in the same manner as other civil matters and the same adversary approach prevailed.

The Family Court Act 1984 was, enacted to set up for speedy settlement of family disputes. The reliefs concerning properties, declaration as to legitimacy in person, guardianship of a person are custody of a manner and maintenance including proceedings under Chapter- IX of the code of criminal procedure are entrusted to these special Courts, It has been made obligatory u/s 9 on the Family Court to make efforts for settlement. Section 11 provides that proceedings may be held in camera if the family Courts desires and shall be so held if either party so desires. The assistance of medical and family welfare experts can be taken u/s 12, or such persons (preferably a woman was available), including professional services for assisting the Family Court in discharging the functions imposed by the Act, The facts and circumstances in which this matter arose, giving rise to these contempt proceedings, and the manner the Family Court dealt with the matter completely frustrates, the object and purpose of the Act.

The Family Courts Act 1984 was enforced in Uttar Pradesh by notification No. 79/1/86-145 dated 4.9.1986 w.e.f. 2.10.1986. It is significant to note here that the High Court has not made the Family Courts Rules as provided u/s 21 of the Act so far, and that all the family Court in the State have devised procedures for its functioning, adapting almost the same old adversarial approach to the issues arising before these Courts.

The petitioner Shail appeared in person. In the entire proceedings, and even in this Court, she has not sought any professional help. The applicant belongs to a poor back ground, and is at present employed as. Class IV employee in a school. She is a weak, frail but persuasive and full of Courtesy to Court. She is not aware of technicalities of law but is quite confident pleading her matters. I did not find her absent on any dates fixed in the matter when the matter came up before me. A first information report u/s 328/376 IPC.-P.S. Naka Hindola, Lucknow, was lodged registering case crime No. 55/2002, by the applicant alleging that she was raped by Sri Manoj Kumar Yadav, Head Constable on 18. 1.2002 at Apsara Hotel, Police Station Naka Hindola Lucknow. The applicant alleges that accused Sri Manoj Kumar Yadav, thereafter to avoid his prosecution persuaded the applicant for solemnizing marriage with him. On. his persuasion and in order to save herself from social disgrace, and stigma on her character, she agreed to

marry him. The marriage took place on 20.7.2002. After marriage, Sri Manoj Kumar Yadav deserted her. He was not prepared to fulfill the marital obligations and did not take care of the applicant. She was left in destitution without any help from him. She filed an application u/s 125 Cr.P.C. for maintenance from her husband Sri Manoj Kumar Yadav before the family Court Kanpur Nagar, The proceedings were pending. The applicant filed a Criminal Misc. Application No. 7688 of 2002, which was disposed of with the following order;

Supplementary affidavit is taken on record. Heard Smt. Shall, applicant appeared in person and learned AGA.

This application u/s 482 Cr.P.C. has been filed with a prayer to issue a direction to the judge family Court Kanpur Nagar to decide the case of the application No. 535 of 2002 of the applicant expeditiously. It is further prayed that the Judge, Family Court be directed to dispose of the application of the applicant for interim mandamus, It is stated by Smt. Shail that she is unable to maintain herself and her husband, opposite party No. 3 Sri Manoj Kumar Yadav is Head Constable in U.P. Police. As such, an interim mandamus be awarded to her.

After pursuing the entire material on record, this application is finally disposed of with a direction to the Judge, Family Court Kanpur Nagar to dispose of Case No. 535 of 2002 u/s 125 Cr.P.C. within a period of four months from the date of presentation of the certified copy of the order.

With the aforesaid direction this application is disposed of.

Dt. 4.9.2002

Sd/- Hon. V.K. Chaturvedi, J.

She filed another criminal miscellaneous application No. 10073 of 2003 u/s 482 Cr.P.C. before this Court in which by an order dated 17.1.2003, this Court gave following direction;

This case was earlier listed on 16.1.2003 but the applicant appearing in person told that she has not the sufficient means to come on the next date from Kanpur. Request has therefore been made that here case be taken today and she be permitted to appear in person. She has also been provided assistance of Amicus Curie, On her request this application is taken up today.

This application u/s 482 of the Code of Criminal Procedure (which is hereinafter called as the I Code") has been brought for issuing appropriate direction to this Court of IV Additional Chief Judicial Magistrate, Lucknow for expediting the disposal of the criminal case I crime No. 55 of 2002} under Sections 328, 376 I.P.C. police station Naka Hindola, Lucknow. It is said that the applicant was raped by Sri Manoj Kumar Yadav, Head Constable on 18.1.2002 at Apsara Hotel Police Station Naka, Lucknow. Report of this incident was lodged by the applicant at the police station which was registered at crime No. 55 of 2002 at that police station. Sri Manoj Kumar Yadav thereafter persuaded the applicant for

solemnizing marriage so as to avoid his further prosecution. On his persuasion she agreed to marry with the applicant on 20.7.2002. After marriage Sri. Manoj Kumar Yadav again deserted her. He was not prepared to fulfill his obligations as husband and was not, even taking care of the applicant. She was left as destitute without any money. Resultantly she has to bring the proceedings u/s 125 of the Code before the Family Court, Kanpur Nagar. Those, proceedings are still pending. She has not been paid any money by Sri Manoj Kumar Yadav. At this stage the prayer is confined that her case which is pending before the Family Court, Kanpur Nagar, be expedited so that she may not suffer agony any longer.

