

Allahabad High Court

Chandra Bhan vs Smt. Sudha Rani And Anr. on 17 December, 2004

Equivalent citations: 2005 CriLJ 1978, II (2005) DMC 324

Author: R Singh

Bench: R Singh

ORDER Ravindra Singh, J.

1. Supplementary affidavit filed today, same be taken on the record.
2. Heard Sri S.P.S. Rathore, learned counsel for the petitioner, learned A.G.A. and Sri V. D. Agarwal and Mrs. Sandhya Agrawal, learned counsel for the respondents.
3. This writ petition has been filed against order dated 15-1-2004, passed by learned Additional Chief Judicial Magistrate, Etah and order dated 6-10-2004, passed by learned Additional Sessions Judge, Court N. 7, Etah in Criminal Revision No. 209 of 2004.
4. It is contended by the learned counsel for the petitioner that the maintenance allowance was awarded by the learned Magistrate to respondents Nos. 1 and 2 who are wife and daughter respectively of the petitioner. The petitioner moved an application in the Court of learned Magistrate under Section 128, C. P.C., praying therein that the proceedings of the recovery be quashed against him because he has filed a suit in the Court of learned Civil Judge, Etah for declaring him insolvent. It is contended that the petitioner has not paid the above mentioned maintenance as awarded by the learned Court below because he has no source of income, that is why he has filed a civil suit for declaring him insolvent, that suit is pending. Contention of the learned counsel for the petitioner is opposed by learned A.G.A. and learned counsel for the respondents by submitting that the petitioner is under obligation to maintain his wife and daughter. He has been directed to pay the maintenance allowance to his wife and daughter by the Courts below and deliberately he is not paying the maintenance allowance and its arrears. So he filed a civil suit for declaring him an insolvent.
5. From the perusal of the record as well as the orders passed by the learned Courts below, I am of the view that mere filing of the suit for declaring the petitioner to be an insolvent is not a sufficient ground available to petitioner for not discharging his obligation to maintain his wife and daughter. He is under obligation to pay the maintenance allowance as awarded by the Courts below. If a person is declared insolvent, even then he is under obligation to maintain his wife and daughter, if he is physically fit to do the labour. From the perusal of the impugned orders, it appears that there is no illegality or irregularity. Therefore, the prayer for quashing the abovementioned impugned order is refused.
6. Accordingly, this writ petition is dismissed.