

(1997) 11 AHC CK 0031
In the Allahabad High Court
Case No : Criminal Revision No. 1537 of 1997

Virendra Kumar Shroti

APPELLANT

Vs

Smt. Upasana Dixit and Another

RESPONDENT

Date of Decision : 27-11-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1998) 1 DMC 423

Hon'ble Judges : G.S.N. Tripathi, J

Bench : Single Bench

Advocate : N.K. Sharma, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

G.S.N. Tripathi, J.—Heard learned Counsel for the parties. Admittedly, the Family Court was established in the District of Moradabad on 3.6.1997. The present matter was pending before the Magistrate 1st Class prior to this date i.e. 3.6.1997, situated at Chandauli, out of Court in the same district but the learned Magistrate concerned could not know about it on the date on which he passed the order i.e. 5.6.1997 that a Family Court had been established in the district. Therefore, he passed bonafidely an order of maintenance in proceedings u/s 125, Cr.P.C.

2. My attention has been invited to the provisions of Section 8 of the Family Court Act, 1984 (Act No. XXXVI of 1984, Central Act), which provides that all pending matters shall stand transferred to the Family Court on the date on which it is established.

3. In the present case, the Family Court was established on 3.6.1997. So by virtue of the legal fiction, the case pending before the Magistrate concerned stood transferred to the Court of Family Judge on that date i.e. 3.6.1997. Hence the learned Magistrate concerned had no jurisdiction. Whether he had knowledge about the fact that a Family Court has been established or not, is not material.

His jurisdiction was legally ousted w.e.f. 3.6.1997. Under the circumstances, the order passed by him granting maintenance to Smt. Upasana Dixit, wife of the revisionist, is liable to be set aside being without jurisdiction.

4. The order passed by the learned Magistrate dated 5.6.1997 is set aside accordingly. The matter shall go to the Family Court, Moradabad, where it shall be registered in its original number. The learned Family Court Judge shall decide the matter afresh, in accordance with law, at the earliest.