

Urmila Vs. Kaushal Kishore

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Court : Allahabad

Decided On : Apr-04-1995

Reported in : II(1995)DMC276

Judge : N.B. Asthana, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 127

Appeal No. : Cr. Revision No. 1456 of 1994

Appellant : Urmila

Respondent : Kaushal Kishore

Disposition : Revision allowed

Judgement :

N.B. Asthana, J.

1. This revision has been directed against the order dated 20.6.1994 passed by Judge, Family Court, Kanpur in Case No. 829 of 1993 Kaushal Kishore v. Smt. Urmila Devi under Section 125 Cr.P.C. whereby the Trial Judge accepted the application under Section 127 Cr.P.C. moved by the Opp. Party and cancelled the order of interim maintenance passed on 8.1.1987 granting her maintenance allowance at the rate of Rs. 300/- per month for herself and her children.

2. The application was filed upon the allegations that the Opp. Party who is admittedly her husband has refused to keep her and their child and has cruelly treated her. The contention of the Opp. Party was that the revisionist is living in adultery and therefore he has sufficient reason to live separately. The Opp. Party then filed a petition under Section 13 of Hindu Marriage Act seeking divorce from the revisionist. This petition was allowed on 25.9.1990. The marriage between the parties was dissolved. The revisionist preferred an appeal against the aforesaid judgment which was registered as Family Court Appeal No. 1195 of 1990. The Opp. Party filed another Appeal No. 402 of 1990 in this Court against the order granting maintenance to the revisionist. That appeal is still pending. The revisionist, therefore, moved an application under Section 127 Cr.P.C. for cancellation of the order granting interim maintenance allowance to the revisionist. This application was registered as Case 590 of 1993. It was rejected on 15.12.1993, on 22.12.93 the Opp. Party moved another application under Section 127 Cr.P.C. alleging that the revisionist after the divorce has re-married. 'This application was allowed on 20.8.1994 by the Principal Judge, Family Court, Kanpur Nagar. It was alleged in this application that the revisionist has married Rakesh son of Ram Singh and that both are living in Kazi Khare and as such the order granting maintenance allowance should be cancelled. The Opp. Party in support of the application filed a copy of the affidavit of Ram Lakhan filed by him in Case No. 279 of 1993. It is stated in this affidavit that he is the owner of house No. 478, Kazi Khare, Lal Bungalow, Kanpur, in which revisionist and Rakesh lived as tenant for the period 30.1.1993 to 30.9.1993 No affidavit of Ram Lakhan was filed in this application before the Family Court. The Family Court has itself remarked that his affidavit should have been filed in these proceedings. The copy of affidavit filed was at best the copy of the previous statement of a living persons. It was not made clear as to how that copy of affidavit was admissible in evidence. There is also nothing on the record to indicate that the affidavit filed by him was relied upon and taken as correct affidavit in Case No. 279/93, Smt. Urmila Devi v. Kaushal Kishore. The copy of this affidavit should not have been relied upon by the Trial Judge.

3. From the perusal of the order it further appears that the Trial Judge was influenced by the fact that the petition under Section 13 of Hindu Marriage Act has

been granted on the ground that the revisionist was leading an immoral life. This decree is sub-judice in this Court and, therefore, whatever has been stated in the judgment has not become final. The Trial Judge should not have cancelled the maintenance allowance on the basis of that judgment alone.

4. No reason is also forthcoming as to why in the earlier application this plea was not taken. The earlier application under Section 127 Cr.P.C. was rejected on 15.12.1993. The present application was filed on 22.12.1993. No date of marriage was given in the application. It was stated that after marriage they are residing in Kazi Khere. Neither the house number nor the name of the landlord was given. The application itself was moved with vague allegations. It appears that Opp. Party wanted to avoid payment of maintenance allowance to the revisionist and their daughter and for that reason he moved another application after 7 days of the rejection of his earlier application under Section 127 Cr.P.C.

5. The Trial Judge granted the application of the Opp. Party under Section 127 Cr.P.C. without any cogent or convincing evidence in its support. The order passed is not based on any evidence on record. The order passed by the Judge, Family Court, cannot, therefore, be sustained. The revision is allowed. The order dated 20.6.1994 passed in Criminal Case No. 829 of 1993 Kaushal Kishore v. Urmila Devi under Section 127 Cr.P.C. is set aside. The revisionist would continue to get the interim maintenance allowance as granted to her on 8.1.1987 in Case No. 886 of 1986 Smt. Urmila Devi v. Kaushal Kishore.