

Moti Vs. Beni

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Court : Allahabad

Decided On : Aug-22-1936

Reported in : AIR1936All852; 166Ind.Cas.847

Appellant : Moti

Respondent : Beni

Judgement :

ORDER

Thom, J.

1. This is an application in revision against an order of the District Judge of Allahabad directing that a certain girl, Mt. Chamelia, be allowed to remain in the custody of her mother. It appears that the girl's father, Beni, made a complaint against Chhote and others alleging that they had kept Mt. Chamelia, his daughter aged 12-13 years, in wrongful confinement. Following upon this complaint the City Magistrate issued a warrant under Section 100, Criminal P. O., and Mt. Chamelia was taken from the house of Chhote Lal by the police and handed over to the custody of her mother. When the complainant had secured possession of his daughter, Mt. Chamelia, he requested the Court which was seized of the matter to dismiss the complaint. The complaint was accordingly dismissed. It transpired during the proceedings however that in fact the girl Mt. Chamelia had been married to one Moti. Moti was therefore, as the girl's lawful husband, entitled to the

custody of his wife. The Special Magistrate accordingly directed that the girl be produced in Court and handed over to her husband. The Court further instituted proceedings against Beni under Section 215, Criminal P.C. Against this order of the Special Magistrate the complainant made an application in revision before the District Magistrate of Allahabad. The District Magistrate has directed that Mt. Chamelia in the meantime be left in the custody of her mother. He has held that as she is yet a girl of 12-13 years, she cannot be legally married and that therefore the proper guardian is the girl's mother. Learned Counsel for the applicant has attacked the order of the District Magistrate on two grounds.

2. In the first place, he has contended that the learned District Magistrate had no jurisdiction to set aside the order of the Special Magistrate directing that 'the girl, Mt. Chamelia, be produced in Court and handed over to her husband. Under Section 435, Criminal P.C., no doubt, it was open to the complainant, Beni, to make an application in revision against the order of the Special Magistrate before the District Magistrate. If however the District Magistrate decided, upon a consideration of the application and examination of the record, that the order of the Special Magistrate was unjust, then he could only act under Section 438. Under this section all that the District Magistrate can do is to refer the matter to the High Court with his recommendation. The District Magistrate's powers under Section 438 however refer to sentences imposed against the applicant before him. Now, in the present case, there was no sentence passed upon Beni. The order complained against was an order directing the production of Mt. Chamelia in Court. Learned Counsel for the opposite party contended however that it was open to the District Magistrate to set aside the order of the Special Magistrate in virtue of the provisions of Section 552, Criminal P.C. The District Magistrate however can only act under Section 552 where there is a complaint before him on oath of the abduction or unlawful detention of a woman or of a female under the age of 16 years. Now, in the present instance, Beni, the applicant before the District Magistrate, made no complaint that his daughter had been abducted or that she had been kept in unlawful confinement.

3. I am therefore satisfied that in setting aside the order of the Special Magistrate the District Magistrate acted without jurisdiction. It follows therefore that the order

of the District Magistrate cannot stand. Apart altogether from the question of jurisdiction however it appears to me that the learned District Magistrate as learned Counsel has contended in the second place has erred in law in holding that the marriage of Mt. Chamelia to Moti was an illegal marriage. It is true that the celebration of this marriage may have contravened the provisions of the Child Marriage Restraint Act of 1929; but the marriage of a child is not declared by the Child Marriage Restraint Act of 1929 to be an invalid marriage. The Act merely imposes certain penalties on persons bringing about such marriages. In this connexion I would refer to the latest edition of Mr. Mulla's book on Hindu Law (Principles of Hindu Law, Edn. 8, p. 496). In the result the application is allowed and the order of the District Magistrate is set aside.

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