

Mst. Jati Vs. Daljit Singh

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Court : Rajasthan

Decided On : Nov-30-1956

Reported in : AIR1957Raj359; 1957CriLJ1317

Judge : Modi, J.

Acts : [Child Marriage Restraint Act, 1929](#) - Sections 6, 10, 12, 12(1) and 12(2);
[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 205

Appeal No. : Criminal Ref. No. 66 of 1956

Appellant : Mst. Jati

Respondent : Daljit Singh

Disposition : Reference accepted

Judgement :

ORDER

Modi, J.

1. This is a reference by the Sessions Judge, Pali, in a proceeding under Section 12 of the Child Marriage Restraint Act, and arises under the following circumstances.

2. It appears that on 15-6-1956, one Daljitsingh filed a complaint, against Panna and his wife Mst. Jati who is the petitioner before me to the effect that Panna and Mst. Jati were about to solemnize the marriage of their daughter Pukhli aged six years and of another girl Najuri (daughter of one Jetha) aged 12 years and that the marriages were to be performed on the same evening and therefore prayed that an injunction be issued against Panna and his wife prohibiting the said marriages. A further prayer was made that 'the accused' be punished in the matter.

The Sub Divisional Magistrate Pali in whose. Court the aforesaid application was filed examined Daljitsingh, registered it under Section 6 of the Child Marriage Restraint Act and directed that notices be issued to Panna and his wife to refrain from performing the marriages of Pukhli and Naiuri until further orders and to file their written statements in the matter. On the 22nd June, 1956 Panna appeared in court but Mst. Jati did not.

An application was also filed on behalf of Mst. Jati under Section 205 Cr. P. C. for exemption from attendance in Court. The Magistrate rejected the application. Mst. Jati then went in revision to the learned Sessions Judge, Pali, against the order of the Magistrate rejecting her application for exemption from attendance in court, and this is how the present reference has arisen.

3. The learned Sessions Judge formed the opinion that the Magistrate was a right in refusing exemption under Section 205 but the same should have been allowed under the Child Marriage Restraint Act, and as such exemption was not allowed, he has made the present reference recommending that the Magistrate be directed not to compel the attendance of 'the accused' until he has held a preliminary inquiry into 'the matter under Section 10 of the Child Marriage Restraint Act.

4. I cannot help stating at the very outset that the courts below seem to me to have misconceived the legal position in this case. In the first place the Magistrate was entirely wrong when he registered the information, conveyed to him by Daljitsingh, under Section 6 of the Child Marriage' Restraint Act. A bare perusal of that section would show that it can come into play only where a child marriage has been performed and not before.

Admittedly no marriage had been performed in the present case, and, therefore, there is no question of a complaint being registered under Section 6 of the said Act. The correct position in law is that the application which has culminated in the present reference was filed under Section 12(1) of the Child Marriage Restraint Act and should have been registered as such. Section 12 is a self-contained provision and its main object is preventive, that is, to prevent child marriages from being performed. In this view of the matter, I have no hesitation in coming to the conclusion that no question also arose of the application of Section 10 of the said Act.

That section comes into Play only when a court takes cognizance of an offence under the Act and not where merely an application has been made to prevent a child marriage from being performed under Section 12. It also follows that the application under Section 205 of the Code of Criminal Procedure was clearly misconceived. So far as Section 205 is concerned, it applies to an accused and not to a person in the position of Mst. Jati who was not accused of having committed any offence at all but against whom the complaint was that she was about to commit an offence if I may say so.

The discussion by the courts below as to the application of Section 205 on the ground that Mst. Jati was a woman of status or not is, therefore entirely beside the mark and the application of that Section is not attracted at all.

5. The only question which then remains for decision is whether in a proceeding under Section 12 of the Child Marriage Restraint Act, the Magistrate should have compelled the person complained against to put in his or her personal appearance. Sub-section (4) of this section provides that where such an application is received, the court shall afford the applicant an early opportunity of appearing before it either in person or by pleader. This clearly shows that so far as the applicant is concerned he need not personally appear before the Court.

There is also nothing in the section which demands that the person to whom a notice is given and who is complained against shall also appear in person. All that Sub-section (2) provides is that no injunction under Sub-section (1) shall be issued against any person unless the court has previously given notice to such person,

and has afforded him an opportunity to show cause against the issue of the injunction.

Now. I have no hesitation in saying that such a person may show cause either personally or by pleader. In this view of the matter, I conclude that Mst. Jati has a right to show cause against the issue of an injunction by pleader if she does not wish to appear personally in court, and there is nothing in law which can prevent her from doing so.

6. For the reasons mentioned above, I accept this reference and set aside the order of the Magistrate compelling Mst. Jati to make her personal appearance in court and hereby direct that she shall proceed to dispose of the case in the light of the observations made above. I may add that much of the trouble in this case has been caused because counsel for the petitioner himself misconceived the true position and made an application under Section 205 Cr. P. C. which need not have been made at all.

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