

Dassu Vs. Smt. Manitra

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SooperKanoon Citation : sooperkanoon.com/467093

Court : Allahabad

Decided On : Sep-19-1975

Reported in : 1976CriLJ1221

Judge : H.N. Kapoor, J.

Appellant : Dassu

Respondent : Smt. Manitra

Advocate for Pet/Ap. : Smt. Ramo Devi Gupta

Judgement :

ORDER

H.N. Kapoor, J.

1. This is a petition under Section 482, Criminal Procedure Code praying that the order passed by the Magistrate under Section 488, Criminal Procedure Code allowing maintenance to the opposite party Smt. Manitra be quashed. In this case a revision had already been filed (Cr. Revision No. 31 of 1974) which was dismissed on 6-5-1975. No second revision lies under Section 397(3), Criminal Procedure Code, The provisions under Section 482, Criminal Procedure Code cannot be invoked for the purpose of circumventing the express provisions under the Code. Smt. Ramo Devi Gupta, learned Counsel for the applicant, however, argued that the question is one which goes to the very root of the jurisdiction. In

this case it has been challenged that there was no valid marriage between the applicant and the opposite party. According to her, the opposite party no doubt examined some witnesses including herself and all that was stated was that she was married with the applicant. Her argument is that a bald statement itself was not sufficient as it had to be proved that all the necessary ceremonies had been performed. It appears that even the Pandit, who performed the marriage ceremony, was examined in this case and he had proved that the marriage was duly performed. The learned Magistrate and the revisional court both have arrived at the conclusion that it was proved that the marriage had been performed. That finding cannot be assailed in a petition under Section 482, Criminal Procedure Code.

2. Learned Counsel has challenged the validity of the marriage on another ground. She has argued that from the evidence led in this case it has been established that at the time of the marriage, the age of the boy was 14 years while that of the girl was 17 years and as such the marriage was against the provisions of Section 5(iii) of the Hindu Marriage Act, 1955, According to her such a marriage would be void ab initio as the boy was not qualified to be married at that time. In the Act, there is a provision under Section 11 for declaring certain marriages to be null and void which contravene the provisions of Section 5, Clauses (i), (iv) and (v). There is another provision under Section 12 for making certain marriages voidable which contravene the provisions of Section 5, Sub-clause (ii) and in which the consent of the guardian as contemplated under Section 5(vi) has been obtained by playing fraud or by using force. It is significant that there is no provision under the Act for rendering the marriages performed in contravention of the provisions of Section 5(iii) either voidable or void. Smt. Gupta has argued that the intention of the legislature was to make such marriages void ab initio for which even a decree of nullity was not necessary as provided under Section 11 of the Act and so no provision has been made for declaring such marriages void or voidable, I am unable to agree with this contention. In case the intention of the legislature was to make all marriages void ab initio which were performed in contravention of the provisions of Section 5, no specific provisions would have been made in Sections 11 and 12 for declaring some marriages as void and declaring some marriages as voidable. In this view, I am supported by the comments made in Mulla's Principles

of Hindu Law (1974 Edition) at page 688 which are as follows

A marriage solemnized in violation of the requirement as to age laid down in this clause is not void or even voidable, but the contravention of the condition is punishable as an offence under Section 18 of the Act.

In my opinion, that can be the only conclusion arrived at by a reading of Sections 5, 11, 12, and 18 of the said Act.

3. Smt. Gupta has also argued that the doctrine of *factum valet* will not apply to the marriages which were against the provisions of the Act. In support of this contention she has placed reliance on the case of *Lallan Ram v. Gobri Ram* : AIR1972 All540 which was a case in which the validity of adoption had been challenged. That authority can apply only if it can be proved that the marriage was not performed according to Hindu rites as contemplated under Section 7 of the Hindu Marriage Act. I have already held above that the finding of fact recorded by the lower courts is that a valid marriage had been performed between the parties.

4. Smt. Gupta has also argued that the boy was minor at the time of the marriage and as such he could not be made responsible to give maintenance to the opposite party under Section 125, Criminal Procedure Code (New) when he was himself not a consenting party nor he had ratified the marriage after attaining majority. I do not think that any such ratification is needed under the Hindu law.

5. There is no force in this petition. It is dismissed summarily.