

Shyama Devi, and Another. Vs. State of U.P. and Another.

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Court : Allahabad

Decided On : Aug-02-2010

Judge : Shri Kant Tripathi, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 420, 467, 468, 471

Appeal No. : APPLICATION U/S 482 No. - 14610 of 2008

Appellant : Shyama Devi, and Another.

Respondent : State of U.P. and Another.

Advocate for Def. : Rajiv Lochan Shukla, Govt. Adv.

Advocate for Pet/Ap. : R.O.V.S. Chauhan; S.O.V.S. Chauhan, Advs.

Judgement :

1. This is a petition under section 482 Cr.P.C. for quashing the order dated 2.11.2007 passed by Additional Sessions Judge, Court No.1 Etawah in criminal revision no. 290 of 2007 (Shyama Devi v. State of U.P.) where by the learned Additional Sessions Judge dismissed the revision filed on behalf of the applicant and confirmed the order dated 11.6.2007 passed by the Judicial Magistrate Etawah in case crime no. 160 of 2005 under sections 420, 467, 468, 471 IPC.

2. It appears that in the aforesaid case the investigating officer submitted a final report on the ground that no case was made out. The respondent no.2 Smt. Saroj,

who is the complainant, moved a protest petition against the final report. The learned Magistrate considered the protest petition report and perused the entire case diary and arrived at the conclusion that the final report was not correct and there were sufficient materials on record to take cognizance of the offences under section 420, 467, 468 and 471 IPC and he accordingly summoned the applicants as accused.

3. The counter affidavit has been filed on behalf of the applicant. No rejoinder affidavit has been filed.

4. It appears that in the present case the respondent no.2 Smt. Saroj was the wife of the deceased Ajay Krishan who died in a road accident. The case of the applicants is that the respondent no.2, after the death of her husband Ajay Krishan, remarried with one Surendra Singh, therefore, she lost her rights not only in the agricultural land and other properties left by her husband Ajay Krishan but also became disentitled to continue with the job she obtained in place of her husband after his death. In support of this plea a reliance was placed on an entry made in the family register in which the respondent no.2 was shown as the wife of Surendra Singh. The said entry in the family register was made on the application moved by Surendra Singh.

5. The respondent no.2 lodged the FIR with the allegations that the family register entry showing her as the wife of Surendra Singh was a forged entry made in connivance with the applicants. The investigating officer concluded the matter with the observation that no criminal case was made out. The Learned Magistrate seems to have perused the entire case diary and its annexure and arrived at a prima facie conclusion that the respondent no.2 is the widow of Ajay Krishan and, therefore, the family register entry showing the respondent no.2 as wife of Surendra Singh was not genuine and was forged.

6. The learned counsel for the applicant submitted that the learned Magistrate has failed to see as to whether there was any material in the case diary to support that the respondent no.2 remarried with Surendra Singh. If there was no such material, the family register entry showing the respondent no.2 as wife of Surendra Singh ought not to have been prima facie adjudged as forged only on the ground of

Khatauni entries and previous family register. It was next submitted that the summoning order based on mere comparison of Khataunis and previous family register with the disputed family register was not proper.

7. In reply, Mr. Rajiv Lochan Shukla the learned counsel for the respondent no.2 submitted that the summoning order has been passed on the basis of the materials collected during the investigation, therefore, it cannot be quashed on the ground that there was some error in making appraisal of the evidence on record.

8. Keeping in view the facts and circumstances of the case and submissions of the learned counsel for the parties, the summoning order which is based on the materials collected during the investigation cannot be quashed. The learned counsel for the applicants further submitted that the applicants may be provided a liberty to move an application through counsel for discharge so that they may place their view points before the Magistrate on the basis of the materials collected during the investigation. It was next submitted that the applicants may be provided some interim protection in the bail matters.

9. Keeping in view the facts and circumstances of the case, it is provided that if the applicants move any application for discharge through counsel, the same may be considered and disposed of in accordance with law without being influenced from the observations made herein before. It is further provided that if the applicants move any application for bail, the same may be considered and disposed of in accordance with the principles laid down by the Apex Court in the case of Lal Kamlendra Pratap Singh versus State of U.P. & others (2009) 4 SCC 437.

10 .With the aforesaid observations, the petition are finally disposed of.

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