

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Criminal Revision Case No.1048 of 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure ('the CrPC', for brevity) by PW1/the victim is directed against the judgment dated 28.09.2007 of the learned Additional Judicial Magistrate of First Class, Bhongir in C.C.No.258 of 2005 taken on file for the offence punishable under Section 494 read with 114 of the IPC against A1 to A10, i.e., the respondents 1 to 10 herein.

2. I have heard the submissions of the learned counsel for the petitioner (PW1), the learned counsel for the accused/A1 to A10 and the learned Public Prosecutor appearing for the State/the 11th respondent herein. I have perused the material record.

3. The case of the prosecution including the gravamen of the charge, in brief, is this: PW1 had lodged a complaint on 21.02.2005 with the Station House Officer, Rajapet Police Station of Bhongir. In the said report, she had stated as follows: "Her marriage was solemnized with A1 on 21.12.1997 at Valigonda. At the time of the marriage, Rs.1,70,000/- was given to A1 as dowry. PW1 and A1 lead happy marital life for a period of two years. PW1 gave birth to a daughter under her lawful wedlock with A1. After the birth of the daughter, A1, his parents, brother and sister-in-law ill-treated PW1, both physically and mentally. After the matter was brought to the notice of the elders by the parents of PW1, there was re-union. However, after ten days, the said accused beat her and sent her away to her parents' house by asking her to bring Rs.1,00,000/- from her parents. The father of PW1 having paid Rs.1,00,000/- to the husband of A1 had sent back PW1 to her matrimonial home for leading conjugal life. However, again after one month, A1 and his parents beat PW1 indiscriminately and made a demand to bring Rs.50,000/-. They had left her at Valigonda near the house of her parents. On hearing her cries, her parents shifted her to a hospital; and, they had

spent huge amounts on her treatment. Two months thereafter, the father of PW1 went to Brahmanapalli with four elders. At that time, the parents-in-law of PW1 beat her father and abused the elders and sent them away. Therefore, PW1 had approached Bibinagar Police and had lodged a complaint against her husband, parents-in-law, sister-in-law and younger brother-in-law. To meet the medical expenses of PW1, her parents had to sell away their house at Valigonda. They are now working as labourers in the fruit market at Dilsukhnagar, Hyderabad. Further, A1 had neglected to maintain her for over a period of five years. Further, A1 had married another woman by taking Rs.2,00,000/- as dowry by representing that PW1 had died. The said second marriage of A1 took place with Boga Rani @ Sandhya D/o Boga Markandeyulu on 20.04.2003 at about 01.30 AM at Markandeya Temple, Begumpet, Hyderabad in the presence of Surakanti Laxma Reddy, Narsi Reddy, Sathaiah (A-8), M.Janaki Ramulu (A-9), M.Ramchandraiah (A-10). The said elders performed the second marriage. In February 2004, A1 sent a notice demanding divorce from PW1.” The above report with the above contents lodged by PW1 which was registered as a case in Crime No.05 of 2005 set the criminal law in motion. After investigation, a charge sheet was filed against A1 to A10 for the offence punishable under Section 494 read with 114 of the IPC.

4. During the course of trial, PWs 1 to 10 were examined and exhibits P1 to P5 were marked on the side of the prosecution. No evidence (oral and documentary) was adduced on the side of the defence. On merits, the trial Court had found the accused not guilty of the offence with which they were charged and had acquitted them. Therefore, PW1 had preferred this Revision case.

5. Now the point for determination is -

**Whether the judgment of the Court below
acquitting the A1 to A10 is unsustainable under
facts and in law?**

6. The learned Public Prosecutor had submitted that the State did not prefer any appeal. The learned counsel for the petitioner had contended as

follows: 'The court below did not consider in proper perspective the evidence adduced and had failed to give due weight to the evidence, which is credible and sufficient to base a conviction. The court below had failed to observe that non-examination of the person, who performed the marriage, the trustees of the temple and other witnesses who were present at the time of the second marriage, has not affected the case of the prosecution as there was sufficient evidence even in the absence of examination of such witnesses. The court below ought to have considered and appreciated the evidence on record instead of observing that certain witnesses were not examined. The trial Court ought to have seen that the defects in the investigation shall not be taken as a circumstance favourable to the accused. The findings of the trial Court, which are not based on evidence, are grossly erroneous. The judgment of the trial Court, which is unsustainable, has resulted in gross miscarriage of justice.'

