

(2013) 09 AHC CK 0257

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 21009, 36844, 43518, 37337, 37954, 43768, 47826 and 51693 of 2013

Smt. Neetu and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (2013) 10 ADJ 420 : (2013) 101 ALR 613 : (2014) 1 AWC 630 : (2014) 1 DMC 481

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Ajay Vashistha, B.P. Mishra, Rahul Mehrotra, Mohammad Khalid, Atul Tej Kulshreshtha, Vinay Singh Khokher, Kamal Mishra, Gagan Pratap Singh, Ram Ker Singh, V.D. Agarwal and Sandhya Agarwal, for the Appellant; Ashutosh Pandey, Gaurav Sharma and H.P. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Shakespeare in one of his famous plays The Merchant of Venice" had said:

Love is blind

and lovers cannot see

the pretty follies

that themselves commit

1. This is probably the reason that not only young boys and girls but man and women of age in love fall into the clutches of unscrupulous persons.

2. All these writ petitions are glaring examples where couples have been deceived in the name of justice by none other than the keepers of law.

3. In all of these writ petitions, the petitioners who have married with their own free will but against the wishes of their family members have made a prayer that their married life may not be disturbed by their parents and relatives with the help of police force and that they be given adequate protection.

4. In support of the marriage petitioners have filed marriage certificates all issued on different dates by one Dr. Arun Kumar Upadhyaya, Former Member, Lok Adalat, Nyayapeeth and Secretary of the Matrimonial Disputes, Arbitration and Conciliation Center, a division of Nihshuk Vidhik Sahayata (Legal Aid) Samiti 50, Aruna Nagar, Etah.

5. The marriage certificate issued by Dr. Arun Kumar Upadhyaya apart from other things states as under:

6. On presentation of one of the above petitions No. 21009 of 2013 this Court vide order dated 16.6.2013 had expressed surprise over the capacity of Dr. Arun Kumar Upadhyaya in issuing marriage certificates as aforesaid and had directed the District Magistrate to conduct an enquiry into the affairs of the aforesaid society and to submit a report in consultation with the District Judge, Etah.

7. After the above petition, several other writ petitions came up before this Court with similar certificates. In each one of them the Court on noticing the marriage certificates appended was astonished at the manner in which the work of the solemnizing marriage was being conducted. Therefore the Court called upon the Secretary of the society Dr. Arun Kumar Upadhyaya to submit his reply as to under what authority of law marriage certificates are being issued by him.

8. In response to the above, Dr. Arun Kumar Upadhyaya had sent his reply in three of writ petitions dated 19.7.2013, 27.2013 and 10.9.2013 to the Registrar General annexing various documents justifying his action.

9. Dr. Arun Kumar Upadhyaya in his reply has tried to justify his action regarding issuance of marriage certificates and assuming the jurisdiction of arbitrator to resolve the disputes between the so married persons by submitting that for his above activities the society had written letters to the various authorities including the Central Government, State Government, Chief Justice of India, Chief Justice of the Allahabad High Court and Judge, Incharge Mediation Center of the High Court, Allahabad but as none of the authorities and dignitaries raised any objection, he started functioning as an authority for registering marriages.

10. The authorities referred to above cannot be expected to attend such kind of letters which may have been received by them and they are even not supposed to acknowledge or reply such letters.

11. The fact that none of the above referred authorities replied to the letters of Dr. Arun Kumar Upadhyaya/society so as to raise any objection against the work proposed to be undertaken by him does not in any way tantamount to according him/society permission to carry out the proposed activities.

12. The other explanation that the National Commission for women had evolved a concept of Parivarik Mahila Lok Adalat for redressal and speedy disposal of cases relating to marriage and family affairs and that the name of Dr. Upadhyaya/society at one time was recommended for organizing Parivarik Mahila Lok Adalat in District also does not authorize him/society to organize/recognize any marriage between two Hindus and to issue marriage certificate. Parivarik Mahila Lok Adalat is a non statutory forum aimed to bring about the settlement of matrimonial disputes rather than a forum to recognize marriages and to issue certificates thereof.

13. Dr. Arun Kumar Upadhyaya in his reply has also placed reliance upon one of the orders of this Court dated 3.9.2010 passed by the Division Bench in Writ Petition No. 3894 of 2010 Smt. Raj Kumari v. State of U.P. and others. The said writ petition was also preferred jointly by persons allegedly married, for getting protection on the basis of marriage certificate issued by the Matrimonial Disputes of Arbitration and Conciliation Center, Etah. The petition was disposed of with the direction that as the petitioners appear to be major and married, the police authorities shall ensure that they are not harassed in any manner.

14. The disposal of the aforesaid writ petition without adjudicating the competence of the society and its Secretary to issue marriage certificate and to register them does not in any way mean that this Court had recognized that the society or its Secretary is competent to issue marriage certificate.

