

Shyamlal Pathak Vs. State of Bihar and anr.

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Court : Patna

Decided On : Mar-14-2007

Judge : Madhavendra Saran, J.

Appellant : Shyamlal Pathak

Respondent : State of Bihar and anr.

Disposition : Application dismissed

Judgement :

Madhavendra Saran, J.

1. This application u/s 482 of the Code of Criminal Procedure (in short as Code) has been filed for quashing the order dated 12.12.97 passed by Shri Mahabir Kumar, Judicial Magistrate, 1st Class, Gaya in Misc. case No. 20/1987 corresponding to Jr. No. 575/97 whereby and whereunder he refused to recall the exparte order dated 21.7.97 by which the petitioner was directed to pay maintenance to O.P. no. 2 at the rate of Rs. 400/- per month along with arrears since 5.5.1987.

2. It appears that O.P. No. 2, Smt. Pushpa Kumari, filed an application u/s 125 of the Code in the court of CJM, Gaya on 5.5.87 and the said application was numbered as Misc. case No. 20/87 in which O.P. No. 2 claimed herself to be legally wedded wife of the petitioner and claimed maintenance from him. Learned

Magistrate initiated the proceeding and issued notice against petitioner who appeared and filed show cause. In course of enquiry two witnesses were examined on behalf of the applicant and cross examined. After examination and cross examination of two witnesses petitioner being the husband made application before the court below on 21.3.90 and prayed that since he has been acquitted in complaint case No. 127 of 1986 in which O.P. No. 2 has been held out not to be wife of petitioner and hence present proceeding u/s 125 of the Code be dropped. The matter was heard by the learned Magistrate who by order dated 2.4.91 passed in Misc. case No. 20/87 rejected the prayer.

3. It is further said that prior to the filing of the application u/s 125 of the Code O.P. No. 2 had filed a complaint case in the court of CJM u/ss 323, 342 and 380 of IPC and 4 of the Dowry Prohibition Act against her husband, that is, petitioner and others claiming herself to be legally wedded wife of the petitioner and made some other allegations also. The said complaint petition was registered as complaint case No. 127/86-87. The complainant and other witnesses were examined during trial and learned Magistrate by judgement dated 24.4.89 acquitted the petitioner/husband after holding that complainant/ OP No. 2 was not legally wedded wife of the petitioner. A copy of the said judgement is annexure-1 to the application. It is further said that against the judgement dated 24.4.89 O.P. No. 2, that is, wife of petitioner preferred SLA No. 77/89 before this Court and the same was dismissed by order dated 19.1.90 and the judgement of the trial court was affirmed. It is further case of the petitioner that against the order dated 2.4.91 passed in Misc. case No. 20/87 petitioner preferred an application for quashing before this Court vide Cr, Misc. No. 5380/91 and the said application was disposed of by order dated 14.11.96 with certain observation. A copy of the said order dated 14.11.96 is annexure-2 to the application. It is further said that petitioner had no Knowledge regarding order dated 14-11-96 passed by this Court and all of a sudden he received notice dated 28.8.97 from which he learnt that trial of the maintenance case is over and the order had already been passed ex parte in Misc. case No. 20/87. Against the order dated 21.7.97 petitioner preferred Cr. Rev. No. 134/97 before Session Judge, Gaya which was withdrawn and thereafter he filed a petition for recall of the order dated 21.7.97 before the Magistrate and the same was rejected by order dated 12.12.97.

4. It has been contended on behalf of the petitioner that prior to the filing of the application u/s 125 of the Code the complainant had filed a complaint case in the court of CJM, Gaya for offences punishable u/ss 323, 342, 380 of the IPC and 4 of the Dowry Prohibition Act claiming herself to be legally wedded wife of the petitioner. He contended that after trial the learned trial court by judgment dated 24.4.89 recorded finding that complainant could not establish her marriage with petitioner. He contended that when the marriage of the complainant with petitioner has not been established so, the question of grant of maintenance also does not arise. In support of his contention learned Counsel placed reliance on a decision of the Supreme Court given in the case of Samir Mandal vrs The State of Bihar & reported in 2001 (X) SCC page 50. He also contended that against the judgement dated 24.4.39 complainant had preferred SLA No. 77/89 before this Court which was dismissed on 19.1. 90.

5. In the decision relied upon by the petitioner the facts were different. It was a case u/s 494 of the IPC in which standard of proof of marriage is very high. The criminal case as mentioned above was filed by the complainant for offences punishable u/ss 323, 34.2, 380 of the IPC and 4 of the Dowry Prohibition Act in which learned Magistrate in the judgement dated 24.4.89 observed that complainant has failed to establish that she was legally wedded wife of the petitioner. In the present case u/s 125 of the Code there is finding of the learned Magistrate that the applicant is legally wedded wife or the petitioner. In the maintenance case though the husband cross examined two witnesses but thereafter he left taking interest in the case and he did not contest the applicant's claim. It is settled view that the proceedings u/s 125 are of summary nature and strict proof of marriage is not as high as in the proceeding u/s 494 or in a proceeding for divorce. All that is required to be shown that there has been marriage between the applicant and opposite party. If the applicant is able to show that she and Opposite party lived together as husband and wife, the court can presume that they are legally married spouse. When the marriage is disputed the Magistrate can still grant maintenance to the wife leaving the husband to establish invalidity of marriage in a competent civil court. Such being the position, in my considered opinion, the decision relied upon by the petitioner's counsel is not applicable to the present facts and circumstances of the case.

6. No other point was raised before this Court.

7. In the aforesaid facts and circumstances, I find no merit in this application and it is, accordingly, dismissed.

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