7. On the other hand, the learned counsel for A1 to A10 had contended as follows: 'Except a bald allegation that A1 had married one Boga Rani @ Sandhya in the presence of some elders on 20.04.2003 midnight at a temple at Begumpet, there is absolutely no averment either in the report or in the charge sheet laid. The ingredients of the penal provisions are not attracted. The allegation that A1 had married another woman during the subsistence of his marriage with PW1 is false; the accused are innocent; they did not indulge in any offence much less the offence of bigamy. There is absolutely no evidence to base a conviction. The trial court had properly appreciated the evidence and the legal position applicable and had rightly acquitted the accused after recording a sustainable finding that they are not guilty.' He had alternately contended that the law is well settled that when two views are possible and that the view taken by the court below is consistent with the evidence on record and is probable and plausible, this court shall not substitute its own view because another view is possible.

8. I have bestowed my attention to the facts and the submissions. I have carefully perused the evidence on record. There is no dispute in regard

to the marriage between PW1 and A1. There is also no dispute in regard to the relationship among the accused. A2 is the mother of A1; A3 is the younger brother of A1; A4 is stated to be the second wife of A1; A5 and A6 are the parents of A4; A7 is brother of A4; and, A8 and A10 are the maternal uncles of A1. As rightly contended, the burden is on the prosecution to prove the charge as required under law and beyond reasonable doubt. Though PW1 had affirmed in her examination-in-chief that A1 married A4 during the subsistence of her marriage with A1, she had admitted in her cross-examination that she had learnt through her relatives that during the month of April 2003, A1's second marriage was performed stealthily during night hours in a temple at Begumpet village and that she had further learnt that Surakanti Laxma Reddy and Narsi Reddy had participated as elders in the said second marriage along with A8 to A10 and that she was informed that the second marriage of A1 with A4 was performed by the parents of A1 and A4 and their family members and that on knowing about the same, she had lodged report with the police. She had admitted in her cross-examination that she had earlier filed a report against A1 and his family members for the offence under Section 498-A of the IPC and that C.C.No.215 of 2001 had ended in acquittal on 17.12.2002 and that since the date of filing of the report related to the said case, she did not join the society of A1. She had also admitted that she had filed a maintenance case in a Court at Ramannapet and that maintenance was awarded to her. In her cross-examination, she had further stated that she does not know the name of the person who had informed her about the second marriage of A1 with A4 and that the person, who had informed so to her is a relative of her father. Her further admissions in her cross-examination are as follows: 'It is true that after giving requisition to the Chairman, Mandal Legal Services Authority I also made a representation to the Hon'ble Chief Justice of A.P.High Court against the Senior Civil Judge, Bhongir for not taking any action on my petition. After I had made representation to the Hon'ble Chief Justice of A.P High Court the Senior Civil Judge, Bhongir summoned A1 and also myself and only thereafter forwarded the complaint to P.S.Rajapet. I have mentioned in my complaint before the Senior Civil Judge about lodging a complaint against the accused by me at

P.S.Bibinagar.It is true when the Senior Civil Judge, Bhongir did not initiate any action against the accused I and my family members threatened the Senior Civil Judge, Bhongir. It is true only after the panchayat was held at P.S.Bibinagar I filed the earlier criminal complaint against the accused. One Laxma Reddy and Narsi Reddy appeared as elders on behalf of accused while one Pandaiah, Anjaneyulu and few others appeared as elders on my behalf'. She had denied the suggestion that A1 had not contacted the second marriage with A4 or any other person and that she is not interested in conjugal society with A1 and that a false complaint was given to harass A1.

