

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

TUESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FIFTEEN

PRESENT
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE Nos.365 & 368 of 2007

Between:

1. Bathula Linga Reddy (A2)
2. Bathula Pushpa Bai (A3)
3. Bathula Raju (A1)

..... PETITIONERS

AND

The State of Telangana, rep.by its
Public Prosecutor

.....RESPONDENT

The Court made the following:

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE Nos.365 & 368 of 2007

COMMON ORDER:

These two criminal revision cases can be disposed of by a common order, since they arose out of common judgment, dated 05.03.2007 in CrI.A.Nos.39/2006 and 40/2006 on the file of the II Additional District and Sessions Judge (FTC), Adilabad. Both the criminal appeals arose out of judgment, dated 15.03.2006 in

C.C.No.391/2004 on the file of the Judicial Magistrate of First Class, Adilabad.

2. The facts in brief are that PW 1-B.Panchaphoola filed a complaint on 23.06.2004 before the concerned police alleging that her husband Raju (A1) was contemplating marrying for second time during subsistence of first marriage. The other allegations were made alleging the offence under section 498-A IPC. PW 1 originally filed the complaint against as many as 6 persons. While A1 is the husband of PW 1, A2 and A3 are parents of A1. A4 is said to be the alleged second wife of A1, whereas A5 and A6 are parents of A4.

3. The case of the *de facto* complainant-PW 1 is that there was love affair between herself and A1 and subsequently, in December, 2000 both of them got married in Shanimandir at Adilabad before the elders as per the customs prevailing in their community. Thereafter, they lived happily and blessed with a female child. It is alleged that after birth of female child, A1 started harassing PW 1 both mentally and physically and sent her out of his house. It is alleged that at the instigation of A2 and A3, the parents of A1, A1 had decided to marry another woman i.e., A4. Having come to know about the attempts of A1, PW 1 filed the complaint.

4. The case was taken on file against the accused for the offences under section 498-A and 494 IPC. The accused denied the charges. The prosecution examined the victim wife as PW 1 and her father as PW 2. PWs 3 and 4 were examined to show that the marriage between PW 1 and A1 was performed at Shanimandir at Adilabad. PWs 5 & 6 were examined to show that they had informed about the disputes between A1 and PW 1, but in spite of that A5 and A6 performed the marriage of their daughter-A4 with A1. PW 7 is the Priest of the Temple and PW 9 is the Clerk of the Temple who spoke about the alleged marriage in between A1 and A4. PW 9 is the

landlord in whose house PW1 and A1 had stayed for few months as tenants. The Investigating Officer was examined as PW10. Exs.P1 to P8 and Exs.D1 and D2 were brought on record.

5. After considering the material on record, by judgment dated 15.05.2006 the learned Judicial Magistrate of First Class, Adilabad found A4 to A6 not guilty of any of the offences charged. Similarly, the learned Magistrate also found A1 to A3 not guilty of the offence under section 498-A IPC. However, the learned Magistrate found that the case against A1 to A3 for the offence under section 494 IPC is proved and accordingly, convicted and sentenced A1 to A3 to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- each, in default, to suffer simple imprisonment for one month.

6. Aggrieved by the said conviction and sentence, while A1 preferred CrI.A.No.40/2006, A2 & A3 preferred CrI.A.No.39/2006 both on the file of the II Additional District and Sessions Judge (FTC), Adilabad. By common judgment dated 05.03.2007, the learned Sessions Judge confirmed the conviction recorded by the trial Court and dismissed both the appeals. Aggrieved by the said common judgment, the present criminal revision cases are filed.

7. It is the contention of the learned counsel appearing for the revision petitioners that the evidence on record do not in any way establish that it is the Accused 1 to 3 who have committed the offence punishable under section 494 IPC and that both the Courts below have erroneously held that the marriage between A1 and A4 was proved and consequently convicted A1 to A3 of the charge under section 494 IPC. The learned counsel further submits that absolutely there is no evidence to show that the essential requirements of a marriage of Hindu couple were followed or proved and in the absence of any evidence to show that the alleged second marriage being a valid marriage, the petitioners/A1 to A3 cannot be held liable for the offence punishable under section 494 IPC. That apart, it is submitted by the

learned counsel for the petitioners that the evidence on record absolutely do not show that any marriage was performed between A1 and A4 as alleged. It is also contended that when the complaint itself was filed on 23.06.2004, the alleged second marriage was performed on 26.06.2004, which means that the complaint was filed even prior to the alleged second marriage. It is contended that in this case whatsoever was gathered by the investigating agency, it was only prior to the alleged second marriage. For these reasons, the learned counsel submits that the petitioners/A1 to A3 are entitled for acquittal of the offence convicted.

8. The learned Additional Public Prosecutor, representing the State, submits that the evidence of PWs 3 and 4 proves that there was a valid marriage in between the *de facto* complainant-PW 1 and A1, and the evidence of PWs 7 and 9 clearly shows that there was second marriage in between A1 and A4. The learned Additional Public Prosecutor further submits that since the second marriage between A1 and A4 was during subsistence of first marriage, the same is an offence punishable under section 494 IPC and therefore, both the Courts below are justified in rendering the judgments and they do not suffer from any infirmity warranting interference and hence these two revisions are liable to be dismissed.