Looking to the facts and circumstances of the case, Principal Judge, Family Court, Kanpur Nagar is directed to expedite the disposal of the maintenance proceedings under section 125 of the Code, pending before him preferably within a period of four months.

With these observations this application is finally disposed of.

Dt.17, January, 2003

Sd/- Hon. S.S. Kulshrestha, J.

This contempt petition was filed by applicant u/s 12 of the Contempt Courts Act on 18.11.2002 against Manoj Kumar Yadav, D.I.G. Headquarters Allahabad, and Family Courts Kanpur Nagar alleging that she filed a certified copy of the order dated 4.9.2002 in Family Court, Kanpur Nagar, but the order was not complied with within time and that warrants be issued to the opposite parties. On 19.11.2002, this Court directed her to file a supplementary affidavit and that on 11.2.2003 following order was passed on the contempt petition;

Supplementary affidavit filed today is taken on record.

Non-compliance of the order dated 4.9.2002 passed in Crl. Misc. Application No. 7688 of 2002 is alleged in the contempt petition.

By the aforesaid order dated 4.9.2002 passed in Crl. Misc. Application No. 7688 of 2002 respondent No. 3 Judge Family Court Kanpur Nagar was directed to decide case No. 535 of 2002 u/s 125 Cr.P.C. within a period of four months from the date of representation of the certified copy of the order.

Respondent No. 3 Judicial Officer and is a part of the administration of justice. It is expected that every person will give due regard to the orders of the Court. If for some reason he was unable to decide the case within the time fixed by this Court he had to approach this Court and obtain further time. Every citizen of this country has a right to legal remedy for which he approaches Courts and if any direction is issued; by this Court the same must be complied with within time allowed by the Court. It does not depend on the sweet will of any person to ignore any part of the order. Non-compliance of the order is clear contempt. A division bench of this Court in case of P.N. Srivastava v. State reported in 199 (1)

Local Bodies and Educational Service Reporter page 742 (Lucknow Bench) held that:

The direction issued by the High Court of Supreme Court in its decision carry equal importance as that of a statute or Rules and hence directions are required to be complied with and disobedience amounts to contempt as such the decision of Court partakes the position of statutory rule.

Relying on the case of All India Reporter Karamchari Sangh and Ors. v. All India Reporters Ltd. And Ors. AIR 1988 Supp SCC 472 the Court further held:

In view of the decision of this Court dated 27.8.1996 the opposite parties had no option but to complete the enquiry within four months (time allowed by the Court in that case). It further implies that in case opposite parties were unable to do so they could approach the Court and seek further extension of time. In M.L. Sachdev Vs. Union of India and another, the apex Court held that Government under duty to comply with the order within time set by Court and in any case if it was not possible to comply with the order within the time for whatsoever reason then the only course open was to seek extension of time or further instructions (also see State of Bihar v. Subhash Singh 1997 (1) SC 430)

From the above decisions it is apparent that the directions of the Court are else as good as statutory rules. The parties to whom the direction is issued have no care to carry out the orders of the Court.

Whenever the Court uses the words "preferably" as far as possible, expeditiously, at an early date" in its judgment and order, the direction is to be complied with within the time allowed by the Court, in the order and judgment. Even Section 20 of the Contempt of Courts Act provides limitation for initiating contempt proceedings if the order is not obeyed by the contemnor, hence it is imperative that the order of the Court in which even no time is fixed are to be faithfully complied with in letter and spirit within a reasonable time, say four months from the date of the communication of the order. This would be in order to enable the parties to come before the Court within a reasonable time for initiation of contempt proceedings, if they choose to file the same. Sometimes plea of filing of appeals do not give any handle to the authorities/ officers for not complying with the orders of the Court in letter and spirit when no interim orders are granted by the appellate Court staying the order impugned.

The respondent (s) did not comply with the order within the time given by this Court nor applied for extension of time. The time has expired and the respondent has taken the order very lightly.

Issue notice to respondent No. 3 to show cause within one month why contempt proceedings may not be drawn against him for deliberate and willful disobedience of the orders of this Court dated 4.9.2002 passed in criminal Misc. Application No. 7688 of 2002.

However, in view of the guidelines given by the Hon"ble Supreme Court in case

of Suresh Chandra Poddar 2007 (1) SC 766, I give one more opportunity to respondent No. 3 to comply with the order dated 4.9.2002 passed by this Court in Criminal Miscellaneous Application No. 7688 of 2002 within a period of one month. In case the said order is complied with he shall no he personally present. In case the said order is not complied with, he shall he personally present on the date fixed.

