

CASE NO.:
Appeal (crl.) 836 of 2008

PETITIONER:
Tarakanath Kar

RESPONDENT:
Lipika Kar

DATE OF JUDGMENT: 07/05/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
JUDGMENT

REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 836 OF 2008
(Arising out of SLP (Crl.) No. 3857 of 2006)

Tarakanath Kar

..Appellant

Versus

Lipika Kar

..Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Calcutta High Court in CRR No.970 of 2000 dated 19.1.2005 and order passed in the application for clarification or modification of the order dated 19.1.2005.

3. Background facts as projected by the appellant are as follows:

Appellant and one Chandana entered into a wedlock on 16.2.1993 and were blessed with two sons. On 16.9.1995 respondent-Lipika filed a case no.320/95, under Section 125 of the Code of Criminal Procedure, 1973 (in short 'Code') claiming to be wife of the appellant and prayed for maintenance. The said case was filed in the Court of SDJM, West Bengal. On 9.7.1997, the said case was transferred to the Court of SDJM Suri, by order of learned CJM at Birbhum. On 13.8.1997 Chandana appeared before the SDJM, Suri and filed application for being impleaded in the proceedings. On 14.1.1998 learned SDJM passed an ex-parte order of

maintenance in favour of the Lipika granting her maintenance @ Rs.400/- p.m. On 27.8.1999 Criminal Revision case No.308/99 was filed by the appellant against Lipika's misc. execution case no.413/1998 arising out of ex-parte order referred to above. The ex-parte order was set aside by the High Court and learned SDJM was directed to decide the matter afresh. On 10.1.2000 learned SDJM dismissed the application under Section 125 Cr.P.C. filed by Lipika holding that Chandana is the legally married wife of Tarak and Lipika is not legally married of the appellant. The revision petition filed by Lipika was allowed by the learned Single Judge in CRR No.970 of 2000 and the order of learned SDJM was set aside. There were certain directions given in the said petition, the correctness of which was questioned by the appellant by filing an application for modification/clarification. It was the specific stand of the appellant that the directions in question could not have been given i.e. to initiate departmental proceedings against the appellant.

The said application was dismissed by the subsequent order dated 5.7.2006 holding that in view of the provisions of Section 362 of the Code the application was not maintainable.

4. Learned counsel for the appellant submitted that the directions as given are clearly beyond the jurisdiction of the High Court while exercising revisional jurisdiction under the Code. Learned counsel for the respondent supported the order of the High Court stating that the directions have been given keeping the ultimate objective of doing justice to the parties.

5. In the present appeal we are concerned with the legality of the direction given by the learned Single Judge for initiation of the departmental proceedings. The impugned direction read as follows:

"Before conclusion I think that it would be expedient for the interest of justice to take appropriate action against the Opposite Party Taraknath Kar. It appears from the materials on record that Opposite Party

Tarakanath Kar is a Group - D employee of Durgapur Court and he is a government servant. In T.S. No.200/94 filed by him before learned Munsif, 1st Court, Durgapur the Opposite Party stated that he is unmarried and there was no marriage between him and defendant Lipika Kar. He filed the suit for declaration that Lipika Kar is not his wife. Subsequently, in CRR No.1742/95 filed by him and others praying for quashing of criminal case being C.R. No.124/95 under Section 498A of IPC it was mentioned in paragraph 1 that he is the husband of Opposite Party no.1 Lipika Kar and in paragraph 4(a) of the said revisional application it was mentioned that on 17.3.94 his marriage with Opposite Party No.1 was solemnized. Before the learned SDJM, Suri in Misc. Case No.320/95 by producing certified copy of order sheet of learned Judicial Magistrate, 4th Court, Bankura, this Opposite Party Tarakanath Kar introduced the story that he was married with Chandana Kar on 16.2.93 and a misc. case No.153/97 of learned Judicial Magistrate, 4th Court, Bankura Maintenance order under Section 125 of the Code had been passed against him. It is, therefore, apparent from the papers and documents that this Opposite Party has introduced papers before Court regarding his marriage twice-once with Chandana Kar on 16.2.93 and another marriage with Lipika Kar on 7.3.94. Being an employee of Court and a government servant Opposite Party is not entitled to marry twice without obtaining permission of Appointing Authority. The conduct of the Opposite Party whether is unbecoming of a government servant, or not, as being a Hindu he cannot marry twice under present law, should be considered by the Appointing Authority and Disciplinary Authority. Accordingly, learned District Judge, Burdwan being the Appointing Authority and Disciplinary is directed to take necessary disciplinary action against Opposite Party Tarakanath Kar for his alleged marriage twice and if he finds that papers and documents are satisfactory for placing him under suspension he shall

take necessary steps in accordance with law for starting the disciplinary action and for consideration whether Taraknath Kar would be placed under suspension.

Learned Registrar (Administration) is directed to send a copy of this order to the learned District Judge, Burdwan for information and necessary action accompanied by copy of revisional application of CRR No.1742/95, copy of plaint of T.S. No.200/94 filed by the Opposite Party copy of application filed by Lipika Kar and written show-cause and annexures filed by Taraknath Kar of Misc. Case No.320/95 under Section 125 of the Code pending before learned SDJM, Suri and also copy of exhibit G-Series filed before the learned SDJM, Suri in connection with aforesaid Misc. Case for information and necessary action. The learned Registrar (Administration) may also instruct the learned SDJM, Suri to send copy/Xerox copy of application under Section 125 of the Code of Misc. Case No.320/95 of this Court, copy of written show-cause and annexures filed by the Opposite Party in connection with the said Misc. Case No.320/95 and copy of exhibit G-Series of that case to him so that after collection all the papers and documents he can send the said papers and documents to the learned District Judge, Burdwan for taking necessary action in the matter."

6. In the subsequent order dated 5.7.2006 the High Court highlighted the limited jurisdiction for rectification/modification under Section 362 of the Code.

7. It appears that the High Court while dealing with the application under Section 125 of the Code has essentially adjudicated that an offence punishable under Section 494 of the Indian Penal Code, 1860 (in short the 'IPC') is made out. It needs to be noted that a Title Suit (TS 200/94) filed in the Durgapur Civil Court is pending where prayer was made for declaration that the respondent was not his wife. Whether there was a second marriage as contended and whether Lipika was his wife as claimed by her or Chandana was the wife of the appellant as claimed by him has yet to be decided. While exercising revisional jurisdiction it was not open to the High Court to give direction for initiation of departmental proceedings. Such a direction is beyond the scope of revisional jurisdiction under the Code. Therefore, the High Court was clearly in error in directing initiation of departmental proceedings; while dealing with an application for revision in the matter relating to Section 125 of the Code. The directions given in this regard both in the original order and the subsequent order stand quashed.

8. The appeal is allowed to the aforesaid extent.

J.

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(Dr. ARIJIT PASAYAT)

.....J.
(P. SATHASIVAM)

New Delhi,
May 7, 2008

JUDIS