

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No. 1273/2011
CMP No. 1767/2011

Date of Decision: 22.02.2012

Kavita V. State of J&K & ors.

Coram:

Mr. Justice J. P. Singh.

Appearing Counsel:

For Petitioner(s) : Mr. B. L. Kalgotra, Advocate

For Respondent(s) :

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| i) | Whether approved for reporting
in Press/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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The petitioner-Kavita is contesting respondent-Gurmer Singh's Petition seeking dissolution of their marriage, before the Matrimonial Court at Kathua. The dissolution is sought, *inter alia*, on the ground that the petitioner was living in adultery and had delivered a female child when the respondent had no access to her.

To determine the respondent's entitlement or otherwise to dissolution of marriage, the parties were directed to lead evidence on issues which read thus:-

1. Whether non applicant – Kavita was leading an adulterous life and had given birth to an illegitimate child, if so what was its effect?

OPP

2. Whether the petition had not been filed in accordance with the provisions of Hindu Marriage Act, 1980 and as such, the same was liable to be dismissed? OPR

3. Relief.

After the respondent completed his evidence in the case, the petitioner was called upon to lead evidence in rebuttal.

During the pendency of the proceedings, the petitioner's prayer seeking directions to the respondent to undergo DNA Test was rejected by the Court on 21.08.2007.

The petitioner thereafter failed to produce any evidence in the case and her evidence was closed vide order dated 17.09.2007. She questioned the order of closure of her evidence before this Court by her Civil Revision No.132/2007.

With the consent of the parties, the Civil Revision was disposed of allowing three more opportunities to the petitioner to produce her evidence and appear as her own witness too. It was, however, provided that no further time would be allowed to the petitioner to produce evidence and in case of non-production thereof, her right to produce evidence shall be deemed to have been closed. The petitioner again did not produce her evidence despite opportunities allowed to her to do the needful. Her evidence was, therefore, closed on 13.07.2008. She again approached this Court and was able to get another opportunity to lead her evidence on three days. It was specifically indicated by the Court that no further opportunity would be allowed to her.

Despite having been allowed last opportunity by the Matrimonial Court to lead evidence, pursuant to the

directions of this Court, the petitioner did not produce her evidence.

She thereafter filed Application for summoning records of 17 Jammu and Kashmir Rifles and Kumar Academy High School, Chandawan where her minor daughter was stated admitted for schooling.

Learned Additional District Judge, Kathua rejected the Application, aggrieved whereby, she approached this Court by her Civil Revision No. 17/2010. The Revision was, however, withdrawn with liberty to workout appropriate remedy available under law.

It is after the withdrawal of the Civil Revision that the petitioner has again approached this Court and this time invoking jurisdiction under Section 104 of the Constitution of Jammu and Kashmir.

I have heard petitioner's learned counsel on motion hearing.

To deal with the petitioner's learned counsel's plea that petitioner's case was fit for exercise of jurisdiction under Section 104 of the Constitution of Jammu and Kashmir, reference needs to be made to *Surya Dev Rai versus Ram Chander Rai*, reported as 2003 (6) Supreme Court Cases 675, where dealing with the reach of and parameters indicated for exercise of, jurisdiction under Articles 226 or 227 of the Constitution of India, it was held as follows:-

"(1) Amendment by Act 46 of 1999 with effect from 1.7.2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the

jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) *Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to certiorari and supervisory jurisdiction of the High Court.*

(3) *Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction-by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.*

(4) *Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.*

(5) *Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.*

(6) *A patent error is an error which is self evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.*

(7) *The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene*

would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) *The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.*

(9) *In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”*

The above view was reiterated by the Supreme Court, *inter alia*, in *Abdul Razak (Dead) through LRs and ors. versus Mangesh Raja Ram Wagle and ors.*, reported as 2010 (2) Supreme Court Cases 432.

The order questioned by the petitioner in the Writ Petition does not attract any of the situations indicated hereinabove warranting exercise of jurisdiction under Article 226 of the Constitution of India or Section 104 of the Constitution of Jammu and Kashmir.

This apart, the proceedings before the Matrimonial Court, which were otherwise required to be decided expeditiously, having been already unduly delayed, the interests of justice may not warrant any further delay in the conclusion of proceedings pending before the Matrimonial Court.

Even otherwise, the Matrimonial Court having passed a reasoned order rejecting the petitioner's prayer for summoning records, taking into consideration the rejection of her earlier prayer in the year 2007 for issuance of directions to the respondent to undergo DNA Test, may not warrant exercise of Extra Ordinary or Supervisory Jurisdiction of the Court, for, neither the decision making process of the Matrimonial Court suffers from any vice nor does the order cause any mis-carriage of justice or otherwise suffers from any error of law.

For all what has been said above, this Petition is found without substance, hence dismissed in limine.

**(J. P. Singh)
Judge**

Jammu:
22.02.2012:
Parshant Sharma