9. Now the point that arises for consideration in these two revisions is whether the conviction and sentence imposed by the Courts below against the revision petitioners/A1 to A3 for offence under section 494 IPC is legal and sustainable.

Point:

10. I have gone through the entire material on record, including the judgments under challenge. Even though a feeble attempt has been made by A1 to show that there is no legally valid marriage between him and PW1, but the evidence on record shows that there

was a valid marriage in between A1 and PW 1. The evidence of PWs 3 and 4 clearly shows that both PW 1 and A1 came to them and informed that they fell in love each other and since the parents of both A1 and PW 1 are opposed for their marriage, they intended to get marry each other and accordingly, after following due procedure, PW 4, being Purohit of Shani Temple, Adilabad, had performed the marriage between PW 1 and A1. It is also not denied that PW 1 had a daughter through A1. The allegation of PW 1 is that after the birth of female child, A1 deserted her and went back to his parents and at the instigation of his parents who are A2 and A3, he married A4 during subsistence of first marriage. The further allegation of PW 1 is that even though the parents of A4 i.e., A5 & A6 were informed by PWs 5 and 6 that there were certain disputes in between PW 1 and A1, but they did not object such marriage of A1 with their daughter-A4.

11. The evidence of PW 1 coupled with that of PWs 3 & 4 would establish that there was valid marriage in between PW 1 and A1. That apart, the evidence of PW 8, who is said to be the landlord, in whose house both PW 1 and A1 lived for some time as husband and wife, also establishes that there was valid marriage between A1 and PW 1. The evidence of PW 2 establishes that PW 1 and A1 lived together for 3 to 4 months in the house of PW 8 and later shifted to his house and lived there and PW 1 gave birth to a female child and thereafter, A1 discarded PW 1. Nothing was elicited from the cross examination of PWs 2, 3, 4 & 8 contrary to disbelieve their version. There is no doubt that there was valid marriage between A1 and PW 1.

12. The other aspect is as to whether there was valid marriage in the eye of law in between A1 and A4. As already stated, the complaint itself was filed 3 days prior to the alleged second marriage of A1 and in the said complaint, PW 1 raised her apprehension about the intention and proposal of A1 to get marry A4 at the instigation of A2, A3, A5 and A6. After the marriage was performed between A1 and A4, nothing

was brought on record by way of any statements given to the police by any prosecution witnesses. The Investigating Agency recorded the statements of witnesses even prior to the alleged second marriage of A1 with A4. That apart, the learned counsel for petitioners/A1 to A3 submits that even if the scanty evidence on record is accepted that there was valid marriage between A1 and A4, that by itself is not sufficient to prove the ingredients of Sec.494 IPC warranting conviction of the petitioners/A1 to A3, unless it is established by the prosecution that the second marriage of A1 with A4 was in accordance with the provisions of Sec.7A of Hindu Marriage Act, as the parties are Hindus.

13. The essential ingredients of the offence under Section 494 IPC are (i) the accused must have contracted the first marriage; (ii) whilst the first marriage was subsisting, the accused must have contracted a second marriage; and (iii) both the marriages must be valid in the sense that necessary ceremonies governing the parties must have been performed.

14. In support of the contention of the learned counsel appearing for the petitioners/A1 to A3 that the alleged second marriage of A1 with A4 is not a valid marriage, he relied on a decision of the Supreme Court in ***Smt.Priya Bala Ghosh v. Suresh Chandra Ghosh***^[1] which was followed by this Court in ***Natari Parvati v. State of A.P.***^[2].

15. The decision of the Supreme Court clearly laid down that there is obligation on the prosecuting agency to prove that the alleged second marriage in between parties was legal. In the case before the Apex Court, even though the husband had admitted that he married Sandhya Rani as second wife, the Supreme Court held that the admission by itself cannot be taken as proof of second marriage warranting the conviction of the husband. The relevant observations of the Supreme Court are reproduced hereunder;

“5. The trial Magistrate, after considering the

evidence adduced both regarding the marriage between the appellant and the respondent as well as the alleged second marriage between the respondent and Sandhya Rani, held that the marriage of the appellant with the respondent was established. Notwithstanding the scantiness of the evidence regarding the second marriage, the Trial Magistrate, however, found that the respondent had admitted the second marriage in his objections filed to a claim made by the appellant for maintenance under Section 488 of the Code of Criminal Procedure. In this view the Magistrate held that there cannot be any doubt that the respondent has married Sandhya Rani while his first wife, the appellant, was still alive.....