List after one month.

Dt 11.2.2003

Sd/- Hon. Rakesh Tiwari, J.

That on 28.3.2003, the registry of "this Court received a letter from Sri Vishal Chandra Saxena, Principal Judge, Family Court Kanpur Nagar No. 40/03/ Family Court Kanpur Nagar dated 25.3.2003, The Family Court informed this Court that applicant filed a case u/s 125 Cr.P.C. on, 27.7.2002 alongwith a copy of the order dated 17.7.2002 in Civil Misc. Writ Petition No. 10] 56 of 2002. By this order, the High Court found that it was not possible to give reliefs claimed in the writ Petition as the allegations made by her, required investigation from the competent authority, and in the absence of any evidence no conclusion can be drawn. The applicant was directed to make complaint to the appropriate authorities. The Munsarim raised objections on the application u/s 125 Cr.P.C. On 27. 7.2002 stating that she has not stated anywhere in the application and affidavit as to how (he marriage "was performed between her "and Manoj Kumar Yadav, and that the documents annexed with the application and the order dated 17.7.2003 does not establish that she is legally married, for which no proof was given alongwith her application. The case was not registered and since the Family Court was lying vacant the Civil Judge, Senior Division was looking after the work.. The matter was fixed on 12.8.2002 for hearing on 24.8.2003 and thereafter on 13.9.2002. On that date petitioner/applicant produced a Copy of the order of the High Court dated 4.9.2002 in which the case number in the Family Court was shown as case No. 535 of 2002, to be decided in four months. At that time both the Family Courts were lying vacant and thus the matter was fixed on 28.9.2002, The concerned clerk registered her application as Crl. Case No. is 108 of 2002 Thereafter the matter was fixed on 7.11.2002. From 28.9.2002 to 1.12.2002 the jurisdiction of Kanpurnagar was transferred to District Fatehpur. The Civil Judge, Senior Division Fatehpur/Incharge Officer found that the application u/s 125 has not been registered. On 7."1.2002, he gave applicant an opportunity, to file objections and fixed the t matter on (0.12.2002. The applicant did not remove the defects; she filed two applications on" 11.11.2003 and appeared in person before the District Judge Fatehpur. After hearing her, an order was passed by -District Judge, Fafehpur that until the defeats are removed, the hearing was not possible. Sri Vishal Chandra Saxena, further, reported to this Court that applicant resorted to incorrect facts before the High Court and gave a wrong case number. He took over charge as Principal Judge Family Court on 28.10.2002. On 10. 12.2002 when the matter was put up

before him he found that case No. 535 of 2002 u/s 125 Cr.P.C. is between Smt. Akila Kanwar and Mohammad wasim Khan. The applicant did not appear on 10.12.2002, and did not file any objections to the office report. The case was thus fixed for 16.1.2003. On that date the applicant again did not appear and the matter was fixed on 26.4.2003. He informed this Court in his report that he has not committed any contempt and that in fact the applicant has not removed defects. She filed the application before the High Court, with wrong case number and that the contempt notice be discharged.

The applicant filed an application during summer vacations on which the matter was nominated by Hon"ble Senior location Judge on 2.6.2003 to be heard by me. I found that the simple matter of deciding application u/s 125 Cr.P.C. has been made complicated by Principal Judge Family Court Kanpur Nagar, The application was disposed of with following directions:

I further find that the Principal Judge, Family Court Kanpur Nagar instead of helping the petitioner and getting the defects in her petition cured has tried to put the blame upon her. A lady appearing to person and claiming maintenance for destitution u/s 125 of Cr.P.C. has to be given a helping hand, and a healing touch by the Court. Instead of providing necessary assistance, the Principal Judge, Family Court, Kanpur Nagar, acting against the object of establishment of family Courts "and has tried to put the blame upon her. He has also casted aspersions upon her for providing wrong case number to the Court It was apparently a, mistake and could have been easily ignored by the Family Court. This Court takes exception to the report of the Family Judge by which he has sent the matter back to the Court and is trying to unnecessary delay the proceeding and harasses the applicant.

In the aforesaid circumstances, I direct Special Judge. Family Court to provide all possible assistance to the applicant to cure the defects in her application, and to pass necessary orders as expeditiously as possible and preferably within one month. He is reminded on the fact that he is impleaded as a contemnor, and has to purge the contempt instead of aggravating the contemptuous actions.

List on 22.7.2003

Dt. 3.6.2003

Sd/- Hon. Sunil Ambwani, J.

On 12.9.2003, the matter again came up before me. The applicant informed the Court that in pursuance of the order dated 3,6.2003, the Family Court has issued summons, and assured her that in case her husband does not appear, the proceeding will be taken ex pane against him. She submitted that inspite affixing dates nothing has been does in the matter. On this mention, I directed the Family Court to conclude the matter as expeditiously as possible, within intimation to the Court and fixed the matter on 20.10.2003.

