

Devendra Kumar and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-31-2011

Reported in : 2011AIR(All)158;

Judge : Ashok Bhushan & Ran Vijai Singh

Appeal No. : Civil Misc. Writ Petition No. 21325 of 2011

Appellant : Devendra Kumar and Others

Respondent : State of U.P. and Others

Advocate for Pet/Ap. : Sri. Girish Kumar Yadav

Judgement :

Heard Sri Girish Kumar Yadav, learned counsel for the petitioners and Sri Ram Krishna, learned Standing Counsel for respondents No.1, 2 and 3.

Notices were issued to respondent No.4 by order dated 18th April, 2011 but no response has been received.

By this writ petition, the petitioners have prayed for a writ of mandamus directing the respondents not to interfere in the peaceful living of the petitioners.

Petitioners' case in the writ petition is that both the petitioners being major have performed their marriage on 3rd April, 2011 which marriage has also been registered by the Registrar, Hindu Marriages, Allahabad on 4th April, 2011. Copy

of the certificate of marriage registration has been filed as Annexure-2 to the writ petition.

The Apex Court in the case of Seema (Smt.) vs. Ashwani Kumar reported in 2008(1) S.C.C. 180 has issued directions to the State and the Union territories to comply with earlier directions of the Apex Court issued by order dated 14th February, 2006 in the case of Seema (Smt.) vs. Ashwani Kumar reported in 2006(2) S.C.C. 578 for making rules for compulsory registration of marriages.

Under the Hindu Marriage Act, 1955, the State of U.P. has framed a rule, namely, Uttar Pradesh Hindu Marriages (Registration) Rules, 1973 (hereinafter referred to as the 1973 Rules) under which the marriages are registered by the respective Registrars who has been conferred jurisdiction of registration of marriages.

This Court while considering similar cases regarding registration of marriages has come across several registration certificates of marriage which indicate that registration of marriages are being done in a mechanical manner without taking into consideration the statutory requirements and without application of mind. In this writ petition, consequently we had passed an order on 13th April, 2011 allowing time to the learned Standing Counsel to verify as to who is the officer who has issued certificate (Annexure-2 to the writ petition) in the capacity of the Registrar of Hindu Marriage. By further order dated 18th April, 2011, this Court directed as under:-

"Issue notice to respondent no.4 (wrongly mentioned as respondent no.5 in the array of parties).

Learned counsel for the petitioners contends that both the petitioners being major they have performed their marriage on 03/4/2011 and their marriage has been registered by the Registrar of Hindu Marriage on 04/4/2011. The submission of the learned counsel for the petitioners is that although no F.I.R. has been lodged against the petitioners, but they are being harassed by the police personnel.

Learned Standing Counsel was allowed time to obtain instruction as to what is the procedure which is being followed by the Registrar Hindu Marriage, Allahabad for

registering the marriage and under which authority the officer has registered the marriage may also be brought on record.

Learned Standing Counsel seeks one weeks time to file affidavit of Registrar Hindu Marriages, Allahabad giving relevant details of the authority, manner and procedure for registering the marriage.

As prayed put up on 27/4/2011, as fresh.

In the meantime, in case there is no F.I.R. lodged against the petitioners, no coercive action shall be taken against them."

An affidavit of Mr. Jaishankar Mishra, Officiating Registrar, Hindu Marriages has been filed in compliance to the aforesaid order. In the affidavit an order dated 16th September, 2010 passed by the Assistant Inspector General (Registration), Allahabad has been brought on the record by which it was directed that since due to transfer of Sub-Registrar the post is vacant, till the posting is made Mr. Jaishankar Mishra, Registration Clerk shall work as Incharge Sub-Registrar, Sadar-I, Allahabad in addition to his duties. The officiating Registrar, who has been authorised to perform the duties of Sub-Registrar, has been continuing as such for the last more than 9 months and no regular posting of the Sub-Registrar has been brought to our notice.

It is true that according to Section 12 of the Registration Act, 1908 when any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the vacancy is filled up. Section 12 of the Registration Act, 1908 is quoted below:-

"12. Absence of Sub-Registrar or vacancy in his office. - When any Sub-Registrar is absent, or when his office is temporarily vacant, any person who the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the vacancy is filled up."

What Section 12 of the Registration Act, 1908 contemplate is arrangement in the temporary vacancy so that work of registration may not suffer. It is for the

competent authority, i.e. The Inspector General (Registration) and other authorities to look into the fact that temporary arrangement made in accordance with Section 12 be not allowed to continue for indefinite period. We direct the learned Chief Standing Counsel to communicate this order to the Inspector General (Registration) for taking appropriate action in this regard.

