

(1991) 01 AHC CK 0036

In the Allahabad High Court

Case No : Criminal Revision No. 1721 of 1989 and Criminal Miscellaneous Case No. 11 of 1990

Tayyaba Bibi

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 09-01-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 125, 482

Citation : (1991) 1 DMC 596

Hon'ble Judges : S.R. Bhargava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.R. Bhargava, J.—The revision petition and the criminal misc. petition u/s 482 Cr.P.C. have arisen from the same proceedings u/s 125 Cr.P.C. and for avoiding repetition are being disposed of by a common judgment. Lower courts record has been summoned and perused by this Court, parties have been heard at length at admission stage and the revision and the petition u/s 482 Cr.P.C. are being disposed of finally at this stage according to Rules of the Court.

2. What appears is that Mohd. Abdul Haseeb Siddiqui is an employee in Mono Section of Government Press, Allahabad. In 1982 Smt. Tayyaba Bibi filed objection before the Magistrate u/s 125 Cr.P.C. against Mohd. Abdul Haseeb Siddiqui claiming monthly maintenance of Rs. 300/- with the allegation that she is his wedded wife, that she is unable to maintain herself that her husband deserted her and has another wife from whom he has four children. Mohd. Abdul Haseeb Siddiqui resisted the application and denied his marriage with Tayyaba Bibi. He raised other grounds also. After oral and documentary evidence Magistrate dismissed the application of Tayyaba Bibi by judgment dated 10th February, 1988. He disbelieved her marriage with Mohd. Abdul Haseeb Siddiqui. Then Tayyaba Bibi preferred revision before Sessions Judge, which was decided

on 16th November, 1988. The revisional court allowed the revision, set aside the judgment and order of the Magistrate and remanded the case to the Magistrate for fresh decision in the light of the observations made in the judgment. Revisional court further directed that the case was pending since 1982, it was, therefore expected that the same should be decided at the earliest. Revisional court directed the parties to appear before the Magistrate on 30th November, 1988.

3. Record of the Magistrate shows that on 30th November, 1988 Mohd. Abdul Haseeb Siddiqui did not appear before the Magistrate. Case was ordered to be put on 12th December, 1988, on that date Mohd. Abdul Haseeb Siddiqui was again absent. Case was adjourned to 22nd December, 1988. On that day also Mohd. Abdul Haseeb Siddiqui was absent. It may be noted that on 12th December, 1988 court of the Magistrate was vacant, on 22nd December, 1988 the Magistrate was on casual leave. On 22nd December, 1988 case was adjourned to 12th January, 1989. On the date so adjourned Mohd. Abdul Haseeb Siddiqui was again absent. Hence the case was ordered to be put up for exparte arguments on 17th January, 1989. Arguments were heard on 17th January, 1989 and then on 18th January, 1989 exparte judgment was delivered by the Magistrate. He upheld marriage. He found grounds for awarding maintenance. He awarded monthly maintenance of Rs. 200/- per month from the date of application.

4. Against this Mohd. Abdul Haseeb Siddiqui preferred revision before the Sessions Judge. In ground No. 3 he mentioned that since the court was vacant on 22-12-1988 a general date in all the cases as notified in the Notice Board and as announced by the Reader, 8th March, 1989 was fixed but unusually the date for hearing in the instant case was expedited without any information to him or his counsel and ultimately the case was decided exparte. In ground No. 4 of grounds of revision he urged that when the court was vacant it was the duty of the court to inform him or his counsel for the date fixed for hearing.

5. In this revision the learned Sessions Judge re-considered the material on record and agreed with the findings of the Magistrate. He, however, did not refer to grounds No, 3 and 4 of the grounds of revision. He noticed that Mohd, Abdul Haseeb Siddiqui has four children besides a wife and so he reduced the maintenance to Rs. 100/- per month. With this alteration he dismissed the revision.

6. Smt. Tayyaba Bibi felt aggrieved with the reduction of her maintenance and filed revision in this Court. She contended that she cannot maintain herself in Rs. 100/- per month which is too meagre. She further contended that all the daughters of Mohd. Abdul Haseeb Siddiqui are now self dependent.

7. Mohd. Abdul Haseeb Siddiqui filed petition u/s 482 Cr.P.C. for quashing the order of the Magistrate in the revisional court on the grounds that marriage was not proved and that revisional court did not consider grounds No. 3 and 4 of his

grounds of revision.

8. In this Court it was conceded on behalf of Mohd. Abdul Haseeb Siddiqui that after dismissal of the revision Mohd. Abdul Haseeb Siddiqui cannot maintain a petition u/s 482 Cr.P.C. But it was urged that there has been violation of principles of natural justice and the revisional court has decided the revision without considering his grounds against exparte decision. Hence this Court can grant relief under Article 226 of the Constitution.

9. I have heard the parties at length and perused the lower court record closely. Mohd. Abdul Haseeb Siddiqui knew that he had to appear on 30th November, 1988 before the Magistrate. But he did not appear there. He preferred to behave like a litigant who does not come before the Court but peeps in to the court from the door. His grounds No. 3 and 4 of the grounds of revision before the Sessions Judge are not made out from any evidence on record. On the other hand, it appears that on 22nd December, 1988 the Magistrate was on casual leave and the court was not vacant. On the other hand, it appears that Mohd. Abdul Haseeb Siddiqui did not apply for setting aside of exparte order. When he did not avail his remedy this Court would not come to his rescue under Article 226 of the Constitution. On the top of it he simply avoided the court and there can be no justification for interference under Article 226 of the Constitution.

10. There are consistent findings of the two lower courts about the marriage of Tayyaba Bibi with Mohd. Abdul Haseeb Siddiqui. There is also evidence of desertion and cruelty. There is also evidence that Smt. Tayyaba Bibi was unable to maintain herself. All these matters are findings of fact, and there can be no re-consideration in proceedings u/s 482 Cr.P.C.

11. Undoubtedly, Mohd. Abdul Haseeb Siddiqui has his another wife and four daughters. He is employed in the Government Press. After revision of pay on ground of parity with the Pay of employees of Central Government and on account of various dearness allowances his total emoluments cannot now be less than Rs. 1400/- or Rs. 1500/- per month. With escalation in prices a woman cannot maintain herself in an amount less than Rs. 200/- per month.

12. But this is what is today. There is no reason to make an order of payment of maintenance of Rs. 200/- per month from the date of application.

Hence, in result, the revision filed by Smt. Tayyaba Bibi should succeed and the petition of Mohd. Abdul Haseeb Siddiqui u/s 482 Cr.P.C. should be dismissed.

Revision of Smt. Tayyaba Bibi is allowed. Her maintenance is raised to Rs. 200/- from today, petition of Mohd. Abdul Haseeb Siddiqui u/s 482 Cr.P.C. is dismissed.