

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

COCP No.3544 of 2017
Date of Decision: 16.5.2019

SumanPetitioner
Versus
Rakesh KumarRespondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Ms. Ruchi Sekhri, Advocate, for the petitioner.

Mr. Ravi Sodi, Advocate and
Mr. M.M. Pandey, Advocate, for the respondent.

NIRMALJIT KAUR, J. (ORAL)

The present contempt petition is filed for violation of the order dated 11.2.2016 passed by the Hon'ble the Division Bench, vide which, operation of the judgment and decree granting divorce to the respondent-husband, was stayed till further orders.

The divorce decree was granted by the trial court vide order and judgment dated 14.1.2016. The petitioner-wife has challenged the order dated 14.1.2016 by filing FAO-M-59-2016, titled as Suman vs. Rakesh Kumar. While issuing notice of motion, the Hon'ble Division Bench stayed the operation of the judgment and decree dated 14.1.2016. In spite of the appeal having been filed within the stipulated period and the order of stay, the respondent-husband solemnized second marriage with one Pooja d/o Chabeel Dass. When the petitioner-wife came to know about the factum of second marriage of the respondent-husband, she sent a complaint to Superintendent of Police, Fatehbad to take legal action against him. However, the respondent-husband had already solemnized his second marriage with Pooja d/o Chabeel Dass, r/o Dhani Dullat, Tehsil Bhuna,

District Fatehabad on 31.3.2016 itself. The petitioner-wife thereafter, submitted a complaint to the Chief Minister, Haryana. An enquiry was conducted on the said complaint. The respondent-husband also got recorded his statement before the enquiry officer, in which he admitted that he was now married with Pooja to run his family. The said statement is placed on record as Annexure P-3. The said averment has not been denied by the respondent-husband in his reply. Thereafter, even a child was born out of the said wedlock. The birth certificate of the child dated 10.8.2017 is also placed on record as Annexure P-4, in which the name of the father of the child is mentioned as Rakesh Kumar, who is none else, but the respondent-husband.

Reply has been filed. The contention in the reply filed by the respondent-husband and the argument of learned counsel for the respondent-husband is three fold. Firstly, no Court can initiate any proceedings for contempt, either on its own motion or otherwise, after expiry of a period of one year from the date on which the contempt is alleged to have been committed. Secondly, the respondent-husband was never aware of the stay granted by Hon'ble Division Bench on 11.2.2016. Third, he was not married to Pooja.

The first argument that the contempt is barred by limitation has no substance. The petitioner-wife came to know about the second marriage of the respondent at the first time, when the respondent made statement on 20.7.2017 in pursuance to the enquiry initiated against him. Before the said statement, the petitioner was only apprehending that the respondent is likely to get married and therefore, she filed complaints to the SHO and various other authorities. The petitioner-wife rushed to this Court as soon as she

came to know about the factum of marriage.

The second argument that the respondent-husband was not aware of the stay granted by this Court too does not help. It is not disputed that the appeal was filed within the period of limitation. The appeal having been filed within the period of limitation, the circumstances of the present case would be governed under the provisions of Section 15 of the Hindu Marriage Act, 1955 (for brevity, 'the 1955 Act').

Section 15 of the 1955 Act reads as under:-

“15 Divorced persons when may marry again.-
When marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.”

In view of the provisions of Section 15 of the Act, it was not lawful for the respondent to re-marry.

In the present case, not only the appeal was filed within time but even the stay order has also been passed. The plea of the respondent-husband that he was not aware deserves to be rejected by this Court in view of the judgment of this Court in the case of Jasbir Kaur vs. Kuljit Singh 2008(2) RCR (Civil) 929, in which one of the question was as under:-

“1. Whether the performance of a marriage after filing of appeal, an unlawful act in terms of Section 15 of the Hindu Marriage Act, 1955, amounts to willful disobedience to the “other process of the Court” disclosing a civil contempt within the meaning of Section 2(b) of the Act?

