

Malti Vs. State of Uttar Pradesh

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Court : Allahabad

Decided On : Feb-07-2000

Reported in : 2000CriLJ4170; I(2001)DMC204

Judge : S.K. Agarwal, J.

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

Appeal No. : Crl. Revn. No. 1167 of 1993

Appellant : Malti

Respondent : State of Uttar Pradesh

Advocate for Def. : Taj Pal, A.G.A., ;Ram Babu Sharma, ;S.P. Singh, ;A.P. Singh, ;Braham Singh and ;Ran Vijay Singh, Advs.

Advocate for Pet/Ap. : H.C. Rastogi, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

S.K. Agarwal, J.

1. This revision arises against the judgment dated 17.5.1993 passed in Criminal Revision No. 341 of 1991 by IVth Additional Sessions Judge Budaun allowing the

revision and setting aside the order passed in Criminal Case No. 6 of 1991 under Section 125, Cr.P.C.

2. The present revision is preferred against the aforesaid order setting aside the grant of maintenance allowance to the applicant. Before entering into the merits of the case this Court on 13.12.1999 had directed as under :

'Last opportunity is given to the parties to appear and argue the case failing which the case shall be decided on merit.'

3. List has been revised. No one has appeared even today on behalf of the applicant to press this revision. Mr. Ran Vijay Singh, learned Counsel for the opposite party is present. The case was listed for delivery of judgment on 18.2.2000. On this day the Counsel for the applicant appeared before the Court and desired to argue. He was heard. Before proceeding I wish to discuss the case relating to right to hearing by a party in a criminal revision.

4. Code of Criminal Procedure contemplating such contingencies and situations enacted Section 403. It reads as under :

- Option of Courts to hear parties.

- Save as otherwise provided by this Code, no party has any right to be heard either personally or by the Pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by a Pleader.

5. From a bare perusal of Section 403 there remains no room for any complacence regarding the rights of any party to be heard by any Court who is exercising the revisional jurisdiction. It further subjects this denial to the right of hearing of any party to two conditions :

(a) where the Code itself specially provides, the right of hearing cannot be curtailed, or

(b) where the Court on its own after an examination of records finds it fit to hear the parties, may hear them either personally or through their Pleaders.

6. Thus no party preferring a revision application before any Court competent to exercise revisional powers enumerated in Sections 397 to 401, Cr.P.C. has a right of hearing. This provision is quite contrary to the right of hearing in appeals. No appeal can be decided without affording opportunity of hearing to the parties because it is so mandated by law.

7. The withdrawal of this opportunity in revisions is to avoid unusual delay in disposal of trials, appeals, inquiry and any other proceeding. In revisions this power is to be exercised within a very limited compass. No section pertaining to exercise of revisional powers (Sections 397 to 401, Cr.P.C.) creates any vested right of hearing in the litigant. It is the discretion of the Court. The Courts have to use this power of theirs to foster the interest of justice. Mitigation of injustice, any impropriety or serious illegality resulting into miscarriage of justice is the theme behind the exercise of this power. The Courts, especially the High Courts, have to see that no subordinate Court exceeds its jurisdiction or abuse their powers in an arbitrary manner contrary to settled principles of law. It can be exercised, (i) on being moved by an aggrieved party; or (ii) by any other person on his behalf; or (iii) suo motu on the basis of its own knowledge or knowledge derived from any other source.

8. Analysing Section 397 to Section 401;Cr.P.C. what is apparent is that this Power is purely discretionary. Parties have only a latent right to invoke the exercise of this power either by a High Court or other Courts by motivating it i.e. bringing such impropriety, illegality or any miscarriage of justice to such Court's notice. The rights of parties to a hearing are subject to express provisions contained in Section 401(2), Cr.P.C..

9. Bearing in mind the principles of equity and natural justice indulgence is granted to him. He was heard at some length. He was unable to persuade me to make any change in my order. If a man and a woman choose to live together and indulge into sex no such married status can be conferred automatically by their so living upon such a woman. No legal status of a wife she is entitled to in the eyes of law and society. Both law and society treat such women either a concubine or a mistress of that person with whom she is so living. The two may also agree to live

together to satisfy their animal needs. But such a union is never called a marriage nor a woman leading such life is bestowed with the sacrosanct honour of a wife. No marital obligations accrue to such a woman against her husband. Secondly such a life is called adultery. The applicant has to prove her status under personal law before she can legally be entitled to maintenance from her spouse.

10. I have again perused the lower Court's order. I have also gone through the judgment of the learned Trial Court. The Trial Court has returned the finding in favour of the opposite party of her being the wife of the applicant solely on account of their living under one roof. This inference was deduced on the basis of the admission made by the applicant. The applicant's case, according to his evidence, is that the applicant was not married to her at all. She was working in his house as a cook and in the process an illicit intimacy developed between them. They started living together as husband and wife due to the aforesaid illicit relationship. It is not enough to declare that they are married person or applicant No. 1 was married to the opposite party. The applicant has proved, by evidence, that she initially was married to one Devi Das and from his house she had eloped and lived, in between, with several persons before becoming intimate with the applicant. This in law is not enough to declare any woman a legally wedded wife. Wife means a legally wedded wife according to Section 125, Cr.P.C. There ought to be a marriage according to religion or customs prevalent amongst their community. A marriage carries a legal, social or religious sanction behind it. It can be broken only in the manner prescribed either by law, religion or custom prevalent amongst the parties to any such marriage. It provides a guarantee and also a sense of security to the woman who enters into such nuptial bondage especially. In the present case there is evidence on record as admitted by her, that she was turned out of the applicant's house by his wife after administration of beating to her.

11. In the circumstances, the finding returned by learned Judicial Magistrate does not appear to be based on sound reasoning and proper appreciation of evidence. Learned Sessions Judge was right in not accepting this finding. I do not find any infirmity in the order of the learned Sessions Judge. The judgment does not call for any interference.

12. In the result, this revision is dismissed.

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