

Laxmi Narain Vs. Munni Devi

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Court : Allahabad

Decided On : Aug-07-1990

Reported in : I(1991)DMC123

Judge : G.D. Dube, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : Criminal Revision No. 823 of 1986

Appellant : Laxmi Narain

Respondent : Munni Devi

Advocate for Def. : Viresh Misra, Adv.

Advocate for Pet/Ap. : Mool Behari Saxena, Adv.

Disposition : Petition allowed

Judgement :

G.D. Dube, J.

1. This revision has been preferred against the order of Second Additional Sessions Judge Mathura allowing the revision of opposite party setting aside the order of the lower court and thereby allowing the application of the opposite party under Section 125, Cr. P.C. The learned Sessions Judge has allowed the

maintenance allowance of Rs. 250/- per month to the opposite party from the date of the order of the lower court i.e 8-8-1984.

2. It is an admitted case that the opposite party was married with revisionist about 10 years before the application moved before lower court under Section 125, Cr. P.C. The only allegation against the revisionist is that he has developed illicit connection with his daughter-in-law who came in the family after marriage with his son Shiv Kumar about 7 months before from the date of application. It was urged that when the opposite-party objected she was turned out of the house and the revisionist is not maintaining her. It was urged that the revisionist has sufficient means to maintain; hence a prayer for granting maintenance at the rate of Rs. 600/- per month was made.

3. The opposite party denied the contentions. It was urged that the opposite party has left the house on her own accord with the ornaments worth Rs. 20,000/- to her father's place. When the revisionist went to call her on 15-1-1984 the opposite party refused to come to his house.

4. The opposite party had examined 4 witnesses before the trial court. The revisionist had also examined three witnesses. After the appraisal of the evidence the trial court had come to the conclusion that the opposite party had failed to prove the allegation against the applicant regarding his illicit connection with his daughter-in-law. The petition was, therefore, rejected. As against this order a revision was preferred before the Sessions Judge. It was decided by the Second Additional Sessions Judge Mathura. The learned Additional Sessions Judge had observed that the lower court had not given any reason as to why after 10 years of married life she was not willing to live with her husband. The learned Session Judge had believed the statement of the opposite party that she had seen with her own eyes the revisionist having illicit connection with his daughter-in-law. On the basis of these findings the learned Judge had reversed the order of the trial court and had allowed the petition directing the payment of maintenance as stated above.

5. It has been argued that the Sessions Judge exercising the jurisdiction of a revisional court should not have interfered with the findings of the trial court on the

question of facts unless the finding was, based on no evidence or misreading of evidence or could not have been passed by a prudent person. It was also argued that even if two view was possible the Sessions Judge ought not to have interfered and substituted his own view different from the trial court.

6. The learned counsel for the opposite party has urged that the conclusion drawn by the learned Magistrate were passed on misreading of evidence and, therefore, revisional court was fully justified in reversing the order of trial court.

7. A very basic factor which has come on record ought to have been noticed by the revisional court. In paragraph 5 of the petition under Section 125, Cr. P.C. it is stated that Shiv Kumar, son of the applicant, was married about 7 months back. Shiv Kumar DW 2 had stated that he was married on 3rd of July, 1983. His wife came to his house for about 3 days and thereafter went to her fathers' place. She came back to his house three months after. It had been stated that he lives in his father's house whereas his father (revisionist) and step mother (opposite party) reside in a government quarter. This fact had not been challenged in the cross examination of Shiv Kumar. Laxmi Narain Sharma revisionist had also stated that he lives in a government quarter whereas Shiv Kumar resides in his own house in Krishnapur. This fact was also not challenged in the cross-examination of this witness. Thus, from these evidences it was clear that two families; i.e., Shiv Kumar and his wife and the parties to this revision were living separately in separate house. .Therefore, it was quite improbable for the opposite party to have seen the revisionist having illicit connection with his daughter-in-law. Moreover, it also transpires that prior to moving of petition under Section 125, Cr. P.C. the wife of Shiv Kumar had started living with her husband some time in October, 1983 and onwards. The opposite party admitted in her cross-examination that Shiv Kumar's wife is 15 years old. The revisionist is about 55 years old. It was, therefore not probable that between short span of about three months some illicit connection might have developed between revisionist and his daughter-in-law. The trial court has considered this aspect in its judgment. Reliance has been placed upon two letters allegedly written by the opposite party. These letters bear dates 10-1-1984 and 25-1-1984. There is no mention in these letters about the alleged illicit connection between the revisionist and his daughter-in-law.

8. From the above I find that the trial court had appreciated the evidence properly. The view taken by the trial court was based on proper appraisal of evidence. There was no justification by the revisional court to have substituted its view. The view taken by the revisional court was also not based on proper appreciation of evidence. The Additional Session Judge believed the statement of opposite party that she saw with her own eye the revisionist having illicit connection with his daughter-in-law, this was not possible when she was living separately. There was no evidence to support the view taken by the revisional court that revisionist was living adulterous life. The courts exercising revisional jurisdiction have no power to assess the evidence produced before the trial court unless the conclusion drawn by it are based on no evidence or misreading of evidence or are totally perverse. This is not the case in this matter. The conclusion drawn by trial court cannot be said to be erroneous. Hence the revision ought to be allowed. The order passed by the Session Judge should be set aside and the order of the trial court restored.

9. No other point was raised.

10. The revision is allowed. The order of the revisional court is set aside and the order passed by the trial court is restored.

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