On 29.10.2003, the applicant filed an application complaining that inspite of

aforesaid directions, the Principal Judge Family Court has not decided the matter so far. She filed a copy of the order dated 28.7.2003 passed by Family Judge in which it was stated that in spite of notices sent to Manoj Kumar Yadav and thereafter sending notices through the Director General of Police, he has not appeared and thus the matter was directed to proceed ex-parte against her husband. This Court took notice of the fact that in spite of repeated directions, the Family Judge is not deciding the matter. The applicant pleaded that she is on the verge of destitution, and that her husband who was earlier accused of rape has deserted her," and is was not prepared to fulfill his obligations as husband and was not even taking care of the applicant. She was left as destitute without any money. She informed the Court that the Family Judge makes uncalled comments on her appearance, and takes pleasure on asking unnecessary questions. On these allegations Sri Vishal Chandra Saxena was required to appear before this Court on 17.11.2003. Following observations were made while summoning] him to this Court;

It is matter of serious concern that a Judicial Officer/ Subordinate to the Court, is taking the directions casually. This Court has repeatedly requested him and advised him to expedite the matter. Once the orders passed by this Court came to his knowledge, it was his duty to pass necessary orders expeditiously and in accordance with law.

On 17.11.2003 Sri Vishal Chandra Saxena, " Principal Judge, Family Court Kanpur Nagar (now District Judge J.P. Nagar) appeared before this Court. Sri O.P. Singh, Principal Judge, Family Court, Kanpur Nagar was also present and had brought the records of case No. 708/2003, u/s 125 Cr.P.C. along with him. Sri Saxena informed the Court that the Application u/s 125 Cr.P.C. was finally decided by him on 5.8.2003. On the "request made by Sri S.K. Garg, learned standing Counsel, the matter was taken up in chamber at 1.30 PM.

I have heard applicant in person and the explanation given by Sri Vishal Chandra Saxena. The applicant was anguished, hurt and was in tears in explaining the conduct of the Family Judge. She stated that whenever dates were fixed, he called and heard only the clerks presenting the matter and went on fixing dates. She was taken by surprise and was not aware of order dated 5.8.2003 by which her application was dismissed. She questioned, the manner in which she has been dealt by the Family Court. Initially she was harassed for not giving correct details of her marriage and fixing dates after dates. She stated that in order to avoid compliance her application number was changed without informing her. The clerks in the office of Family Judge treated her shabbily, and told her that she will get nothing from the Court. She also questioned the authority of Family Court in disbelieving her marriage and rejecting her application for maintenance in spite of the fact that the matter was proceeding ex-parte against her husband. She submitted that if the Family Court was not satisfied with her affidavit, she should have been given a; chance to establish her marriage. She accused the Family Judge to have questioned her marriage and thereby putting her to disrepute in

society. According to her no one disputed the marriage and in] the ex-parte proceedings, the Family Judge had no right and authority to disbelieve her marriage and to take away her rights against the person who had raped her and thereafter married her.

Sri Vishal Chandra Saxena explained that in proceedings u/s 125 Cr.P.C. the wife must" establish the marriage. There was no pleading of the date of marriage or the manner in which the marriage was performed. The applicant absented on 5.8.2003 and thus he had no option but to dismiss the application.

The order dated 5.8.2003 shows that the matter was proceeding ex-parte and that her husband had not appeared. The family Court proceeded, to examine" the affidavit and found that whereas she had pleaded that on 18.1. 2003 after the incident she had accepted the opposite party as her husband and was discharging duties of wife and was given some amount towards maintenance, The Family Judge found that there was no pleading as to how her marriage was solemnized. Since she had not produced any documentary proof or evidence of her marriage, the Family Court found that she is not legally married wife of the opposite party. The Family Judge thereafter recorded the observations of this Court in Writ Petition which was decided on 17.7.2002, commented on her conduct of giving wrong Case number to the High Court and the fact that she made a mention to the Family Court on 10.7.2003 to adjourn the proceedings for one hour as she has to take leave from Juhari Devi College from where she is serving. The Family Court observed that the applicant is serving in Juhari Devi College and rejected the application.

This Court takes strong objection to the manner in which the Family Court decided the matter. The statement given by Sri Vishal Chandra Saxena that the applicant absented herself is doubtful. The applicant has been diligently pursuing the proceedings. She has appeared in High Court on several occasions and was always present in the Court. Her manners and demeanor in Court demonstrated her desperation and destitution. Almost all the orders passed by this Court were ignored by the Family Judge. He was aware of the direction of this Court to decide the matter within four months. In spite of the fact that the applicant kept on appearing before him and sought compliance of the directions could not persuade the Family Judge to give her even a brief hearing. In spite of the fact that the matter was proceeding ex parte, he chose to dismiss the application u/s 125 Cr.P.C. on the ground that she has not been able to establish her marriage. There were clear and specific averments in her application supported by her affidavit that Sri Manoj Kumar Yadav is her husband. The opposite party did not appear in the matter and that the matter proceeded, ex parte. In spite of these glaring facts and the object and the purpose of maintenance u/s 125 Cr.P.C. as well as Family Court Act 1984, the District Judge chose to reject the application u/s 125 Cr.P.C. in her absence. This Court is deeply pained and anguished in the manner the applicant armed with four orders of this Court was dealt with by the Family Judge. Sri Vishal Chandra Saxena, the then Family Judge, Kanpur Nagar

failed to discharge his duties as a Family Court Judge and appears to be prejudiced by the persistence of the applicant and the orders passed by this Court requesting him to expedite the matter. I find, that the explanation given by Sri Saxena for delay in deciding the matter, cannot be accepted and reprimanded him for his conduct.