PW2 is the father of PW1. He had also testified as follows: 'Two months after the disposal of the criminal case filed by his daughter, they came to know that A1's second marriage was performed with A4 with the assistance of his family members including the accused and Surakanti Laxma Reddy and Narsi Reddy. Therefore, his daughter had lodged a complaint with the police. But, police did not take action despite lapse of two months. Therefore, he had approached Mandal Legal Services Authority-cum-Senior Civil Judge, Bhongir for redressal of the grievance.' In his cross-examination, he had admitted that he did not state to the police at the time of recording of his statement about his coming to know of the second marriage of A1 with one Rani through Krishna, resident of Begumpet village. But, he had stated that in the month of April, 2003 the said Krishna informed him about A1 contacting second marriage. He had further testified that the said Krishna informed him about the second marriage of A1 over telephone at a public telephone booth at Kothapet Fruit market. **PW3** is the mother of PW1. Regarding the second marriage, she had testified as under: 'A1 contacted second marriage; and two days after the above marriage, a known person brought this to our knowledge. I also came to know that A1 married A4, the daughter of A5-Boga Markandeyulu. Thereafter, I, my husband, PW1 along with elders like Anjaneyulu, Markandeyulu, A.Janardhan and Shankaraiah went to the village of the accused to enquire as to how A1 has contacted the second marriage with A4. At that time the accused informed us that do whatever we wanted. On that PW1 lodged a report with the police.' In her cross-examination, she had stated as follows: 'I did not disclose the names of

the elders to the police. One Krishna informed us about A1 contacting second marriage. I stated to the police about Krishna informing us about A1 contacting second marriage. **PW4**, who is said to be Purohit and **PW5**, a watchman of the temple did not support the case of the prosecution. **PW6**-Ch.Rama Swamy who is said to be a Tailor by profession, **PW7**-Lingala Buchaiah, who is a washer-man by profession also did not support the case of the prosecution. **PW8** is the Investigating Officer. **PW9** is said to be an elder who was said to have mediated to settle the disputes between PW1 and A1. His evidence is as follows: 'On 20.04.2003, he went to Begumpet to the house of one Krishna on business purpose and he had stayed on that night in the village along with one Markandeya. In the morning at 5 AM, he and Markandeya noticed a marriage being performed at Begumpet at Kusuma Harinatha Ashramam. He and Markandeya went there and found that the marriage of A1 was being performed with A4. He and Markandeya and Krishna asked the people who were present at the marriage as to whether the marriage of A1 is a second marriage. Upon that the persons present there abused them and sent them away from the premises. Thereafter, Krishna informed PW2 about the 2nd marriage of A1 with A4. On the same day between 11.30 to 12 Noon, all of them went to Brahmanapalli to the house of A1 and by that time, the father of A1 died. He, PW2, Markandeya, Krishna and three other elders went to the Police Station, Bibinagar and had lodged a report.' In his cross-examination, the following points were elicited. 'PW2 is not known to me. He belongs to the same community. The distance between Kusuma Harinath Asharam and the house of Krishna is about 200 yards. I do not know the name of the trustees of the above Ashramam. The name of Pujari was Seetharamulu.' He had denied the following suggestions: 'It is not true to say that PW2 is my maternal uncle and therefore, I am deposing false. It is not true to suggest that A1 has not contacted second marriage with one Sandhya Rani. It is not true to suggest that Markandaiah is co-brother of PW2.' **PW10** is the said Markanedeyulu. He is stated to be Tailor by profession. On the relevant aspect, he deposed as follows: 'I know PW9. On 20-4-2003 I along with PW9 went to the house of Krishna in Begumpet village in Rajapet Mandal. On the

