THE HIGH COURT OF TRIPURA
AGARTALA

CRL PETN No.49 of 2012

Krishna Debnath
S/O Shri Jadab Debnath,
Village- Nabinpara, P.O. & P.S.- Sabroom,
Sub-Division- Sabroom, District- South Tripura.

…… Petitioner.

– V e r s u s –

1. The State of Tripura

2. Smt. Dipti Nath (Debnath),
D/O. Late Manoranjan Nath,
Village- Sonai Rupaichhari, P.O.- Sonai,
P.S.- Manu, Sub-Division- Sabroom, District- South Tripura.

……. Respondents.

_B_E_F_O_R_E_

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner	: Mr. Somik Deb, Sr. Advocate
For the respondent No.1.	: Mr. S.B. Deb, Advocate
Date of hearing and delivery of judgment.	: 23.07.2015.
Whether fit for reporting	: No.

JUDGMENT & ORDER (ORAL)

This petition under section 482 of Cr.PC read with Articles 226 and 227 of the Constitution of India has been filed with a prayer that the charge-sheet (Annexure- P/6) filed against the petitioner be quashed.

2. The undisputed facts are that the petitioner (hereinafter referred to as "the husband") was married to respondent No.2 (hereinafter referred to as "the wife"). It is

also not disputed that the petitioner had filed a petition for divorce against the wife and this petition for divorce was allowed by the learned District Judge, South Tripura, Udaipur in Case No. T.S.(Divorce) 04 of 2010 on 06.07.2011 and by this judgment and decree the marriage between the parties was dissolved.

3. The respondent wife aggrieved by the said judgment and decree filed an appeal being MAT Appeal No. 04 of 2011 in this Court and along with the MAT Appeal she filed an application for stay and on 25.07.2011, ad-interim *ex parte* stay order was granted whereby the judgment and decree of divorce was stayed.

4. It was urged by Mr. Somik Deb, learned counsel on the last date of hearing that this order was never served upon the petitioner-husband. To verify this fact, I have called for the record of MAT Appeal No.04 of 2011 and I find that notice of the appeal or the application for stay was not served upon the husband. Thereafter, various dates were given to the petitioner to take steps, but the petitioner did not appear and on 09.04.2012, it was ordered that in case the appellant fails to take steps within a period of seven days, then the appeal would be dismissed for default. Even thereafter, steps were not taken and on 07.06.2012, another request for adjournment was made. Thereafter, on 22.06.2012 it was

prayed that the husband be served by publication in a newspaper. In fact, no publication was made and finally, on 08.08.2012, the petitioner-husband put an appearance. There is no material on the file of the MAT Appeal to show that the husband was aware of the stay order dated 25.07.2011.

5. The petitioner-husband got remarried on 19.09.2011 i.e. more than 60 days after the judgment and decree dated 06.07.2011 was passed. The respondent-wife thereafter filed a complaint under section 494 IPC alleging that the husband had committed the criminal offense of bigamy. Charge has been framed and against this charge the husband is before this Court.

6. From the facts narrated above, it is apparent that the husband was not aware about the stay order granted by this Court. He contracted second marriage after the decree of divorce was passed in his favour. During this intervening period the appeal filed by the wife has also been dismissed. It is true that the appeal has been dismissed in default but, the fact is that the MAT Appeal No. 04 of 2011 was dismissed in default on 14.01.2015, when it was found that none had appeared for the petitioner.

7. Now, in view of this latest development that the decree of divorce has been affirmed and without going into

any other questions I feel that it would be a futile exercise to continue with the charge-sheet under section 494 IPC.

8. Therefore, the petition is allowed and the charge-sheet (Annexure P-6) is quashed.

9. Send down the LCRs forthwith.

CHIEF JUSTICE

Sabyasachi ghosh