In the affidavit, which has been filed by the Officiating Registrar, it has been stated in paragraph 5 that under the provisions of the 1973 Rules the Registrar has no power for any inquiry but he has to paste application in the prescribed register and certificate to that effect is to be issued. It is useful to quote paragraph 5 of the said affidavit, which is as under:-

"5. That, under the rules the Registrar has no power for any further enquiry but he has to paste application in the prescribed register and certificate to that effect is being issued. It is stated that all the necessary formalities in the case has been done by the petitioner and the certificate has been issued to them in accordance with law. The certificate is a showing certificate issued by the deponent."

In the manner under which registration of marriage is being done and from the stand which has been taken in the affidavit, it is clear that there is substantial confusion with regard to power of the Sub-Registrar while registering the marriage and the procedure which is to be adopted while registering the marriage. It is, thus, necessary for us to look into the manner and procedure of registration of marriage as provided by the statutory rules.

The 1973 Rules have been framed in exercise of power under Section 8 of the Hindu Marriage Act, 1955. The scheme of the 1973 Rules clearly discloses that registration of marriage is not a mechanical act, rather it has to be done by the Registrar after due application of mind and after adverting to the relevant statutory requirements as indicated in the rules. Rules 4, 7, 13, 14 and 15 of the 1973 Rules are quoted below:-

"4. Registration of Marriages. - (1) The parties to any marriage may, on payment of the fee specified in Rule 10, have the particulars relating to marriage entered in the Hindu Marriage Register kept for the purpose in the office of the Registrar.

(2) An application for registration of a marriage shall be made in duplicate to the Registrar within whose jurisdiction the marriage is solemnized or within whose jurisdiction the husband permanently resides and shall be in Form "A" of the Schedule to these rules.

Provided that, if the application is made to the Registrar within whose territorial jurisdiction the marriage is solemnized, and the husband does not permanently reside within such jurisdiction, it shall be made in triplicate and the third copy of the application shall be forwarded by the Registrar receiving the application to the Registrar within whose jurisdiction the husband permanently resides:

Provided further that an application for registration of marriage shall ordinarily be presented to a Sub-Registrar having jurisdiction, but the Registrar of the District may in his discretion also entertain any such application.

(3) The application mentioned in sur-rule (2) shall be accompanied by a certificate by a Member of Parliament, Member of State Legislature, Gazetted Officer, Pradhan of a Gaon Sabha, Sarpanch of a Nayaya Panchayat, Pramukh of a Kshetra Samiti or the President of any other local body and where any party to the marriage resides outside India by the Indian Consul or Vice Consul, as to the identity of the parties to the marriage and the correctness of the other particulars appearing in the application, and shall be presented personally to the Registrar concerned : Provided that where the applicant resides outside India it may be sent through Indian Consul or Vice-Consul by registered post. Where the person presenting the application so desires he shall be given a receipt for the application in the following form:

"Received an application for registration of marriage between and

..... presented by

(Signature).....

dated Registrar of Hindu Marriage....

(4) Where the application is sent by registered post the fee shall be remitted by money order at the remitter's expense and the receipt issued to the remitter by the post office through which the remittance is made shall be attached to the application.

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6.

7. Endorsement on application.- Each application and its duplicate and also its triplicate wherever required shall be endorsed by the Registrar with the following endorsement duly signed by him, on the reverse thereof, namely:

"The application was received by me on 19 and it is filed at serial no..... of 19 on page of volume of the Hindu Marriage Register maintained under the Hindu Marriage Registration (Uttar Pradesh) Rules, 1973.

Date.....

(Signature)

Registrar of Hindu Marriages.

(2) The Registrar shall as soon as may be inform the applicants in writing that their marriage has been duly registered.

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13. Power of Registrar.- (1) If an application for registration of Marriage or for a certified extract from the Marriage Register is incomplete or defective in any

respect or is not accompanied by the fee specified in Rule 10, the Registrar shall require the applicant to remove the defect or pay the said fee, as the case may be, within such time as may be specified by him failing which the application shall be rejected.

(2) If the Registrar receiving such application has no jurisdiction to receive the same, he shall return it to the applicant for being presented to the proper authority.

(3) Where an objection to any application for registration is received by a Sub-Registrar, he shall refer the same to the Registrar of the district, who shall decide the same as also objections received by him after hearing the parties affected thereby and his decision subject to any decree or order of a competent court be final, in so far as the question of action on the application for registration is concerned.

(4) The particulars of all applications which are returned or of which registration is refused as aforesaid shall be noted in a register in Form 'C' of the Schedule appended to these rules.

14. Superintendence.- The Registrar shall perform his duties and exercise his powers under the general superintendence of the Registrar General."