After the order was reserved the applicant moved two applications dated 20.11.2003, to transfer the matter. Both the applications are rejected.

The order rejecting the application u/s 125 dated 5.8.2003, has concluded the proceedings. The Court, however, finds that Sri Vishal Chandra Saxena, District Judge, U.P. Nagar was negligent in discharge of his duties in deciding the matter within the time fixed by this Court, on 4.9.2002, which was filed on record by the applicant in Family Court on 13.9.2002. He took notice of the order on 10.12.2002 but did not care to decide the matter, within reasonable time. The two reminders given to him by this Court on 11.2.2003 and thereafter on 3.6.2003 were ignored by him. He fixed long dates (on 16.1.2003n he fixed the matter for 26.4.2003) and proceeded ex-parte by his order dated 10.7.2003 and thereafter decided the matter on 5.8.2003 in the absence of the applicant who was appearing in person, without giving her any opportunity to give any evidence of her marriage.

The Courts subordinate to the High Court must carry out the orders. It was the duty of the Family Judge, Family Court, Kanpur Nagar to decide the matter within the time fixed by this Court. If he found that there was some procedural delay or that the proceedings cannot be concluded for any reason, if he should have applied to this Court for extension of time or at. least sent his report. He was reminded time and again to conclude the proceedings. Repeated orders of this Court dated 4.9.2002, 17.1.2003, 11.2.2003 and thereafter a warning given to him by order dated 3.6.2003 were ignored. The Family Judge proceeded to decide the matter as a routine matter without caring for the repeated orders issued by this Court. In the meantime, the applicant suffered harassment and humiliation by the officials in his Court. He could not even find a few minutes of his precious time to hear the applicant.

Sri Vishal Chandra Saxena, Principal Judge, Family Court Kanpur Nagar, now posted as District Judge, J.P. Nagar has clearly disobeyed the orders of this Court. He was heard in person on 17.1.2003. He did not choose to file any explanation in writing nor sought any time to give a reply. His submission in defence is not satisfactory. He had full knowledge of the directions of this Court dated 4.9.2002 and 17.1.2003. He submitted a report to the Court on 25.3.2003, making allegations against the applicant but did not decide the matter. He did not submit any further report, nor sought extension of time to decide the matter. Having proceeded ex parte, he chose to decide the matter in petitioner's absence. He has willfully and deliberately avoided the timely compliance of the orders. He has not only disobeyed the orders of this Court but has also acted in breach of the object and purpose of the Family Court's Act 1984. The registry

shall place this order before the Registrar General for information to the Court, to take appropriate action against Sri Vishal Chandra Saxena now District Judge, J.P. Nagar. The Contempt Petition is disposed off accordingly.

The petitioner filed SLP (Crl.) No. 585/2004 in the Supreme Court. The Supreme Court after hearing her in person passed an order on 29.3.2004, which is quoted as below:

The petitioner, appearing in-person, is heard on the question of grant of leave to appeal.

The facts of this case disclose an uncommon story. The petitioner was victim of an offence u/s 376 and 328 of Indian Penal Code at the hands of the respondent Manoj Kumar. To save himself from the peril of conviction, the respondent agreed to enter into a marriage with the petitioner and the petitioner too agreed to do so. The dream of happy married life soon turned out to be a nightmare as the petitioner was deserted by the respondent. On these averments the petitioner filed an application u/s 125 Cr.P.C. seeking maintenance before the Principal Judge, Family Court, Kanpur Nagar. The delay in disposal of the application persuaded the petitioner to knock the doors of the High Court. The High Court showed indulgence to the petitioner by directing the Family Court to expeditiously conclude the proceedings. As no substantial relief was forthcoming, the petitioner this time invoked the contempt jurisdiction of the High Court complaining of non-compliance with the orders of the High Court by the Presiding Judge, Family Court. By order dated 29.10.2003, the learned Judge of the High Court has expressed his anguish having found a prima facie case of non-compliance with the orders of the High Court having been made out. The High Court has directed summoning of the Presiding Judge of the Family Court to appear before the High Court in-person for the purpose of framing charges for willfully disobeying the orders of the High Court. The petitioner seeks leave to file appeal against the order of the High Court. Her grievance is that the initiation of the proceedings in contempt is alright but then she has been left still high and dry as no relief has been allowed to her. Appearing in-person, she submits that the High Court ought to have directed award of maintenance to her and ought to have seen to some relief being granted to her so as to save her from destitution.