6. On appeal by the respondent, the learned Sessions Judge, Jalpaiguri by his judgment dated April 30, 1966 held that the evidence does not establish that the essential ceremonies to constitute a valid marriage have been performed either in the case of the marriage claimed to have taken place between the appellant and the respondent or in respect of the alleged second marriage with Sandhya Rani. In this view the learned Sessions Judge set aside the order of the Magistrate convicting the respondent and sentencing him as mentioned above. The respondent was acquitted of the offence under Section 494 IPC.

7.Regarding the second marriage, the High Court agreed with the finding of the learned Sessions Judge that the essential ceremonies to constitute a valid marriage have not been proved to have taken place. In this view the High Court confirmed the order of acquittal passed in favour of the respondent and dismissed the appellant's appeal.

13. Again in the case before us there is no controversy that the second marriage is stated to have taken place after the commencement of the Act during the subsistence of the first marriage. If the second marriage has taken place, it will be void under the circumstances and Section 494 of the Indian Penal Code will be attracted.....

21the respondent has admitted that Sandhya

Rani is his wife and that he married her because of the misconduct of the appellant. The High Court considered the question whether this statement of the respondent in Ex.2 tht he has married Sandhya Rani can be treated as an admission of the fact of the second marriage.....

24.....Homa and Saptapadi are the essential rites for a marriage according to the law governing the parties and that there is no evidence that these two essential ceremonies have been performed when the respondent is stated to have married Sandhya Rani. No reliance can be placed on the admissions stated to be contained in Ex2.”

16. In view of the above decision of the Supreme Court, for a Hindu marriage “Saptapadi” and “Datta Homa” are essential ceremonies and without there being these two ceremonies, there would not be a valid marriage. Absolutely, there is no evidence in the present case to show that these two essential ceremonies were performed in the second marriage of A1 with A4.

17. In the instant case, the prosecution heavily relied upon the evidence of PWs 1, 7 and 9 in support of the contention that the case against the petitioners/A1 to A3 stood proved in so far as the offence under Section 494 IPC is concerned.

18. The evidence of PW 1 on this material aspect is to the following effect;

“About one year 7 months back from now, I came to know that marriage of A1 with A4 has been settled, immediately I have informed the above said facts to the S.I. of Police, Jainath. I have lodged a report before the police against the accused. Ex.P1 is the report given by me to the police. Police have assured me that action will be taken against the accused. Subsequently, after lodging Ex.P1, I came to know that A1 got married A4 at a temple at Pochampadu during the subsistence of my marriage with A1.”

19. PW 7, who is said to be the Priest of Sri Kodanda Rama

Swamyvari Temple, Pochampadu and who is said to have been performed the second marriage of A1 with A4, gave his evidence which is to the following effect;

“On 26.06.2004 during noon hours I performed the marriage of A1 with A4 after issuing receipt by the temple authorities. A2 and A3 were also present along with A1 at the time of marriage with A4. On behalf of A4, her junior paternal aunt was present.”

20. The Junior Assistant, working in Sri Kodanda Rama Swamyvari Temple, Pochampadu, was examined as PW 9 and he deposed about his informing the police that there was marriage in between Meerabai (A4) and Raju (A1) in the temple. Ex.P6 is the letter issued by him and Ex.P7 is the original receipt issued to A1 to A4.

21. Even if the evidence of PWs 1, 7 and 9 are accepted with regard to performance of second marriage of A1 with A4, the ingredients of valid Hindu marriage are not established. Merely saying that PW 7 performed the marriage in between A1 and A4 that itself is not sufficient for concluding that the marriage in between A1 and A4 is legally valid. PW 7 fairly conceded that no Datha Homam or Sapthapadhi has been performed. On the basis of the evidence of PWs 1, 7 and 9, the petitioners/A1 to A3 cannot be convicted for the offence under section 494 IPC.

22. Offences under the Penal Code are such which require cogent and consistent evidence for finding guilty of the accused beyond all reasonable doubt. Even if there is any element of suspicion or incorrectness in the claim of the prosecuting party, the benefit thereof should go to the persons standing in the dock. A mere allegation by a woman that her husband has married another woman during the subsistence of her marriage, cannot by itself be taken as sufficient for constituting the offence punishable under section 494 IPC thereby inviting the penal consequences.

23. Both the Courts below have not appreciated the evidence on record in proper perspective and erroneously found the petitioners/A1 to A3 guilty of the offence under Section 494 IPC and hence they are liable to be set aside.

24. For the reasons stated above, both these two Criminal Revision Cases are allowed and the common judgment of the appellate Court dated 05.03.2007 in CrI.A.Nos. 39 & 40 of 2006 as well as the judgment of the trial Court dated 15.05.2006 in C.C.No.391 of 2004 in so far as the petitioners/A1 to A3 are concerned are set aside, and the petitioners/A1 to A3 are acquitted of the offence for which they were convicted. The bail bonds of the petitioners/A1 to A3 shall stand cancelled. The fine amount, if any paid, shall be refunded to the petitioners/A1 to A3.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 23.06.2015

Dsr

[\[1\]](#) AIR 1971 SC 1153

[\[2\]](#) 2003(2) ALD (CrI.) 731 (AP)