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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP-3653-2017

Date of Decision: February 04, 2019

Court on its own motion
Versus
Jagdeep Pal Singh

.....Petitioner
.....Respondent

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Ms.G.K.Daultat, Advocate for Harjinder Kaur-wife.

Mr.C.K.Singla, Advocate for Jagdeep Pal Singh-respondent.

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NIRMALJIT KAUR, J. (ORAL)

The present contempt petition comes up for hearing on a *suo moto* notice by the Division Bench initiating contempt proceedings in view of the facts which were brought to the notice of the learned Division Bench. While recording that, *prima facie*, the respondent is liable for having committed civil contempt of Court by indulging in unlawful marriage during pendency of the appeal filed by the appellant-wife, it was held that in the present case, the respondent-husband admittedly re-married on 18.01.2016 when the wife had already filed the appeal within limitation. The argument and the reply of the respondent that the notice of the appeal had not been served upon him was rejected in view of the judgment rendered in the case of **Jasbir Kaur vs Kuljit Singh** 2008(2) RCR (Civil) 929.

The respondent-contemner came present before the Court on 06.12.2017 and took time to file affidavit. He took three adjournments to

file reply but no reply was filed and finally on 09.10.2018, last opportunity was granted. When the matter was listed on 21.11.2018, the same was referred to the Mediation and Conciliation Centre. The compromise was arrived at between the parties. As per the said compromise, a total sum of ₹4.00 lacs was to be paid by the respondent-contemner towards full and final settlement. However, when the matter was listed on 07.01.2019, Harjinder Kaur-wife came present in person and stated before the Court that she was not happy with the settlement arrived at with the respondent as she had demanded ₹10.00 lacs on account of her responsibility to bring up a growing son but she is being made to accept only ₹4.00 lacs.

The compromise having fallen through, this Court proceeded to hear the contempt petition. Reply by way of affidavit was finally filed by the contemner-respondent to the contempt proceedings. Admittedly, the respondent had got married during pendency of the appeal. As per the said reply filed by way of an affidavit, the respondent-husband did not receive any summons from this Court till 08.02.2016 and he was served with the summons by the learned Court at Patiala when he came present to attend the proceedings pending with regard to the case of maintenance in the Court of learned Judicial Magistrate Ist Class, Patiala, whereas, the contemner had already performed marriage on 18.01.2016. The divorce was granted by the Court on 13.07.2015 and he performed the second marriage on 18.01.2016 after six months of the passing of the order. No notice was served upon him at any point of time. It was not in his knowledge that the petitioner has

granted by the Additional District Judge, Patiala. It was further stated that operation of the judgment and decree dated 13.07.2015 had never been stayed.

Learned counsel for the parties were heard at length.

It is admitted 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 a 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.”

The respondent-husband has admitted that he re-married on 18.01.2016 when the wife had already filed appeal within limitation. In view of the provisions of Section 15, it was not lawful for the respondent to re-marry. The plea of the respondent-husband that he was not served with the notice deserves to be rejected in view of the judgment rendered by the Court in the case of **Jasbir Kaur vs Kuljit Singh** (supra). On account of significance and frequent presence of large number of similar cases, two questions of law were referred by the learned Single Judge vide order dated

29.08.2017 in COCP No.1180 of 2015 to the larger Bench for an authoritative opinion. The two questions before the said Court were 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 wilful disobedience to the “other process of the Court” disclosing a civil contempt within the meaning of Section 2(b) of the Act?
2. Whether the act of marriage by the respondent after the filing of the appeal interferes or obstructs the administration of justice and thereby amounts to a criminal contempt within the meaning of Section 2(c) 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 'wilful 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 wilful 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.”

The question No.2 was answered as under:-

“Therefore, we are not inclined to accept that contracting second marriage after the period of limitation provided by Section 15 of the 1955 Act would be covered by the expression that it interferes or obstructs the administration of justice within the meaning of Section 2(c)(iii) of the Act. Therefore, we answer the second question in negative.”

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

The question herein arises as to whether the respondent-

husband can be given the benefit of doubt in view of the fact that he was not served with the notice of the appeal filed by the petitioner-wife before expiry of the limitation period and was served only after the period of limitation had expired. The judgment rendered by the Division Bench in the case of **Jasbir Kaur** (supra) is a total answer to the issue in hand. As per the said judgment, the argument that since he contracted marriage after expiry of period of limitation as provided under Section 28 of the 1955 Act, he/she should not be held guilty of violating of other process of the Court could not be raised as it was the duty of the decree-holder to make enquiry as to whether any appeal has been filed or not or if filed, whether the same has been dismissed. In case fear of civil contempt is lifted of the shoulders of the decree-holder just because he was able to evade the summons of the appeal filed well within time, it would become very easy for the decree-holder to dodge and play hide and seek qua service of summons to enable the limitation period to expire.

Applying the test in the present case, there is nothing on record to show that the respondent-husband made any effort to find out as to whether any appeal had been filed or not. In fact, having failed to serve upon him in spite of the best efforts, the summons were effected upon the respondent-husband by the Court itself when he came to attend the proceedings pending with regard to the case of maintenance in the Court of Judicial Magistrate Ist Class, Patiala, on 08.02.2016.

The decree of divorce was granted on 13.07.2015. The period

of Limitation for filing appeal is 90 days. The appeal was already filed on 04.09.2015 and he got married on 18.01.2016. He was obviously in hurry to get married. This 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 07.01.2019, this Court had directed the respondent-husband to show cause as to why an order of punishment should not be passed against him. Accordingly, he appeared on 04.02.2019 alongwith his counsel. Learned counsel for the respondent-husband stated that a lenient view be taken and an unconditional apology be accepted. However, action of the respondent-husband is such that cannot put the clock back and rectify the damage which has already been done. The petitioner-wife can never dream now of going back to the husband. In fact, he has rendered the very appeal almost infructuous by his conduct. Accordingly, taking into account the facts and circumstances of this case, this Court deems it proper to impose the punishment of imprisonment and accordingly sentence him to undergo one month simple imprisonment with fine of ₹2,000/-. He is directed to surrender before Chief Judicial Magistrate,

Patiala, 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.

Disposed of in the above terms.

February 04, 2019
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(NIRMALJIT KAUR)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes |