

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Revision No. 194 of 2003.

Judgment reserved on: 24.6.2008

Date of decision: 30.6.2008

Gian Singh

.....Petitioner

Vs.

Guddi and another

.... Respondents

Coram

The Hon'ble Mr. Justice Kuldeep Singh, Judge.

Whether approved for reporting? No

For the petitioner : Mr. Romesh Verma, Advocate.

For the Respondents : Mr. Suneet Goel, Advocate .

Kuldeep Singh, Judge.

1. The petitioner has filed this criminal revision against the order dated 14.10.2003 passed in case No.50-4 of 2003, titled Guddi Devi vs. Gian Singh, whereby petitioner was ordered to be served through non bailable warrants.

2. The facts in brief are that respondents had filed an application under Section 125 Cr.P.C. against the petitioner and vide order dated 3.5.2002, learned Sub Divisional Judicial Magistrate, Rohru held that respondents are entitled to recover maintenance at the rate of Rs.500/- per month each from petitioner. The respondents on 13.3.2003 filed an application under Section 125(3) Cr.P.C. wherein arrears of maintenance from November, 2002 to March, 2003

Whether the reporters of the local papers may be allowed to see the Judgment?Yes

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amounting to Rs.5,000/- were claimed from the petitioner and this application was registered as 33/4 of 2003 RBT-50-4/2003.

3. The petitioner on 1.9.2003, filed an application for dismissing the recovery proceedings against him under Section 125 Cr.P.C. in view of judgment dated 1.5.2003 passed by learned Sub Judge, Jubbal in the petition of petitioner under Section 9 of the Hindu Marriage Act, 1955, directing respondent No.1 for restitution of conjugal rights. The application filed by the petitioner for dismissing the recovery proceedings against him under Section 125(3) Cr.P.C. was registered as case No.108-4 of 2003 in the Court below.

4. It has been submitted that recovery proceedings being case No. 50-4 of 2003 and application of the petitioner for dropping recovery proceedings being Case No. 108-4 of 2003 were taken up by the Court below on 14.10.2003. In case No. 108-4 of 2003, the petitioner appeared through his counsel Mr. S.L. Ranjta and in that case next date was fixed on 20.11.2003 for reply. In case No.50-4 of 2003 on 14.10.2003, the presence of learned counsel for respondents was shown but presence of petitioner or his counsel has not been shown. On 14.10.2003 learned Court below in case No.50-4 of 2003, ordered service of petitioner through nonailable warrants, returnable on 20.11.2003. In brief, learned counsel for the petitioner has submitted that on 14.10.2003, he was present through counsel in case No.50-4 of 2003 but the presence of petitioner has not been shown and he was ordered to be served through nonailable warrants whereas in case No.108/4 of 2003 on 14.10.2003 the presence of petitioner has been shown through his counsel and the

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case has been fixed for reply on 20.11.2003. It has been submitted that the learned Court below has erred in issuing non bailable warrants against the petitioner in case No.50-4 of 2003 on 14.10.2003. The learned counsel for the respondents has supported the impugned order. He has submitted that as per the record of Court below no one appeared on behalf of the petitioner in case No.50-4 of 2003 on 14.10.2003 and no fault can be found with the order of the learned Court below when on 14.10.2003 the petitioner was ordered to be served through non bailable warrants, returnable on 20.11.2003. The learned counsel for the respondents has also submitted that the order dated 14.10.2003 in case No.50-4 of 2003 is interlocutory and no revision lies against such order.

5. I have heard learned counsel for the parties and gone through the record. The case Nos.50-4 of 2003 and 108-4 of 2003 were fixed on 14.10.2003 in the Court below. In case No.108-4 of 2003, presence of the petitioner through his counsel was marked whereas in case No.50-4 of 2003 presence of petitioner or his counsel has not been marked. On 6.10.2003 in case No.108-4 of 2003 the learned Court below has ordered tagging of that case with the main case fixed on 14.10.2003. Therefore, it is reasonable to infer that both the cases i.e. Nos. 50-4 of 2003 and 108-4 of 2003 were taken together on 14.10.2003 but in case No.108-4 of 2003 the presence of petitioner through his counsel has been marked and no such presence has been marked in case No.50-4 of 2003, rather the petitioner in that case on 14.10.2003 was ordered to be served through non bailable warrants. Therefore, the order of non bailable

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warrants against petitioner in case No.50-4 of 2003 is not sustainable. The learned counsel for the respondents has submitted that the impugned order is interlocutory and therefore, no revision lies against such order. The petitioner has filed the petition under Section 397 read with Article 227 of the Constitution of India, therefore, the objection of the learned counsel for the respondents regarding the maintainability of the petition is not sustainable. This Court under Article 227 has jurisdiction to look into the legality and propriety of the order in question. The learned Court below has committed jurisdictional error in the facts which have come on record.

6. No other point was urged.

7. The result of the above discussion, the petition is allowed, order dated 14.10.2003 passed by learned Sub Divisional Judicial Magistrate, Rohru in case No.50-4 of 2003 is set aside. The case is sent back to learned Sub Divisional Judicial Magistrate, Rohru, with a direction to the parties through their learned counsel to appear before the Court below on 28.7.2008 and the learned Magistrate shall decide both the cases being case Nos. 50-4 of 2003 and 108-4 of 2003 by on or before 30.9.2008 in accordance with law. Record of the Court below be sent back immediately.

(Kuldip Singh)
Judge.

June 30, 2008
(sks)