
(2003) 07 PAT CK 0062
In the Patna High Court
Case No : L.P.A. No. 170 of 2003

Union of India (UOI) and Others

APPELLANT

Vs

Subodh Kumar and Another

RESPONDENT

Date of Decision : 15-07-2003

Acts Referred:

Citation : (2003) 3 BLJR 1760 : (2003) 4 PLJR 207

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kumar Singh, J

Bench : Division Bench

Advocate : P.K. Shahi, SCCG and Vipin Kumar, J.C. to SCCG, for the Appellant;
Lalit Kishore, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—This letters patent appeal is against the order dated 8th October, 2002 on CWJC No. 641 of 2000 : Subodh Kumar v. Union of India and Ors., whereby the order of the Director General of Police, Central Reserve Police Force (CRPF) dated 30th July, 1999 upholding the order of the Commandant, 133 Battalion, Patna dated 21st May, 1999 dismissing the petitioner-appellant from service has been set aside.

2. The impugned order, which has been set aside by the learned Judge, was to the effect that the petitioner-appellant upon an inquiry was found to have committed a serious misconduct as he had during the subsistency of a marriage married again or took another woman as a wife so as to indulge in a plural marriage within the meaning of Rule 15 of the Central Reserve Police Force Rules, 1955. During the course of the inquiry, the petitioner-appellant could not resist that recital from the proposition as it was a circumstance of fact that he had taken another woman or indulged in a second marriage while his first wife was alive. Further, the fact that the petitioner-appellant had another wife is a matter of record. The Court will revert to this aspect subsequently.

3. On the appeal learned counsel for the petitioner-appellant and learned counsel

for the Union of India have been heard.

4. Upon reading the judgment on the writ petition, the Court is of the opinion that the learned Judge has erred in trying to differentiate whether a second marriage may tantamount to a heinous crime or a lesser one. The argument before the Court has also been on the ground that the petitioner-appellant has not indulged in any heinous crime within the meaning of Section 9 and at best he could be held guilty for a less heinous offence u/s 10 so as to attract a minor punishment u/s 11.

5. Plural marriage, as is referred to in Rule 15, is a concept which has been borrowed from the law which governs the military personnel. The code of conduct has been structured so as to presume that gentlemen soldiers do not indulge in adultery or second marriage. In the circumstances, should this code of conduct be breached then the so-called second marriage is labelled as a plural marriage for the simple reason that soldiers who are bound by the Code of conduct are not meant to co-habit with another woman outside marriage. The debate then, is not of a heinous-crime or a less heinous crime.

6. Now, the aspect which remains to be considered is the code of conduct which is to be strictly followed by persons who join military or paramilitary forces. There is another aspect arising from the circumstance of plural marriage. The military or like institutions do not suffer misdemeanours like adultery. It is not unknown that at times soldiers and officers moved out of their stations leaving behind their wives and families. If a strict code is absent then it could play up havoc amongst the social lives of military personnel. Stealing the affection of a married woman is also a serious misconduct in the military. Thus, the military and the paramilitary deals with such misconduct with strictness.

7. The situation in the present case is of the petitioner's making. After having indulged in a second marriage he started declaring on record and made nominations in his service book and allied papers by inserting the name of the second wife when the first marriage was not dissolved and was still subsisting. In the circumstances, the effort of giving explanations during course of the inquiry that there was no second marriage was in vain. In the explanation, the petitioner-appellant has, in fact, avoided answering this aspect. The petitioner-appellant has also made a faint attempt to give out a story that it was the same woman with the two different names. This story did not hold.

8. The balance which remains is that while the first marriage was subsisting with Ranjana Devi and out of this wedlock there was a child, the petitioner-appellant went for a second marriage with one Santoshi Kumari. Not only this, the relationship apparently was so serious that the petitioner-appellant gave the name of Santoshi Kumari, a woman outside the wedlock, to receive the service benefits and this aspect is on record. The Court has already reflected on this situation in another matter of plural marriage which is in the matter of Union of India and Ors. v. Pramod Kumar Yadav, L.P.A. No. 169 of 2003, decided on 11th

July, 2003. The Court has no cause to change its view in the present case also.

9. The Court also feels that the conduct of the petitioner-appellant is adventurous enough to have more love affairs than is necessary. The administration of the military or the paramilitary does not take kindly to the violation of its social code of conduct, Further, if the petitioner has joined paramilitary force and worn uniform then he has to follow its code of conduct, which requires personnel to stick to one spouse. On adulterous relationship the military or paramilitary is no place.

10. In the circumstances, this is not an issue of heinous or less heinous crime. This is a case of breach of the code of conduct which prohibits military or paramilitary personnel to indulge in adultery otherwise known as "plural marriage". The petitioner-appellant has violated the code of conduct and the Court is afraid that no error has been committed by the Commandant, 133 Battalion, Patna in recommending his service to be terminated and accordingly his service was terminated by the Director General of Police, Central Reserve Police Force.

11. Accordingly, the order dated 8th October, 2002 on CWJC No. 641 of 2000 is set aside and the appeal of the Union of India is allowed with costs.