

(1988) 02 AHC CK 0093
In the Allahabad High Court
Case No : Criminal Revision No. 1958 of 1984

Siri Ram urf Siri

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 07-02-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1988) 12 ACR 262

Hon'ble Judges : V.P. Mathur, J

Bench : Single Bench

Advocate : Krishna Jee Khare, for the Appellant; A.G.A. and R.C. Yadav, for the Respondent

Final Decision : Allowed

Judgement

V.P. Mathur, J.—This revision is directed against the judgment and order passed on 30.7.84 by Sri G.P. Srivastava, the then Sessions Judge, Ghazipur in Criminal Revision No. 85 of 1984. The learned Judge modified the order passed by the learned Magistrate and awarded maintenance allowance of Rs. 90/- per month to opposite party No. 2 against the Petitioner. The proceedings were in connection with criminal case No. 56 of 1982.

2. The criminal case was started at the instance of Smt. Subhagiya. She moved the application u/s 125 Code of Criminal Procedure with the allegations that she was the married wife of Siri Ram and the marriage had taken place according to Hindu rites and custom and that she had given birth to one son and one daughter from this wed-lock and that Siri Ram had taken another wife and was not maintaining her.

3. The learned Magistrate after perusing the evidence on record, which consisted of the statements of the parties and one witness on the side of each, came to the conclusion that the parties were husband and wife and he also came to the conclusion that the wife was living with her son who was an earning member of

the family and the husband's income was so low that if he was made to part with any sum out of his income, he would himself starve. Under these circumstances the learned Magistrate dismissed the petition for maintenance.

4. The learned Sessions Judge passed a very cursory order. He held the Magistrate's order to be perverse but simultaneously did not touch the question whether Smt. Subhagiya was the wife of Siri Ram. He also did not touch the question at all as to whether there was any evidence to the effect that Smt. Subhagiya's son was living separate or joint with Smt. Subhagiya but he came to the conclusion that a sum of Rs. 90/- was enough considering the circumstances of the parties and passed that order.

5. After hearing the learned Counsel of both the sides, I am of the view that both the Courts below were wrong in recording findings in this case. The learned Magistrate was wrong in holding that the son of Smt. Subhagiya was living with her and hence she was not in need of any maintenance allowance from the husband. He was also wrong to hold on the basis of mere entries in the Kutumb Register that there was relationship of husband and wife between the parties. There were two entries of Kutumb Register placed on the record. In one entry which was filed by Siri Ram and which was issued on 22.11.82 there was no mention of Smt. Subhagiya or of her son Gulab Chand in the Kutumb of Siri Ram. In the second entry, a copy of which was issued on 9.2.84, there was mention of these two persons. Thus there were contradictory entries on record. It was necessary for the learned Magistrate to have summoned the original Kutumb Register in order to find out as to which of the two copies was to be treated as correct, and then he could consider the other evidence also about the actual marriage between the parties before coming to the conclusion that the parties were related as husband and wife. The learned Sessions Judge has not considered this point at all although it was very hotly contested by the Petitioner and has been pointed out even before him. Then again the learned Magistrate was absolutely wrong in concluding from the evidence on record that Smt. Subhagiya was living with her son who was an earning member of the family. The only evidence was that Subhagiya's son was already married and was independent so far as earning is concerned. There was absolutely no evidence that Smt. Subhagiya was living with her son. The learned Sessions Judge was equally wrong in coming to the conclusion that Smt. Subhagiya's son was living independently. There was not a word to that effect in the evidence at all. Under these circumstances, the decision of the case has been wrong throughout and the only way to put the things right would be to set aside both the orders of the learned Judge and the learned Magistrate and direct the learned Magistrate to decide the case afresh after allowing the parties further opportunity to adduce evidence both oral and documentary. It will be open to Siri Ram to take steps to summon the original Kutumb Register in order to show as to what is the correct entry.

6. In the result, the revision is allowed. The orders passed by the Sessions Judge

of Ghazipur in criminal revision No. 85 of 1984 on 30.7.84 as well as by the III Additional Judicial Magistrate, Ghazipur in criminal case No. 56 of 1982 shall both stand quashed. The case shall go back to the III Addl. Munsif Magistrate, Ghazipur for re-decision in the light of the observations made above and the learned Magistrate shall allow to the parties an opportunity to adduce evidence both oral and documentary and then decide the case according to law.