

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-38994-2013(O&M)

Date of decision : 19.02.2015

Anu

... Petitioner

Versus

Sandeep Ohri

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Vipin Mahajan, Advocate
for the petitioner.

Mr.Ritesh Pandey, Advocate
for the respondent.

REKHA MITTAL, J.

CRM-5555-2015

Allowed as prayed for.

Annexure P8 is taken on record.

CRM-M-38994-2013

The present petition under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') lays challenge to order dated 16.10.2013 (Annexure P5) passed by the Judicial Magistrate Ist Class, Gurdaspur whereby the application filed by the petitioner under Section 311 Cr.P.C. for adducing additional evidence has been dismissed.

The petitioner filed application under Section 125 Cr.P.C. claiming maintenance from the respondent on the premise that she was married with the respondent on 20.07.2007 at Gurdaspur and her parents gave sufficient dowry at the time of marriage and an amount of Rs.50,000/-

was given by her father to the respondent on 17.04.2008. The petitioner was humiliated, harassed and taunted by the respondent and his family members in connection with demand of dowry i.e. Rs.5 lacs and an Esteem car. She has been turned out of the matrimonial home on 29.06.2008 and articles of her Istridhan are in possession of the respondent and his family members . The respondent is working as an agent and earning about Rs.30,000/- per month.

The respondent filed reply raising preliminary objection in regard to maintainability of the application with the plea that the applicant is the legally wedded wife of Kanwar son of Chaman Lal Ratra and that marriage has not been dissolved till date. The respondent was married with Savita daughter of Sh.Kuldeep Raj Walia on 15/16.1.2005 at Royal Palace, Pathankot and the said marriage has also not been lawfully dissolved. He has further denied that the applicant was married with the respondent on 20.07.2007 at Gurdaspur according to Hindu Rites and rituals.

The petitioner preferred replication asserting her right to get maintenance. It was pleaded that marriage between the petitioner and Kanwarjit Ratra was dissolved by way of decree of divorce passed on 02.09.2004.

The petitioner filed an application under Section 311 Cr.P.C. for examining Pandit Radha Raman and Rakesh Kumar Photographer as witnesses to prove that her marriage with the respondent was performed by Pandit Radha Raman and Rakesh Kumar was the photographer who clicked photographs of ceremonies of marriage.

The application was dismissed by the trial Magistrate with the

observations that filing of present application at this belated stage is nothing but delaying tactic and devoid of merits.

Counsel for the petitioner has submitted that the judgment (Annexure P8), now placed on record makes it evident that marriage of the petitioner with Kanwarjit Ratra was dissolved by way of decree of divorce passed under Section 13B of the Hindu Marriage Act, 1955 on 02.09.2004 by Sh.J.P.Mehmi, the then Additional District Judge, Gurdaspur. It is further argued that as the respondent has denied his marriage with the petitioner to escape his liability to pay maintenance, examination of witnesses sought to be examined by way of additional evidence is essential for just decision of the case. It is further submitted that lapse on the part of the petitioner for want of proper legal advice to examine the witnesses at a proper stage of proceedings should not be allowed to stand in her way to prove her case in regard to entitlement to get maintenance from the respondent under Section 125 Cr.P.C. a provision to protect destitute wives, children and parents from vagrancy and starvation for want of financial support.

Counsel for the respondent has supported the order passed by the trial Magistrate with the submissions that the petitioner cannot be allowed to invoke the provisions of Section 311 Cr.P.C. to fill up gaps and lacunae at this belated stage.

I have heard counsel for the parties and perused the record.

Counsel for the respondent has nothing to counter the submissions that marriage of the petitioner with her earlier husband was dissolved by way of decree of divorce passed by the Court. The petitioner has claimed maintenance from the respondent on a categorical plea that their

marriage was performed on 20.07.2007 at Gurdaspur according to Hindu Religious Rites. She has levelled allegations against her husband and his family for maltreatment in connection with demand of dowry. The trial Court has not held that additional evidence sought to be led by the petitioner is not necessary for just decision of the case. Rather prayer of the petitioner has been declined merely on the ground of delay. On the contrary, if delay in conclusion of proceedings is found to be attributable to the petitioner, the said fact can be appreciated by the trial Court at the time of final disposal of application whether maintenance if allowed should be granted from the date of application or some later date.

The plea of the respondent that the application has been filed by the petitioner to fill up lacuna is devoid of merit. A lacuna in a case cannot be equated with an error or omission due to oversight. In this context, reference can be made to the judgments of Hon'ble the Supreme Court *Rajendra Prasad Vs. Narcotic Cell through its officer Incharge, Delhi 1999(3) RCR (Criminal) 440* and *U.T. Of Dadra & Haveli & Anr. Vs. Fatehsinh Mohansinh Chauhan, 2006(4) RCR (Criminal) 113*. A relevant extract from para 7 of *Rajendra Prasad's case (supra)* reads thus:-

“It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act by saying that the court could not 'fill the lacuna in the prosecution case'. A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to error in human' is the recognition of the possibility of

making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up.”

In view of what has been discussed hereinabove, the impugned order is set aside, application filed by the petitioner to adduce additional evidence is allowed subject to the condition that the petitioner shall ensure presence of both the witnesses on the date to be fixed by the trial Court. The trial Court will put its best efforts to dispose of the case expeditiously.

However, nothing stated in this order shall cause prejudice to final adjudication of the case on its merits.

(REKHA MITTAL)
JUDGE

February 19, 2015.

DK