

Sakina Anjum Vs. Ehsan Khan

Sakina Anjum Vs. Ehsan Khan

SooperKanoon Citation : sooperkanoon.com/66539

Court : Jharkhand

Decided On : Sep-23-2015

Appellant : Sakina Anjum

Respondent : Ehsan Khan

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No. 763 of 2015 Sakina Anjum aged 23 years, W/o Ehsan Khan, D/o Md. Afsar, R/o Mohalla Millat Colony, PO and PS Kanke, District Ranchi . Petitioner Versus Ehsan Khan, S/o Saukat Khan, R/o Millat Colony, PS and PO Kanke, Dist. Ranchi Opposite Party ----- CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA For the Petitioner : Mr. Ishteyaque Ahmed, Advocate For the Opp. Party : Mr. Azeemuddin, Advocate ----- 04/Dated:

23. 09/2015 The present revision is directed against the order dated 04.06.2015 passed in Maintenance Case no. 159 of 2010 by the learned Principal Judge, Family Court, Ranchi whereby the application under Section 125 Cr.P.C. was dismissed holding that the factum of marriage was not established.

2. Learned counsel for the petitioner has submitted that the issue regarding the factum of marriage was adjudicated as Issue no.

3. It is submitted by the learned counsel that while adjudicating the said issue, the learned Principal Judge, Family Court, Ranchi, without calling for the documents

or report from the Marriage Officer at Raghunathpur, Purulia has relied on the letter produced by the opposite party-husband alleged to be received from the Office of Registrar General of Marriage, West Bengal wherein it was informed that Mr. Sushil Kumar Dutta, who had issued the marriage certificate, had retired in January, 2006. That on the said basis, the court below had held that since Marriage Officer had retired on 27.01.2006, hence the question of solemnization of marriage of the petitioner with opposite party on 08.06.2010, is not acceptable. Learned counsel has submitted that the court below erred in holding that since Purulia is at a distance of 125 Kilometers, it is not possible that marriage could have been solemnized on the same date i.e. on 08.06.2010 before the Marriage Officer, Purulia, West Bengal and the Kazi at Ranchi. It is submitted that the finding of the court that since both the petitioner and opposite party were below the marriageable age, hence, there was no valid marriage is not correct as in the case of Md. Idris Vs. State of Bihar reported in (1980) Criminal Law Journal 764, the Division Bench of Honble Patna High Court has held that the girl who has attained the age of puberty (15 years) can marry without the consent of the parents meaning thereby that under the Mohomedan Law the girl attains the age of majority at the age of puberty accordingly the marriage is permissible. It is urged that the Court below has failed to appreciate the Nikahnama (marriage certificate) adduced by the petitioner. On the above grounds, it is submitted that the impugned order has been -2- passed without appreciating the documents of the petitioner and without giving an opportunity to the petitioner to prove the marriage certificate issued by the Marriage Officer, Raghunathpur, Purulia, consequently, the matter be remitted to the court below with liberty to the petitioner to lead her evidence in support of the factum of marriage.

3. Learned counsel on behalf of opposite party has countered and submitted that the documents of the parties was considered by the Court below and on appreciation of the school certificates, the court below has found that the opposite party was below 21 years at the time of marriage. It is submitted that even under the Indian Marriage Registration Act, marriage can be solemnized when the girl and boy have attained the age of majority. That the advocate of opposite party had obtained the report from the Office of Registrar General of Marriage, West Bengal, i.e. Exhibit-B, wherein it has been mentioned that Mr. Sushil Kumar Dutta, the

Marriage Officer, had retired on 27.01.2006. The said report was filed by the advocate for the opposite party and since it is a public document, the court has rightly relied upon it. It is submitted that it would be evident from the order sheet dated 19.11.2014 that the petitioner had filed an application under Section 311 Cr.P.C. along with certain documents but did not press the application due to which the documents were not marked as Exhibits. It is argued that the finding of the learned trial court that there was no valid marriage between the parties is in conformity with law and it does not require any interference by this Court.

4. Heard. On perusal of the impugned order it is amply clear that the learned Principal Judge, Family Court, while discussing the documents has held that the certificate (Ext. B) produced by the opposite party from the office of Registrar General of marriage, West Bengal establishes the fact that the said Marriage Officer had retired on 27.01.2006, and held that the marriage certificate produced by the petitioner-wife was a manufactured document. In this context, it is necessary to state that it was the duty of the Court to call for the report from the concerned authority regarding the genuinity of the document so produced by the opposite party. The document could have been relied upon if it had been proved in accordance to the procedure of law. Thus, the finding of the learned Principal Judge, on the basis of the documents produced by the opposite party-husband without affording reasonable opportunity to the petitioner/wife to rebut the document or to prove the marriage certificate filed by the petitioner, is not in consonance with law and in violation of principles of natural justice. -3- In the attending facts and circumstances and in the interest of justice, the matter is remitted to the court below for proper adjudication of the issue, by giving an opportunity to the petitioner-wife to adduce evidence regarding the genuinity of the marriage certificate issued by the Marriage Officer and if learned trial court deems it necessary it shall also take steps to call for the report from the competent authority regarding the issuance of the letter (Ext.B), produced by the opposite party and after giving an opportunity of hearing to both the parties, shall pass necessary order on merit without being prejudiced by any discussion and observation made in this order.

6. The matter is remitted to the Court below to pass necessary order after giving an opportunity of hearing to both the parties, who shall be present before the learned Family Court, Ranchi, on 21.11.2015. The learned court shall ensure that no unnecessary adjournments are granted and decide the matter expeditiously preferably within six months from the date of appearance of the parties.

7. With the said observation and direction, the revision application is hereby disposed off. (Amitav K. Gupta, J.) Tarun/-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com