15. Sri Hari Prakash Mishra, Advocate has appeared for Dr. Arun Kumar Upadhyaya and has submitted his personal affidavit wherein in paragraph 12 he has tendered his un-conditional and unqualified apology to the Court and has submitted that in case his actions are found to be against the spirit of law, he undertakes to immediately stop such functioning.

16. The District Magistrate, Etah has submitted his report dated 16th August 2013 alongwith the report of the District Judge and that of the Tehsildar.

17. The District Magistrate in his report has clearly stated that Dr. Arun Kumar Upadhyaya is a legal practitioner and that initially his name was included in the penal of the members of the Lok Adalat prepared by the District Judge but later his name was scored out vide order dated 18.8.2011 passed by the District Judge exercising powers as President, District Legal Services Authority. The said order is final but even then Dr. Arun Kumar Upadhyaya continued to depict himself as Member of the Lok Adalat and continued to run the Nishulk Vidhi Sahayata Samiti. The State Legal Services Authority vide letter issued on 29.4.2011 to all District Judges/Presidents District Legal Services Authorities had informed not to permit him to function as such.

18. The District Magistrate in his report has further mentioned that Dr. Arun Kumar Upadhyaya got Nishulk Vidhi Sahayata (Legal Aid) Samiti registered with the Registrar Firms Societies and Chits, Agra but its registration has been cancelled by the Sub-Registrar vide order dated 25.6.2009 which has also been

upheld in appeal by the Commissioner. Thereafter, Dr. Arun Kumar Upadhyaya had filed writ petition No. 17024 of 2010 challenging the order cancelling registration of the society and appellate order thereto but the same was dismissed by this Court vide judgment and order dated 31.3.2010 holding that any intervention in the matter would amount to perpetuate the illegality which has been committed by Dr. Arun Kumar Upadhyaya and the society.

19. The report of the District Magistrate proceed to add that Shree Narain Das Upadhyaya, the father of Dr. Arun Kumar Upadhyaya is also an advocate and both father and son have been advertising in the district that they are specialised in organizing love marriages etc and for that purpose they are duly recognised by the Central and State Government as well as the Courts and that in case any such matters are referred to them they will give appropriate commission to the persons referring the cases.

20. The Additional District Magistrate in order to check the aforesaid illegal activities of Dr. Arun Kumar Upadhyaya has even lodged a FIR on 14.8.2011 at P.S. Kotwali, Etawah wherein a charge-sheet has been submitted against him and a case Crime No. 413 of 2011 u/s 420 IPC has been registered.

21. The District Magistrate in his report concluded that Dr. Arun Kumar Upadhyaya is neither a member of the Lok Adalat nor the society which is being run by him is registered. He has no authority in law to describe himself as the member or the person authorized to negotiate and bring about any settlement between the litigating parties in the garb of legal aid.

22. This apart, the marriage certificate issued under the signatures of Dr. Arun Kumar Upadhyaya mentions that in addition to solemnisation of the marriage, the petitioners have accepted the society to be the mediator/arbitrator between them for all future disputes under the Arbitration and Conciliation Act, 1996.

23. The Arbitration and Conciliation Act, 1996 contemplates an arbitration agreement as a condition precedent for referring any dispute to arbitration. Hindu marriage is not a contract and ordinarily there is no agreement in marriage ruling out the possibility of an arbitration clause therein which may authorize the parties to refer their dispute to the arbitration. In such a situation the provision of The Arbitration and Conciliation Act, 1996 would not be attracted so as to confer powers of an arbitrator upon the society or Dr. Arun Kumar Upadhyaya in respect of future disputes between the petitioners.

24. In view of the aforesaid facts and circumstances, it is a case of gross misconduct on part of an Advocate to indulge in such activities and to deceive innocent people.

25. Dr. Arun Kumar Upadhyaya in his affidavit has mentioned that about 600 marriages as detailed therein were solemnised by the society. All such marriages will not be treated as valid marriages solely on the basis of the marriage certificates issued by him and the parties thereto would not be forced to enter

into any mediation before the society.

26. Since the writ petitions are based primarily on the marriage certificates issued by the aforesaid society which cannot be recognised in law, this Court has no hesitation to decline use of its discretionary jurisdiction and to refuse the relief asked for by the petitioners with liberty to take any other appropriate remedy available to them in law. The Court feels that Bar Council is the appropriate authority for taking action against the Advocates who misconduct himself. Therefore, in view of the unconditional apology tendered by Dr. Arun Kumar Upadhyaya and the assurance that henceforth he would not indulge in any such act, the Court itself is not taking any action against him but directs the Registrar General of the Court to place the entire report of the District Magistrate before the Bar Council, U.P. for necessary action in accordance with law.