In *Surya Dev Rai Vs. Ram Chander Rai and Others*, this Court has held that in exercise of power of superintendence conferred under Article 227 of the Constitution of India on the High Court, the High Court does have power to make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior Court or Tribunal as to the manner in which it would proceed hence and the High Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or Tribunal should have made. The jurisdiction under Article 227 of the Constitution is to be exercised sparingly and with care and caution, but is certainly one vesting in the High Court and meant to be exercised in appropriate cases. I'm convinced of the genuineness of the averments made by the petitioner and if convinced that a deserted woman,

repeatedly knocking at its doors, is on the verge of destitution the High Court itself has jurisdiction to direct suitable amount of maintenance being awarded and to secure compliance with its directions, if the same relief the subordinate Court has failed to grant or to enforce. May be that the High Court could have passed such order on the next date of hearing. But the petitioner has approached this Court probably impelled by impatience.

It is not necessary to grant leave to appeal against the order dated 29.10.2003 of the High Court. There is nothing in the impugned order by which the petitioner may feel aggrieved. Let the petitioner appear before the High Court on the next date of hearing and seek appropriate interim and urgent relief from the High Court which if deserving, we have no reason to assume why the High Court shall not grant to the petitioner.

The SLP be treated as disposed of.

Let a copy of this order be communicated to the High Court forthwith.

Sd/- (R.C. Lahoti, J.) Sd/- (Ashok Bhan, J.) Sd/- (Arun Kumar, J.)

New Delhi;

March 29, 2004.

The applicant moved an application along with the order of the Supreme Court and requested that the matter be heard for grant of maintenance. On this application the following order was passed:

Having regard to the entire facts and circumstances of the case and the order of Hon'ble Supreme Court dated 29.3.2004 the order of this Court dated 3.12.2002 to the extent that the Contempt application was disposed off is recalled and for reasons given in my order dated 3.12.2003, the operation of order of the Family Judge, Kanpur Nagar dated 5.8.2003 deciding and dismissing Criminal Case No. 108/2003 u/s 125 Cr. P.C. is stayed. Issue notice to Sri Manoj Kumar Yadav, Head Constable posted in district Jalaun at Urai through Senior Superintendent of Police, District Jalaun. Notices shall also be issued to Deputy Inspector General of Police, Headquarters, Allahabad. Both the notices shall enclose a copy of this order.

During the pendency of this proceeding, Sri Manoj Kumar Yadav is directed to pay a sum of Rs. 3000/- per month as interim maintenance to the applicant Smt. Shail and Rs. 25,000/- towards interim cost of these proceedings which have been drawn upto the Supreme Court. This amount shall be deducted by S.S.P. Jalaun from the salary of Sri Manoj Kumar Yadav to the extent that the deductions are not made beyond half of the amount of salary including allowances drawn by him, per month and shall be paid and remitted by S.S.P., Jalaun every month to Smt. Shail C/O PPN Girls Inter College Compound Pared, Kanpur Nagar (UP) by Bank Draft prepared in her favour. Copy of the order may be given to the petitioner appearing in person on payment of usual charges

within 24 hours.

2. The SSP Jalaun complied with the order and started remitting the amount of maintenance deduced out of the salary of Shri Manoj Kumar Yadav, to the applicant. There were some defaults on which it was reported by the SSP Jalaun that Shri Manoj Kumar Yadav has been suspended for his unauthorised absence from duties and that the applicant was being paid from making deductions from his suspension allowance.

3. Shri Manoj Kumar Yadav did not put in appearance in these proceedings. He absented from duties and was suspended. In spite of deductions made from his suspension allowance, and having full knowledge of these proceedings, for the reasons best known to him he avoided to appear in the matter. It was found that the entire proceedings were taken ex-parte against Manoj Kumar Yadav and that it was not possible to decide the matter in his absence. In the circumstances firstly bailable warrants were issued against him, which could not be served and thus non-bailable warrants were issued on 24.5.2005 to procure his attendance. Shri Amitabh Yash, Superintendent of Police, Jalaun at Orai filed his affidavit through the Chief Standing Counsel II on 12.7.2005 stating that in compliance of the Court's order Manoj Kumar Yadav was arrested by the police and produced before the Chief Judicial Magistrate, Jalaun, Urai, who had issued direction for sending him Jail and keeping him in police custody. He was detained in the District Jail on 24.6.2005 and shall be produced before the Court on 12.7.2005.

