

Peer Mohd. Vs. Hasinabee

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Court : Madhya Pradesh

Decided On : Aug-26-1994

Reported in : I(1995)DMC209; 1995(0)MPLJ664

Judge : J.G. Chitre, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 271 and 482; Mohammedan Law; Muslim Women (Protection on Divorce) Act, 1985

Appeal No. : M. Cr. C. No. 697 of 1990

Appellant : Peer Mohd.

Respondent : Hasinabee

Advocate for Def. : Vijayvargiya, Adv.

Advocate for Pet/Ap. : Soni, Adv.

Disposition : Petition dismissed

Judgement :

J.G. Chitre, J.

1. The petitioner is hereby praying for invoking the powers of High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred, to as 'Code').

2. The marriage between the petitioner and the respondent took place at Gautampura, Indore, as per Muslim religious way and was performed by one KAZI Abdul Kuddus on 4.5.82. The petitioner averred in this petition that at the time of Saidm marriage the age of petitioner was a years and age of respondent was 6 years. After the marriage as record shows respondent Hasinabee resided with the petitioner in his house for about one year and thereafter they were separated. After exchange of notices, Hasinabee filed a petition for alimony in the Court of Judicial Magistrate. First Class, Depalpur and by order dated 22.7.88, the learned Magistrate allowed her application and granted alimony to her to the tune of Rs. 200/- per month payable by petitioner Peer Mohammed. He filed a revision petition against that order bearing No. 122/88 which has decided by AST Indore on 14.2.90. The learned A.S.J. dismissed the revision petition of the petitioner and maintained the order of learned J.M.F.C.

3. In the present petition, Shri I.N. Soni, Counsel for the petitioner argued that the marriage between the petitioner and respondent is not legal marriage because at the time of said marriage neither the petitioner was major nor the respondent. He submitted that both the Courts below did not give proper consideration to this aspect of the matter, and therefore, High Court should exercise powers under Section 482 of the Code and set right the abuse of process of the law Shri Vijayvargiya, Counsel for the respondent submitted that the said marriage took place in presence of KAZI and the certified copy of the register of KAZI shows that the said marriage was performed by the consent of the guardian of Respondent-Hasinabee. He submitted that the said point has been considered by the Courts below and, therefore, there is no substance in the arguments advanced on behalf of the petitioner.

4. I do not find any substance in the submission made on behalf of the petitioner because the extract from the concerned register of the KAZI makes it very clear that on 4.5.82 when the said marriage was performed the age of the petitioner was 20 years and though the age of respondent Hasinabee was 14 years the consent for the said marriage was obtained from the guardian of the respondent Hasinabee. His name has been shown as Nabubhai father of Guffur Khan Pinzara and the happens to be the grand-father of the respondent Hasinabee. This aspect

has been considered by the Sessions Court in its judgment. A boy or girl, who has not attained puberty (minor) is not competent to enter into a contract of marriage but he or she can be contracted on marriage by his/her guardian Section 271 of the Mohommedan Law provides that the right to contract a minor in marriage belongs successively to the (1) father; (2) paternal grandfather how high soever; and (3) brother and other male relations on father's side in the order of inheritance enumerated in the Table of Residuaries.'

5. In the present matter the record of KAZI shows that the parental grandfather of respondent was present for compliance of the requirements of the marriage as per Mohommedan Law.

6. Besides that the evidence on record shows that the respondent was residing after the marriage in the house of the petitioner for about one year and both of them were behaving like husband and wife. Further, the evidence on record discloses that during this period the petitioner did not contend that the said marriage was illegal. On the contrary he associated himself with respondent as her husband. He has not disowned her during that period by contending that it was illegal marriage. He has acted upon the said marriage and has associated himself with respondent as husband. Now he cannot be permitted to contend that said marriage is illegal.

7. Learned Counsel for the petitioner argued that during pendency of revision petition the petitioner had divorced the respondent and therefore, the order of alimony passed in her favour should be set aside. Shri Vijayvargiya for respondent, opposed.

8. I do not find any substance in this submission also, because when the proceeding Under Section 125 of the Code was being conducted, respondent Hasinabee was the legally wedded wife of the petitioner, Peer Mohammed and even after the said proceeding was concluded and order of alimony was passed in favour of respondent Hasinabee she was legally wedded wife of the petitioner. It has now been contended by the petitioner that during pendency of revision/petition, he had divorced Hasinabee and therefore provisions of Muslim Women (Protection on Divorce) Act, 1985 (herein after referred to as act), would

be applicable. It is pertinent to note that when the said order of alimony was passed in favour of respondent Hasinabee, she was not a divorced women, as she had not acquired the said status. Even in view of the contention raised on behalf of the petitioner, she had not opted for the provisions of the Act. The said order of alimony was passed in her favour when she was having status as 'Legally Wedded Wife' of the petitioner and had not acquired the status as Divorced Woman. In view of that, the provisions of Act would not be applicable to the said order of alimony passed in favour of the respondent Hasinabee.

9. It is pertinent to note that in this master the evidence on record proves that when the petitioner was giving evidence he had already married with another woman and was living with her as Husband and wife. That means he had contracted a marriage with a woman other than respondent Hasinabee. Thus in view of that and in view of provisions of Section 125 of the Code, the order of alimony passed in favour of Hasinabee was quite correct, proper and legal. There is no need of invoking powers of this High Court Under Section 482 Cr. P.C.

10. Thus in view of the discussion made above. I dismiss this petition.