

Punit Vs. Smt. Sunita

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Court : Rajasthan

Decided On : May-26-2011

Judge : R.S. Chauhan, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 397, 401, 127(3), 125

Appeal No. : S.B. Criminal Revision Petition No.830/2009

Appellant : Punit

Respondent : Smt. Sunita

Advocate for Pet/Ap. : Mr.Shambhoo Singh, Adv.

Judgement :

1. Aggrieved by the order dated 19.05.2007, passed by the learned Judge, Family Court, Udaipur, whereby the learned Judge has dismissed the petitioner's application under Section 127(3) Cr.P.C., the petitioner has approached this Court. The brief facts of the case are that the petitioner and the respondent were married. However, subsequently they were divorced.

2. Initially, Smt Sunita had filed an application under Section 125 Cr.P.C. for seeking maintenance from the petitioner. The said application was accepted and the petitioner was directed to pay a maintenance of Rs.600/- per month to Sunita. Subsequently, the petitioner filed an application under Section 127(3) Cr.P.C.

ostensibly on the ground that Sunita has married one Ratan Kumar. Therefore, the petitioner need not maintain her any longer.

3. In order to buttress this case, the petitioner had submitted not only his own affidavit, but also the affidavit of other persons. However, vide order dated 19.05.2007, the learned Judge has dismissed the said application. Hence, this petition before this Court. Mr. Shambhoo Singh, the learned counsel for the petitioner, has vehemently contended that the petitioner had submitted his own affidavit as well as the affidavit of Smt. Maina, the former wife of Ratan Kumar.

4. Despite the affidavits, the learned Judge has rejected the petitioner's application under Section, 127(3) Cr.P.C. Hence, he has committed a grave illegality. Heard the learned counsel for the petitioner and perused the impugned order. There is, indeed, a vast difference between making of an allegation and proof thereof. The learned Judge has clearly noted that the petitioner has been unable to produce any cogent and reliable evidence to establish the fact that Sunita had married Ratan Kumar.

(i) Firstly, although the petitioner claims that Sunita had married Ratan Kumar through the Nata ceremony, but neither any eye-witness, nor any documentary evidence have been produced to buttress this allegation.

(ii) Secondly, even when the affidavit of Smt. Maina was produced, no evidence has been submitted to prove the fact that Smt. Maina is, indeed, the wife of Ratan Kumar.

(iii) Lastly, no documentary evidence in the form of Ration Card or Voter List has been produced to prove the fact that Sunita has married Ratan Kumar.

5. In the absence of cogent and convincing evidence, the learned Judge is certainly justified in rejecting the petitioner's application under Section 127(3) Cr.P.C.. Hence, this Court does not find any illegality or perversity in the impugned order.

6. This petition, being devoid of any merit is, hereby, dismissed.