Hari Singh Vs. Mt. Parbati

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Court : Himachal Pradesh

Decided On : Apr-03-1951

Reported in : AIR1951HP59

Judge : Chowdhry, C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 439, 488, 488(4), 488(8) and 531

Appeal No. : Cr. Revn. No. 29 of 1950

Appellant : Hari Singh

Respondent : Mt. Parbati

Advocate for Def. : R.N. Malhotra, Adv.

Advocate for Pet/Ap. : K.C. Pandit, Adv.

Disposition : Application dismissed

Judgement :
ORDER

Chowdhry, J.

1. This is an appln. in revn. by one Hari Singh against the judgment & order of the learned Ses. J. of Mahasu, dated 16-5-1950, dismissing his revn. against the

judgment & order of a first class Mag. of Kasumpti, dated 16-12-1949, whereby the appln. of the resp. Mt. Parbati, the wife of the present appct. Under Section 488, Cr. P. C., was allowed, & she was granted a monthly allowance of RS. 60 by way of maintenance against the appct.

2. There was a preliminary objection taken on behalf of the resp. that the revn. was time-barred or was, in any case, unduly delayed. There is no limitation prescribed by law for the filing of a criminal revn. There is, however, no doubt that, except in exceptional cases, the filing of a criminal revn. should not be unduly delayed. The revn. of the appct. was dismissed by the Ses. J. on 16-5-1950. On 17-5-1950 the appct. applied for a copy of that judgment. The copy was ready on 80-5-1950 but it was not till 22-7-1950 that delivery of the copy was taken by him. Even after that the appct. waited for 28 days before he filed the present revn. on 19-8-1950. (After discussing the evidence, the judgment proceeded:) I therefore hold that the filing of the present appln. in revn.| was unduly delayed, & that no expln. worth the name for the delay has been offered.

3. It appears to me, however, that even a revn. filed with undue delay, & without any expln. for the delay, might be entertained if, on a consideration of the case on merits, it appears that there has been a failure of justice. That does not appear to be so in the present case.

4. The first point urged on behalf of the appct. was that the present 'proceedings should, under Clause (8) of Section 488, have been taken before the appropriate Ct. at Solan, because village Kundanpur Bater, where the appct. last resided with the resp., is situate within that sub-division, & not by the first class Mag. at Kasumpti. But Under Section 531, Cr. P. C., the order of maintenance passed by the trial Ct., cannot be set aside merely on the ground that the proceedings were had in a wrong place, unless it appears that Such an error has in fact occasioned a failure of justice. On such failure of justice, however, no suggestion whatsoever has been made on behalf of the appct. It is noteworthy that the present plea was not taken by the appct. in the trial Ct. & that, although taken before the Ses. J. it was not pressed there. That by itself shows that the appct. was not in any way prejudiced, & there was no failure of justice. The learned counsel for the appct.

cited before me in this connection the ruling reported as Emperor v. Sham Bai, A. I. R. (28) 1941 Nag. 175; bat the provisions of S. 531 were not cited in that case and, therefore, the present revn. cannot, on its authority, be allowed merely on the ground of the proceedings having been had in a wrong place. It may further be stated in this connection that the appln. Under Section 488 was filed before the Dist. Mag. of Mahasu, & that the appct's. place of residence lies within that district. The appln. for maintenance was, therefore, filed in a proper Ct. The Dist. Mag. thereafter made the case over to the Mag. at Kasumpti, which he was fully entitled to do Under Section 192, Cr. P. C. The first ground of want of jurisdiction in the trial Ct. has, therefore, no force.

5. It was next ucged on behalf of the appct. that, in the course of the proceedings before the trial Ct. he made an offer to the resp. to come & live with him, but that the Mag. did not take her statement in reply to that offer & recorded no finding with regard to the same. According to the learned counsel for the appct. it was incumbent upon the Mag. to have done so in view of the provisions of Clause (4) of Section 488. In other words, before allowing maintenance to the resp. the Mag, should have recorded a finding that the resp. had refused the offer, & that the refusal was based on sufficient reason. The proposition of law thus propounded appears to be correct, but the contention that the resp.'s reply to the offer was not obtained & the Mag. recorded no finding with regard to the offer & refusal is not correct. The offer was made in the appct.'s written statement on 12-9-1949, & in her statement subsequently made by the resp. on 26-10-1949, she clearly stated that she was not ready to go to the appct. because, firstly, her life would be in danger &, secondly, the appct. was in liaison with his sister-in-law. The learned Mag. also recorded a finding on the point by holding that he was not prepared to believe that the appet. was sincere in his offer, & that the resp. was justified in not agreeing to live with him. This technical ground raised on behalf of the appct. has also no force. It was not argued before me that the reason for which the appct.'s offer was held not to have been made bona fide was not a valid reason in law.

6. Finally, it was argued that the evidence produced by the parties in this case did not merit the conclusion that the appot. had been guilty of neglect or refusal to maintain the resp. There is evidence for & against on that point, & it cannot be said

that in weighing that evidence a perverse finding of fact has been recorded by the trial Ct. It is immaterial that this Ct. might have come to a different finding on that evidence. I see no reason, therefore, to disturb the finding oE fact regarding the appct.'s neglect or refusal to maintain the resp.

7. The appln. in revn. accordingly fails, & it is hereby rejected with costs.