4. Shri Manoj Kumar Yadav entered appearance and applied for bail. He was granted bail after giving undertaking that he will appear in the proceedings on all subsequent dates. On the request of Shri Prem Prakash Yadav, learned Counsel for Shri Manoj Kumar Yadav the original record of the maintenance matter was summoned from the Family Court, Kanpur Nagar. In the supplementary affidavit of Shri Ram Niwas Yadav, the maternal uncle of Manoj Kumar Yadav and the rejoinder affidavit of Shri Manoj Kumar Yadav filed on 12.7.2005 and 19.9.2005, he has denied the allegations of rape, sexual harassment and the fact that any marriage was solemnized between him and the applicant. In para 9 of his rejoinder affidavit he states that he is married to Smt. Pushpa Devi in 1996, who is his legally wedded wife and also has a daughter aged about eight years from the wedlock, and has relied upon a copy of the Parivar Register of House No. 213 of Village Shobhavpur, Tehsil Dalmau, District Rai Bareilly. He further states that in the application dated 27.7.2002 filed by Shail in the Court of the Family Judge, Kanpur it was pleaded that the deponent should marry him otherwise the deponent should pay half his salary to her. He has also relied upon his Counter Affidavit filed in Civil Misc. Writ Petition No. 10156/2002 in which he has stated in paragraph 6 that Shri Sone Lal father of the applicant Shail was a Class IV employee in a college at Kanpur and had died in harness. Her mother is also a Class IV employee in P.P.N. Girls Enter College, Kanpur. The applicant Shail was appointed as Peon on compassionate ground in Zuhari Devi Girls Post Graduate College, Canal Road, Kanpur and used to live in the compound of P.P.N. Girls

Enter College in Kanpur with her mother and brother. She used to behave in an abnormal manner on which the residents of the compound made a representation to the Superintendent of Police, Kanpur Nagar, Nagar.

5. The Principal of Zuhari Devi Girls Post Graduate College, Canal Road, Kanpur also wrote a letter on 11.11.97 to S.S.P. Kanpur Nagar about her abnormal behaviour. The college issued charge sheet against the petitioner with several allegations and terminated her services on 30.4.98, after which she was appointed as Home Guard in Zila Commandant, Kanpur Nagar. There too her conduct was not found proper and her appointment was cancelled by Zila Commandant, Home Guard, Kanpur Nagar vide order dated 18.1.2000. The District Commandant, Home Guard, on her application for re-enlisting sent his comments to the Regional Commandant, Home Guard, Region Kanpur on 18.8.2000 stating that the petitioner is undisciplined lady and is habitual of making false complaints.

6. With regard to the incident of sexual harassment of rape dated 18.1.2002 at Lucknow it is stated by him in his affidavit in writ petition No. 10156/02 and annexed to the Supplementary Affidavit of Shri Ram Niwas Yadav, the maternal uncle of Shri Manoj Kumar Yadav that he never misbehaved with the petitioner nor reside in Apsara Hotel with her on 18.1.2002. He has relied upon the affidavit of Shri Rakesh Kumar, the Manager of the hotel and Shri Ravi Sharma in which it was clearly stated that there was no lady accompanying him on 18.1.2002, when he stayed in the hotel. The FIR lodged by the applicant Shail was investigated and it was found that the allegations leveled against the accused were false and bogus. It was also reported that the applicant is habitual in making false complaints. The final report dated 2.3.2002 in FIR No. 11/2002 in Crime No. 86/2002 u/s 376/328 IPC P.S. Naka, Lucknow is annexed with the copy of the counter affidavit.

7. Shri P.P. Yadav, the learned Counsel for Shri Manoj Kumar Yadav alleges that the applicant Shail has a doubtful character. She made false complaints and accusations against the respondent Shri Manoj Kumar Yadav in which a Final Report was submitted and was accepted by the Magistrate. She is still employed in Zuhari Devi Girls Post Graduate College, Canal Road, Kanpur. The entire proceedings taken by her are the figment of her imagination. It is contended by him that she had earlier filed a writ petition No. 10156/2002 with the prayer to issue a writ, order or direction in the nature of mandamus directing the respondent No. 3 (Manoj Kumar Yadav) to marry her and to maintain her as his wife. The Division Bench on 17.7.2002 after taking into account the Counter Affidavit, filed by Shri Manoj Kumar Yadav found that the writ petition is not the appropriate remedy as the allegations require a thorough investigation by the competent authority, and for the absence of the evidence and inquiry no conclusion could be drawn. The writ petition was disposed of with liberty to the petitioner to avail such remedies as are available to her under law.

8. It is contended by Shri Yadav that thereafter, the applicant filed case No.

108/02 for maintenance u/s 125 Cr.P.C. alleging in paragraph 1 and 2, that after the incident dated 18.1.2002 the applicant has accepted the opposite party as her husband and has been performing her duties as his wife. In the short application she alleged that the opposite party has stopped paying her maintenance and has made her destitute along with her mother. He is a Police Hawaldar drawing Rs. 8000/-, and that she is entitled to half his salary as maintenance. The contempt proceedings were dragged for a long period on account of absence of Shri Manoj Kumar Yadav. If he had put in appearance after receiving summons, this matter could have been disposed of long ago. This Court spent almost one year to secure his attendance for which bailable and non-bailable warrants were issued and that he was ultimately apprehended, arrested and produced before the Court. Shri Manoj Kumar Yadav abandoned his job as a Policeman, to avoid these proceedings. The Court draws adverse inference from his conduct and find that there is much to hide, and that that Shri Manoj Kumar Yadav absented, both from service and from appearing in this Court, for some oblique purposes.

