

(2000) 01 DEL CK 0077

In the Delhi High Court

Case No : Criminal M (M) 2229/99 and Criminal M. 1063, 1446/99

S.L. Sehgal

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 12-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482

Citation : (2000) 3 AD 611 : (2000) 84 DLT 561 : (2000) 1 DMC 524 : (2000) 53 DRJ 424 : (2000) 3 RCR(Criminal) 711

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Mr. S.P. Mahana, for the Appellant;

Judgement

Dalveer Bhandari, J.—This petition u/s 482 of the Code of Criminal Procedure is directed against the order dated 23.8.95 passed by the learned Metropolitan Magistrate, Delhi. The learned Metropolitan Magistrate directed the petitioner to pay maintenance to respondent No.2 at the rate of Rs.250/- per month from 11.10.1987. The order has not been complied till date. The petitioner by filing multiple proceedings has circumvented the said order. The relevant portion of the order of the learned Metropolitan Magistrate reads as under :-

"Since in this case the marriage between the parties is in dispute. The petitioner filed certain documents to prove that she married to the respondent. She has filed a writing from Pandit Maleshwar Jha who solemnised the marriage between the petitioner and the respondent. The photo copy of the invitation card has also been placed on record which shows that the marriage took place between the parties on 11.5.85. A letter from the CPWD permitting the parents of the petitioner No.1 for erecting the Shamiyana and tents has also been placed on record. Petitioner has also placed on record certain photographs in which she has been shown in the compromising position with the respondent. She has filed a photo copy of the Bio Data of the respondent which was sent by the respondent for the purpose of marriage as the marriage proposal was finalised through a

newspaper. The standard of proof required for a marriage in proceedings for maintenance, under this section it is not so high as is required in connection with proceedings of under Indian Divorce Act or in a prosecution for bigamy. In a case for maintenance under this section it is not necessary that the marriage is to be established beyond reasonable doubts, it is enough if a prima facie case is made out to provide maintenance and speedy relief to suffering party by leaving it to the aggrieved party of record, prima facie, I am satisfied that petitioner No.1 is legally wedded wife of the respondent. Since I have prima facie held that petitioner No.1 is legally wedded wife of the respondent it is not only a rule of prudence but also the rule of natural justice that child born of a marriage must be deemed to be legitimate."

2. The learned Metropolitan Magistrate was satisfied that the petitioner is married to respondent No.2 and after consideration of entire facts and circumstances directed the petitioner to pay maintenance of Rs. 250/- per month to respondent No.2, which is absolutely imperative for her survival.

3. Aggrieved by the order of the learned Metropolitan Magistrate, the petitioner filed a revision petition before the learned Addl. Sessions Judge. The learned Addl. Sessions Judge by a detailed order dated 21.12.95 dismissed the revision petition and affirmed the order of the learned Metropolitan Magistrate regarding maintenance. The petitioner aggrieved by the order of the learned Addl. Sessions Judge filed a Crl.W.P. 477/96 before the Division Bench of this Court. The order of the Division Bench reads as under :-

"The petitioner through this petition wants quashment of the judgment and order passed by the Metropolitan Magistrate dated 23.8.95 whereby he fixed the interim maintenance @ Rs. 250/- per mensem from the date of filing of the petition i.e 10.11.87 till the disposal of the petition on merits and the judgment and order dated 21.12.95 whereby the aforementioned order was confirmed in revision by the learned Additional Sessions Judge Shri I.C.Tiwari.

Heard the learned counsel for the petitioner and the learned P.P.Learned P.P. has raised a preliminary objection with regard to the maintainability of the present petition. The contention of the learned counsel for the State is that the present writ is not maintenance as there cannot be two revisions against the same judgment and order. Admittedly the petitioner herein aggrieved with the judgment and order passed by the learned Magistrate dated 23.8.95 filed a revision petition before the Court of Session. The same was dismissed vide judgment and order dated 21.12.95. The learned Magistrate and the learned Additional Sessions Judge passed detailed orders dealing with each and every submission raised for and on behalf of the petitioner. The petitioner now wants the quashment of the said judgment and orders through the present writ petition. I thus feel that the same is not permissible. The petitioner is not entitled to any relief from this Court as the present writ petition is simply an attempt to revise the order passed by the learned Sessions Judge which remedy has already been availed of by the petitioner. I, thus, do not see any force in the present writ

petition.

Dismissed."

4. By filing one petition after another the petitioner has successfully circumvented the order of learned Metropolitan Magistrate dated 23.8.95 directing him to pay maintenance to the respondent No. 2 at the rate of Rs. 250/- per month from the date of the petition i.e. 10.11.1987. Admittedly the petitioner has not paid maintenance.

5. Now after the disposal of the Criminal Writ Petition by the Division Bench on 13th February, 1997, the petitioner has filed this petition u/s 482 of the CPC for the same relief. The petitioner is taking undue benefit and advantage of the situation that he is appearing in person and is not bound by the procedure of law or any norms.

6. I have heard the petitioner at length and perused earlier judgments, orders and documents on record. I am of the considered opinion that this petition is a total abuse of the process of law. The petitioner cannot be allowed to abuse the system indefinitely just because he chooses to appear in person. The petitioner has harassed respondent No.2 for several years by filing multiple proceedings in the courts and not paid maintenance and circumvented the court's order. Any further indulgence to the petitioner would lead to serious miscarriage of justice.

7. This petition is accordingly dismissed with costs of Rs.10,000/-. The Registry is directed not to entertain any petition filed by the petitioner in connection with the maintenance unless the costs as directed is paid to respondent No.2 - Shashi and a proof of the same is placed on record.

8. This petition is disposed of.