

Allahabad High Court
Garima Srivastava Vs. State Of U.P. And Another on 19 January, 2010
Court No.27

Criminal Misc. Application No.30509 of 2009

Garima Srivastava Vs. State of U.P. and another

Hon. A.K. Roopanwal, J.

In this petition orders dated 15.7.09 and 7.10.09 passed by the Principal Judge, Family Court, Allahabad have been challenged.

It appears from the record that in a divorce case an application was moved by the husband that the lady had wrongly filed an affidavit that she is not serving in Delhi Public School, Arail, Naini, District Allahabad and therefore, action be taken against her. The lady was ready for inquiry in the matter and the court vide order dated 21.11.06 ordered that the inquiry be made in the matter and the defaulter be punished with a fine of Rs.10,000/-. Subsequent thereto the report from the college was obtained and it was reported by the college that the version of the lady was wrong. In such situation, the court vide order dated 15.7.09 imposed a fine of Rs.10,000/- upon the lady (applicant). By the order dated 7.10.09 the objections filed by the applicant against the maintainability of the proceedings under Section 340, Cr.P.C. instituted by the husband were rejected. Heard Mr. A.N. Tripathi, learned counsel for the applicant, learned AGA and perused the record.

It has been argued by Mr. Tripathi that under the provisions of Section 340, Cr.P.C. the court can make only preliminary inquiry and the final order which may be in the form of imposing fine can be passed by the court of competent jurisdiction and the court of competent jurisdiction would be that court in which the complaint would be filed by the court in which the perjury was committed. The court which made the preliminary inquiry had no jurisdiction to finally conclude the matter and impose the fine, therefore, the order dated 15.7.09 is bad and is liable to be quashed. Regarding the order dated 7.10.09 it was argued by Mr. Tripathi that once a wrong order was passed by the court on 15.7.09 it should have been reviewed and when it was not reviewed, hence, the order dated 7.10.09 is also bad and is liable to be quashed.

So far as the order dated 15.7.09 is concerned, in that regard I am of the view that the matter is liable to be taken further for hearing as there is some substance in the argument advanced by Mr. Tripathi. So far as the argument regarding the order dated 7.10.09 is concerned, in that regard it has been argued by Mr. Tripathi that the court cannot initiate dual proceedings. Once the matter was concluded vide order dated 15.7.09 there could be no propriety at all to continue the proceedings under Section 340, Cr.P.C. Issue notice to O.P. No.2 to file counter affidavit within 2 weeks'. Rejoinder affidavit, if any, may be filed within 1 week thereafter.

Till then, operation of the orders dated 15.7.09 and 7.10.09 passed by the Principal Judge Family Court, Allahabad in misc. case no.2 of 2008, Rajesh Kumar Srivastava Vs. Garima Srivastava, under Section 340, Cr.P.C. shall remain stayed. Dated:19.1.2010/T. Sinha.