9. Shri P.P. Yadav has relied upon *Savita Ben Somabhai Bhatiya v. State of Gujarat and Ors.* 1 (2005) DMC 503 SC in which it was held that the expression "wife" as per Code of Criminal Procedure refers only the legally married wife. In *Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another*, it was held that expression "wife" used in Section 125 of the Code should be interpreted to mean only a legally wedded wife. The word "wife" is not defined in the Code except indicating in the Explanation to Section 125 its inclusive character so as to cover a divorcee. The expression must be given the meaning in which it is understood in law applicable to the parties. The marriage of a woman in accordance with the Hindu rites with a man having living spouse in a complete nullity in the eye of law and she is therefore not entitled to the benefit of Section 125 of the Code or the Hindu Marriage Act. The fact that the husband was treating the applicant as his wife is inconsequential and there is no scope for enlarging its scope by introducing any artificial definition to include woman not lawfully married in the expression "wife".

10. I have already found in the order dated 3.12.2003 that the Family Court committed gross illegality in refusing maintenance in his order dated 5.8.2003. The husband had not put in appearance in the proceedings. The findings of the Family Judge that there was no pleading as to how the marriage was solemnized and there is no documentary proof of her marriage, were not called for in *ex parte* proceedings and that the Family Judge, held without any material on record that she was employed and thus she was not entitled to maintenance. Further the Family Judge was fully aware of the direction of this Court dated 4.9.2002 and 17.1.2003, and still did not decide the matter for a long period of time. It was only when he received the summons in this contempt petition that he decided the matter *ex parte* but recorded findings against the applicant. The powers under Article 227 of the Constitution of India, on the legal position explained by the Supreme Court in these very proceedings, are invoked to grant relief to the petitioner. The order of the Family Judge, as such, cannot be

sustained and must be set aside.

11. I have examined the Final Report submitted by the Investigating Officer in Crime No. 86/2002 u/s 376/328 IPC P.S. Naka, Lucknow with regard to the allegation of rape by the complainant Shail against Manoj Kumar Yadav, a serving Policemen at Kanpur. She made a complaint, registered at Police Station Naka, Sadar, District Lucknow on 10.3.2002 that while she was going for some personal work to railway station at Kanpur, Shri Manoj Kumar Yadav met her and persuaded her to go to Lucknow where he made her stay at Apsara Hotel. He offered cold drink to her in which he had put some intoxicating material and raped her while she was unconscious. Instead of investigating the incident, it was reported by the Investigating Officer that the complainant is a woman of doubtful character. He stated in his final report that the complainant was removed from service of Zuhari Devi Girls Post Graduate College, Canal Road, Kanpur, and the Department of Home Guard. Her stay in Apsara Hotel is not proved and that she has lodged the FIR as she had treated the accused as her husband in her dreams.

12. The Final Report of the investigation carried out by SSI, shows that instead of investigating the incident he led more emphasis, on the character of the applicant and the fact that she was terminated from service and was also removed as a Home Guard. The Investigating Officer did not try to verify the incident in which a Police Officer was involved, and tried to close the matter by making insinuations against the applicant. The investigation as such was incomplete and was wholly illegal. In the allegation of rape, the character of woman is hardly material. It is unfortunate that the police in the State considers a woman of doubtful character, to be an object of ridicule and draws adverse inferences against her while investigating the complaint of rape. The entire approach, puts a question mark on the competence and mentality of the Police Officers. It is apparent that in order to save a fellow Policeman, the Sub-Inspector of Police, tried to close the matter by making allegations against the complainant. The Final Report and the order accepting the Final Report also as such deserve to be set aside by this Court.

13. In the facts and the circumstances the contempt petition is disposed of, confirming the observation made in the order dated 3.12.2003, setting aside the order of the Family Court, Kanpur Nagar dated 5.8.2003 in case No. 108/02, and the Final Report dated 2.3.2002 in Crime No. 86/02 u/s 376/328 IPC Thana Naka, Lucknow and the order accepting the Final Report.

14. The record of the Family Court shall be sent back without any delay. The Family Court shall issue fresh notice to both the parties and decide the matter in accordance with law. The Police is also directed to complete the investigation of the case against Shri Manoj Kumar Yadav, as expeditiously as possible. The investigation shall be carried out by the officer not below the rank of Superintendent of Police.

15. Shri Manoj Kumar Yadav is discharged from this contempt proceedings. His

bail bonds are also discharged. It will, however, be open to the Police Department to keep him under suspension. The applicant Shall will continue to draw interim maintenance as directed earlier till the conclusion of the proceedings u/s 125 Cr.P.C.