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ITEM NO.8

COURT NO.4

SECTION II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).5899/2012

(From the judgement and order dated 27/12/2011 in CRLMA No.576/2009 of The HIGH COURT OF UTTARAKHAND AT NAINITAL)

DEVI PRASAD

Petitioner(s)

VERSUS

STATE OF UTTARAKHAND & ORS.

Respondent(s)

(With appln(s) for ex-parte stay and exemption from filing O.T. and office report)

Date: 05/09/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s)

Mr.K.L.Janjani, Adv.

Mr.Pankaj Kumar Singh, Adv.

Mr. Raj Singh Rana, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

The special leave petition filed by the petitioner against order dated 16.9.2010 passed by the Division Bench of the Uttarakhand High Court in F.A. No.101/2009 for payment of permanent alimony of Rs.5 lacs to respondent No.2 was dismissed by this Court on 4.1.2011. The petitioner is now aggrieved by the dismissal of the petition filed by him under Section 482 Cr.P.C. for setting aside order dated 7.2.2007 passed by Chief Judicial Magistrate, New Tehri in Misc. Case No.51/2000.

We have heard learned counsel for the petitioner and carefully perused the record. While rejecting the petitioner's challenge to the order of the Chief Judicial Magistrate, the High Court observed as under:

"Having heard the learned counsel of both the parties, this Court feels that the petitioner, by way of filing the instant petition, has grossly abused the process of the court. Even, it is the second revision under the garb of Section 482 Cr.P.C, which is not permissible at all as per the provisions of Section 397(3) Cr.P.C. The petitioner has repeatedly challenged the different orders, obviously for the reason that his monetary position is quite strong, inasmuch as, he is a Pharmacist, i.e. a government servant. As such, his pecuniary status happened to be quite strong against his starving wife Godabmari Devi, which enabled him to approach even the Hon'ble Apex Court, without making the payment of a single penny till date and that too, at the cost of utter defiance of the orders of this Court and that of Hon'ble Apex Court.

Otherwise also, on merits, the main contention of the petitioner is that Smt. Godabmari Devi was living in adultery, while the only witness to this fact was one Sri Indramani. The evidence of this witness is so weak, as to make his entire testimony totally unbelievable, as has been discussed by learned Judicial Magistrate in his judgment dated 7.2.2007 and affirmed by learned Sessions Judge, Tehri Garhwal vide judgment and order dated 26.4.2007. This Court is in full agreement with the view

adopted by the courts below in their impugned orders."

In our view, the petitioner is not entitled to relief under Article 136 of the Constitution because he has failed to comply with order dated 16.9.2010 passed by the High Court in F.A. No.101/2009.

The special leave petition is accordingly dismissed.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master