

SMT. SHAIL
v.
SHRI MANOJ KUMAR AND ORS.

MARCH 29, 2004

[R.C. LAHOTI, ASHOK BHAN AND ARUN KUMAR, JJ.]

Constitution of India, 1950:

Article 227—Jurisdiction of High Court—Application for maintenance filed by wife before family court—Delay in disposal—Wife approaching High Court—Directions issued to family court for expeditious disposal of the application—When no substantial result seen to be forthcoming contempt petition filed—High Court passed order summoning the Presiding Judge of the family court on the date of next hearing—Wife filing petition for special leave contending that High Court granted no relief to her—Held, jurisdiction under Article 227 is to be exercised sparingly and with care and caution, but is certainly one vesting in the High Court and meant to be exercised in appropriate cases—If convinced of the genuineness of the averments made by the petitioner and if convinced that a deserted woman, repeatedly knocking at its doors, is on the verge of destitution, the High Court itself has jurisdiction to direct suitable amount of maintenance being awarded and to secure compliance with its directions, if the same relief the subordinate court has failed to grant or to enforce—May be that the High Court could have passed such order on the next date of hearing—Petitioner has approached this court prematurely—There is nothing in the impugned order by which the petitioner may feel aggrieved—Let the petitioner appear before the High Court on the next date of hearing and seek appropriate interim and urgent relief from the High Court.

Surya Dev Rai v. Ram Chander Rai and Ors., [2003] 6 SCC 675, relied on.

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 585 of 2004.

From the Judgment and Order dated 29.10.2003 of the Allahabad High Court in C.M.C.P. No. 2960 of 2002.

A Petitioner-in-person.

The following Order of the Court was delivered :

The petitioner, appearing in-person, is heard on the question of grant of leave to appeal.

B The facts of this case disclose an uncommon story. The petitioner was victim of an offence under Sections 376 and 328 of Indian Penal Code at the hands of the respondent Manoj Kumar. To save himself from the peril of conviction, the respondent agreed to enter into a marriage with the petitioner and the petitioner too agreed to do so. The dream of happy married life soon turned out to be a nightmare as the petitioner was deserted by the respondent. On these averments the petitioner filed an application under Section 125 Cr.P.C. seeking maintenance before the Principal Judge, Family Court, Khanpur Nagar. The delay in disposal of the application persuaded the petitioner to knock the doors of the High Court. The High Court showed indulgence to the petitioner by directing the Family Court to expeditiously conclude the proceedings. As no substantial relief was forthcoming, the petitioner this time invoked the contempt jurisdiction of the High Court complaining of non-compliance with the orders of the High Court by the Presiding Judge, Family Court. By order dated 29.10.2003, the learned Judge of the High Court has expressed his anguish having found a *prima facie* case of non-compliance with the orders of the High Court having been made out. The High Court has directed summoning of the Presiding Judge of the Family Court to appear before the High Court in person for the purpose of framing charges for willfully disobeying the orders of the High Court. The petitioner seeks leave to file appeal against the order of the High Court. Her grievance is that the initiation of the proceedings in contempt is alright but then she has been left still high and dry as no relief has been allowed to her. Appearing in-person, she submits that the High Court ought to have directed award of maintenance to her and ought to have seen to some relief being granted to her so as to save her from destitution.

G In *Surya Dev Rai v. Ram Chander Rai and Ors.*, [2003] 6 SCC 675 this Court has held that in exercise of power of superintendence conferred under Article 227 of the Constitution of India on the High Court, the High Court does have power to make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior Court or Tribunal as to the manner in which it would proceed hence and the High Court has the jurisdiction also to pass itself such a decision or direction as

the inferior Court or Tribunal should have made. The jurisdiction under Article 227 of the Constitution is to be exercised sparingly and with care and caution, but is certainly one vesting in the High Court and meant to be exercised in appropriate cases. If convinced of the genuineness of the averments made by the petitioner and if convinced that a deserted woman, repeatedly knocking at its doors, is on the verge of destitution the High Court itself has jurisdiction to direct suitable amount of maintenance being awarded and to secure compliance with its directions, if the same relief the subordinate Court has failed to grant or to enforce. May be that the High Court could have passed such order on the next date of hearing. But the petitioner has approached this Court probably impelled by impatience. A B

It is not necessary to grant leave to appeal against the order dated 29.10.2003 of the High Court. There is nothing in the impugned order by which the petitioner may feel aggrieved. Let the petitioner appear before the High Court on the next date of hearing and seek appropriate interim and urgent relief from the High Court which if deserving, we have no reason to assume why the High Court shall not grant to the petitioner. C D

The special leave petition be treated as disposed of.

Let a copy of this order be communicated to the High Court forthwith.

R.P.

Petition disposed of. E