said day, we could not return back due to non-availability of conveyance. So we stayed with said Krishna. On the following day morning, when we got up we heard that A1 was contacting second marriage with A4-Sandya Rani and the marriage is going on. We went to the above persons and expressed that the marriage of A1 with A4 was extremely unfortunate being illegal as his first marriage is subsisting. But those who were present there gave deaf ear to our suggestions. Later, the said Krishna informed PW2 about the second marriage of A1 with A4. They went to the house of A1 on the next day. But they were not received well at the house of A1. So they went to the Police Station, Bibinagar.’ In the cross-examination the following points were elicited: ‘There were about 10 people present in the Ashram. Janaki Ramulu, Sathaiah, Narsi Reddy, Laxma Reddy were also present among them. They did not inform either the Trustees or the Pujaris about A1 contacting second marriage.’ He had denied the following suggestions: ‘It is true that A1 had filed a complaint against A1 under Section 498-A of the IPC. It is not true to suggest as I am the co-brother of PW2 I am deposing falsely with a view of harass A1 and that A1 did not contact second marriage.’

9. Thus, I have carefully examined the evidence. The evidence of PWs 1 to 3, i.e., the wife of A1 and her parents is hearsay in nature. PW1 does not refer to the name of Krishna, who was said to have allegedly informed about the second marriage between A1 and A4 to her father PW2. She had only stated that the person who had informed about the second marriage of A1 is relative of her father and that she cannot tell his name.

PWs 2 and 3, who are the parents of A1 also stated that they came to know about the second marriage through one Krishna. But they did not say as to how the said Krishna is interested in PW1 and their family. His relationship with the family of PW2 is also not stated except stating that he is a distant relative. PWs 9 and 10 had also stated that that Krishna had informed them about the second marriage of A1. The said Krishna who obviously is a crucial and material witness was not examined.

10. Coming to the evidence of PW9, he had deposed that he went to

the house of Krishna for business purpose and stayed on that night in the village along with one Markandeya. But the said Markandeya (PW10) had testified that he and PW9 stayed in the house of Krishna. That was not the evidence of PW9. Both PWs 9 and 10 deposed that on coming to know that the marriage between A1 and A4 was being performed at Kusuma Harinatha Ashramam, they went along with Krishna to that place and stated that the marriage of A1 is a second marriage, but, the persons did not pay heed and hence they had returned. PW9 stated that the persons present there abused them. PW10 had stated that the persons present there gave a deaf ear to their suggestions. They did not state as to what was the situation at Kusuma Harinatha Ashramam by the time they went there. They did not speak of any facts like A1 and A4 sitting side by side at that time. They simply had stated that they raised the issue that the marriage of A1 with A4 is a second marriage. They did not say in their evidence anything about any rituals of marriage, if any, witnessed. They did not speak even the details regarding the presence of the persons like the parents of A1 or the parents of A4 etcetera. They did not say that they stayed back at the temple and witnessed the marriage of A1 and A4. They had only stated that later Krishna informed them about the second marriage of A1. As already noted the said Krishna was not examined. The defence is that they are co-brothers and that PW2 is their uncle and therefore, they are giving false evidence. They both had denied their relationship with the PW2. Therefore, by any standards, the evidence on record is not sufficient to hold that the ingredients of Section 494 of the IPC are attracted to the case on hand. It is unsafe in the facts and circumstances of the case to base a conviction on the evidence brought on record by the prosecution. A careful perusal of the judgment of the Court below would show that the Courts below had properly considered the facts and appreciated the evidence and arrived at correct conclusions based on the evidence and that there are no infirmities or material irregularities calling for interference.

11. Viewed thus, this court finds that there is no merit in any one of the contentions urged before this court on behalf of the petitioner and hence,

this court finds that there is no merit in the revision and the revision is devoid of merit and is liable to be dismissed.

12. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 28.09.2007 passed in C.C.No.258 of 2005 by the learned Additional Judicial Magistrate of First Class, Bhongir.

Miscellaneous petitions, pending if any, in this revision shall stand closed.

M. SEETHARAMA MURTI, J

30th January 2015
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