

**ARMED FORCES TRIBUNAL REGIONAL BENCH,
LUCKNOW**

(Court No. 2)

Original Application No. 6 of 2015

Monday , the 23rd day of November, 2015

**“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**

Satya Prakash Sahni (799369-B Cpl Elect/Fit), son of Shri Ram Krishna Dev Sahani, resident of House No. 594, Viman Nagar, P.O. Harjinder Nagar, P.S. Chakeri, District Kanpur Nagar, presently posted at Air Force Station, Kanpur-208008

..... Applicant

By Shri T.N.Tiwari, learned counsel for the applicant.

Versus

1. Union of India, Ministry of Defence, through its Secretary Central Secretariat, New Delhi-110001
2. The Chief of the Air Staff, Indian Air Force, Air HQs (Vayu Bhavan) New Delhi-110106
3. Air Officer Commanding, Air Force Station, Kanpur-208008
4. Air Officer Commanding, 32 Wing, Air Force C/o 56 APO
5. Commanding Officer, 107 HU, Air Force At 32 Wing, Air Force, C/o 56 APO.

6. Smt. Tinku Kumari, wife of CPL S.P.Sahni, presently residing at C/o Sgt. R.B.Sahani, H. No.-1, G-Block, Phase-1, Shyam Bihar, 25feet Road, Near Shiv Mandir, Najafgarh, New Delhi-110043.

7. Sgt. R.B.Sahani, son of not known, resident of H. No.-1, G-Block, Phase-1, Shyam Bihar, 25feet Road, Near Shiv Mandir, Najafgarh, New Delhi-110043.

.....Respondents

By Shri Dileep Singh, learned counsel for the respondents no. 1 to 5, and Shri Shailendra Kumar Singh, learned counsel for respondents no. 6 and 7 alongwith Wing Commander S.K.Pandey, Departmental Representative.

ORDER

1. Heard Shri T.N.Tiwari, learned counsel for the applicant, Shri Dileep Singh, learned counsel for the respondents no. 1 to 5 and Shri Shailendra Kumar Singh, learned counsel appearing for respondents no. 6 and 7 alongwith Wing Commander S.K.Pandey, Departmental Representative.

2. The applicant has preferred this O.A challenging the order dated 12.4.2014, passed by the Chief of the Air Staff by means of which

respondent no. 6 Smt. Tinku Kumari was granted maintenance at the rate of Rs.6000/- per month for a period of five years at a time or till reunion or divorce or grant of maintenance allowance by civil court or discharge/retirement of the applicant subject to AF Act, 1950 or material change in facts and circumstances, whichever is earlier and her daughter was granted maintenance at the rate of Rs.2900/- per month till she marries or remains out of custody of her father or is granted maintenance allowance by civil court or discharge/retirement of the applicant subject to the AF Act, 1950 or material change in facts and circumstances, whichever is earlier.

3. As it comes out from the pleadings of the parties, allegations have been levelled by the applicant against his wife Smt. Tinku Kumari that she is having illicit relations with respondent no. 7 Sgt. R.B.Sahani. According to the applicant, Smt. Tinku Kumari is not residing and performing her matrimonial relations with him. The applicant has filed a suit bearing no. 1087 of 2013 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, vide Annexure A-9, before the Principal Judge, Family Court, Kanpur Nagar, which is still pending. The submission of learned counsel for the applicant is that since Smt. Tinku Kumari is living an adulterous life with respondent no. 7, she is not entitled to grant of any maintenance allowance. Maintenance allowance granted to his wife

and daughter has also been challenged by the applicant saying that his wife is having monetary gains from a Beauty Parlor and she is able to maintain her and her daughter.

4. On the contrary, learned counsel for the respondents submit that on a complaint made by the applicant against respondent no. 7 Sgt. R.B.Sahani, an inquiry was conducted by Wing Commander J.K.Pandey, who submitted his report vide Annexure CA-4 observing that Cpl Sahni appears to be suffering from depression and need medical help. He may be counseled by professional counselor. It was also observed that the alleged illicit relationship of Smt. Tinku Kumari with her brother-in-law could be a major factor in the entire episode. It was suggested that the matter be investigated at 21 Wing, Air Force (Posting place of Sgt. Sahni).

5. To sum up, the order passed by the Chief of the Air Staff has been challenged on the ground that since Smt. Rinku Kumari is living an adulterous life with her brother-in-law, as such the impugned order is bad in law and has no legs to stand upon.

6. While considering the arguments of learned counsel for the parties, we are of the view that the question as to whether Smt. Rinku Kumari, who admittedly is a legally wedded wife of the applicant, is living an adulterous life and whether Miss Kritika Sahni is the daughter of the applicant, cannot be decided in proceedings before us.

Since serious allegations of living an adulterous life have been made by the applicant against his wife and he has also filed a suit under Section 9 of the Hindu Marriage Act wherein also he has made the same averments as stated above, we are firm of the view that these factual aspects cannot be decided in this O.A, which can be decided only by the appropriate forum either by means of an inquiry or investigation. We are surprised to note that the applicant has filed this suit for restitution of conjugal rights, but in spite of having made serious allegations of adultery against his wife, he has not dared to file a suit for divorce against her.

7. Since during the course of arguments Shri T.N.Tiwari, learned counsel for the applicant concedes, rather admits that respondent no. 6 is his legally wife and Miss Kritika Sahni is his daughter but objects only with regard to the grant of maintenance allowance to his wife on the ground that she is living in adultery, we see no reason to entertain this O.A and interfere with the impugned order dated 12.4.2014.

8. Accordingly, this O.A being misconceived is hereby dismissed.
No costs.

(Lt. Gen A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

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