From a perusal of Rule 4(3) of the 1973 Rules it is apparent that the application for registration of marriage has to be accompanied by certificate of a Member of Parliament, Member of State Legislature, Gazetted Officer, Pradhan of a Gaon Sabha, Sarpanch of a Nayaya Panchayat, Pramukh of a Kshetra Samiti or the President of any other local body as to identify the parties to the marriage and correctness of other particulars appearing in the application. Rule 4(3) of the 1973 Rules provides for two things; a) identity of the parties to the marriage; and b) correctness of the particulars appearing in the application. Thus the certificate contemplated under Rule 4(3) has to be in the above regards and the Registrar registering the marriage has to apply his mind as to whether the certificate is in accordance with the statutory requirement of Rule 4(3) of the 1973 Rules. Another aspect, which is clear from Rule 4(3) of the 1973 Rules, is that the application has to be presented personally to the Registrar concerned. The presentation of the

application personally clearly contemplates both by bride and bridegroom and the Registrar has to satisfy himself in this regard and thereafter proceed with the registration.

Rule 13 of the 1973 Rules clearly contemplates rejection of the application when it is incomplete or defective and the defect is not removed. Schedule "C" of the Rules, which prescribes proforma on Form "C", contains a column "Reasons for refusal or return". Thus all applications which are filed have not to be mechanically registered but after application of mind registration has to be done. Rule 7 of the 1973 Rules contemplates that there has to be endorsement by the Registrar to the effect that application has been received by him. This cast a duty on the Registrar to verify as to whether the application has been submitted both by bride and bridegroom personally and also record the said fact on the reverse of the application. Rule 13(3) contemplates filing of objection to the application also. Rule 14 provides that Registrar shall perform his duties and exercise his powers under the general superintendence of the Registrar General. According to Rule 2(b) of the 1973 Rules "Registrar General" means the Inspector General of Registration appointed under Section 3 of the Registration Act, 1908.

When the Registrar General (Inspector General of Registration) has been given power of general superintendence, he is fully entitle to issue instructions and directions for regulating the procedure and manner of presentation, registration and other allied manner in consonance with the statutory rules. The statutory rules in the event does not provide elaborate procedure, that can be provided for by directions or circulars of the Registrar General which are in consonance with the statutory rules.

We are of the view that the Registrar General has to look into the entire aspect of the matter and after assessing the manner under which marriages are being registered in the State, shall consider and issue directions and circular in this regard to facilitate the purposeful and meaningful exercise of the Registrars who have been entrusted with the statutory duty.

After we have reserved the judgment in this writ petition, we had come across a certificate of registration of marriage issued by the Registrar Hindu Marriage-V,

Meerut by which registration certificate the Registrar has registered the marriage of a bride and bridegroom who were belonging to Muslim community. It is useful to quote our order dated 18th May, 2011 passed in WRIT - C No. - 28753 of 2011 (Smt. Asma And Another vs. State of U.P. and others), which is as under:-

"Heard learned counsel for the petitioner and leaned Standing Counsel appearing for respondent No. 1,2 and 3.

Petitioners' case in this writ petition is that the petitioners being major have performed their Nikah on 1.10.2009. It is further submitted that although no first information report has been lodged but coercive action is being taken by the police personnels.

The petitioners have filed a certified copy of the Hindu marriage certificate issued on 15.4.2011 by Registrar Hindu Marriage-V Meerut, U.P. India. Both the petitioners are Muslim and have filed marriage certificate (Annexure-2 to the writ petition). It appears that the Registrar Hindu Marriage who registered the marriage has not applied his mind as the petitioners are muslim, such marriage can not be registered under the Hindu Marriage Act 1955.

Let the Registrar Hindu Marriage-V Meerut be impleaded as respondent No.5 in the writ petition.

Issue notice to the Registrar Hindu Marriage-V Meerut who has issued the Hindu marriage certificate to the petitioners on 15.4.2011 for appearing before this Court and file affidavit.

List this case on 30.5.2011. Steps be taken within three days.

In the meantime, it is provided that in case the F.I.R has not been registered against the petitioners, no coercive action shall be taken against the petitioners."

The above also indicates the cursory and mechanical manner in which Registrars are registering the marriage. The marriages are being registered without even looking into the contents of the application and without adhering to statutory scheme as provided under the 1973 Rules. All these have to be looked into by the

Registrar General and appropriate remedial steps have to be taken in exercise of his power under Rule 14 of the 1973 Rules.

Learned Chief Standing Counsel may communicate copy of this order to the Registrar General for taking appropriate action as directed.

Now coming to the facts of the present case, the petitioners being major have performed their marriage on 3rd April, 2011 which has also been registered. We are of the view that registration of their marriage is prima facie proof of marriage subject to order of a competent court or till the certificate is cancelled. Petitioners' case further is that although no first information report has been lodged against the petitioners but the police personnels are interfering in the peaceful life of the petitioners.

In view of the above, we direct that in case no first information report has been lodged against the petitioners, no coercive action shall be taken against them by the police personnels.

The writ petition is disposed of with the above directions.

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