The Division Bench of this Court vide judgment dated

21.04.2008 answered question No.1 as under:-

“12. It is in the aforementioned context that the expression 'other process of the Court', as used in Section 2(b) of the Act, has to be construed. Once there is a duty cast on the Court to make all endeavour to forge reconciliation between the parties and if the party obtaining decree enters into second marriage in a hurried way displaying such a conduct which would defeat the purpose of filing first appeal or nullifying the right of the losing spouse then it would be covered by the expression 'willful disobedience to other process of a Court'.

13. The principles governing contempt jurisdiction do not require that disobedience of the other process of the Court' is required to be proved beyond reasonable doubt.....The role allocated to the Courts is something more than what Section 15 of the 1955 Act declares. According to Section 15 of the Act, a party to the dissolved marriage could marry again if period of filing an appeal has expired or the appeal has been dismissed. It necessarily implies that the decree holder has to make inquiries that no appeal has been filed within the period of limitation or that the appeal has been dismissed. Such a spouse cannot sit at home and wait the summons to come because service of summons may not necessarily be effected on the winning spouse within the period limitation.

14..... It is well settled that when the contempt alleged is with respect to willful disobedience of 'other process of a Court', which has been provided for the benefit of both the parties and larger public interest then it would plainly be civil contempt and there is no criminality in the disobedience of such a process. In view of the above, we answer the first question in the affirmative.”

Thus, contracting a marriage after filing of the appeal tentamounts to civil contempt.

In the present case, the appeal was filed well within time of limitation period and in fact, the judgment and decree of the trial court had also been stayed. Although it is denied that the respondent was not aware of the filing of the appeal by the petitioner-wife, it was incumbent upon the respondent to have found out as to whether the appeal had been filed or not. The marriage has resulted in interference in the statutory duty cast upon the Court under Section 23(2) and (3) of the 1955 Act to make an endeavour to bring about a re-conciliation between the parties. Having contracted the second marriage by the respondent-husband, it has almost impossible to get them to reside together. The child born out of this wedlock is also deprived of his chance of living with both his parents under the same roof. Thus, the conduct of the respondent-husband amounts the civil contempt and he is accordingly found guilty of the same.

Vide order dated 14.2.2019, this Court had directed the respondent-husband to show cause as to why the order of punishment should not be passed against him.

Today, learned counsel for the respondent argued that a lenient view be taken and unconditional apology be accepted. In the similar circumstances, this Court in the case of Court on its own motion vs. Jagdeep Pal Singh in COCP-3653-2017 has already held that the action of the respondent-husband is in such matters cannot put the clock back and rectify the damages, which have already done by rendering of the apology. The petitioner-wife can never dream now of going back to the husband. In fact, the respondent-husband has rendered the very appeal almost infructuous by his conduct. At this stage, learned counsel for the respondent argued that in case of Jagdeep Pal Singh (supra) this Court had imposed punishment of

sentence to under go simple imprisonment for one month and therefore, parity should be maintained. However, in the present case, the conduct of the respondent-husband in getting married in spite of the judgment and decree having been specifically stayed shows complete defiance of the orders passed by this Court, which is both willful and intentional disobedience. Further, the respondent-husband tried to wriggle out of it by lying that he is not married when admittedly a child is also born out of the wedlock and he has admitted the factum of marriage in his statement placed on record as Annexure P-3, which is not denied in his written statement. Moreover, it was not disputed before this Court that he has not even paid the arrears of maintenance causing both hardship to the petitioner and the minor child. On being questioned, learned counsel stated that the petitioner could always file execution.

Accordingly, taking into account the facts and circumstances of this case and the conduct of the respondent, this Court deems it proper to impose the punishment of imprisonment and accordingly sentence him to undergo two months simple imprisonment. He is directed to surrender before Chief Judicial Magistrate, Sirsa, within 15 days from the date of receipt of certified copy of this order, who shall send him to judicial custody to undergo sentence, as stated above.

(NIRMALJIT KAUR)
JUDGE

16.5.2019
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No