

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-1263-SB of 2014

Date of Decision : September 24, 2015

Paramjit Kumar

.....Appellant

VERSUS

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Rajiv Joshi, Advocate
for the appellant.

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab
for respondent No.1-State.

Mr. Sanjiv Sharma, Advocate as Legal-Aid counsel
for respondent No.2-Sita Devi.

T.P.S. MANN, J.

Appellant-Paramjit Kumar has filed the present appeal against the judgment and order dated 13.3.2014 passed by learned Additional Sessions Judge, Jalandhar whereby he stands convicted under Section 494 IPC and sentenced to undergo imprisonment for three years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

The case of complainant-Sita Devi, respondent No.2 herein, in her complaint was that she was legally wedded wife of the appellant and residing at village Dhadda, Tehsil and District Jalandhar. Baljinder Kaur, the second wife of the appellant, who was residing with him, had

given birth to two children from his loins. Without obtaining divorce from the complainant, the appellant had solemnized second marriage with Baljinder Kaur. On 12.1.1992, in case titled 'Sita Devi Vs. Paramjit Kumar and others' under Sections 498-A 406 IPC, the appellant openly admitted about his second marriage and birth of two children from the same. Baljinder Kaur was registered as voter of village Daduwal at serial No. 616 and shown as wife of the appellant. Baljinder Kaur was, however, impersonating as Balwinder Kaur wife of the appellant. The name of Baljinder Kaur was wrongly shown as Gian Kaur, being mother of the two children of the appellant. Thus, Baljinder Kaur committed offence of forgery by preparing wrong record of birth certificate of her children and impersonation by changing her name in the birth certificate. The complainant further averred that Sanjeev Kumar @ Kala, brother of Baljinder Kaur, also made statement in the Court of Sub Divisional Magistrate, Jalandhar and stated in case titled 'State Vs. Paramjit Kumar and others' under Sections 107/151 Cr.P.C. on 7.8.2000 that Baljinder Kaur was his real sister who had no relation with the appellant. She was living with him in his house in village Virk. She was virgin and as she was living with the appellant as his wife, she was not mother of any child. Baljinder Kaur and the appellant signed the notice under Section 160 Cr.P.C. and while doing so, Baljinder Kaur mentioned herself as wife of the appellant. It established that the appellant and Baljinder Kaur were husband and wife and living in village Dhadda. Therefore, they were liable to be punished under Sections 494 and 468 IPC for arranging second marriage without obtaining divorce from the complainant, who was first wife of the appellant,

besides preparing false record of their children and making of statements by the appellant in the Court of Judicial Magistrate Ist Class, Jalandhar dated 14.2.2007 in case titled 'Sita Devi Vs. Paramjit Kumar' under Section 125 Cr.P.C. Therefore, Paramjit Kumar, husband of the complainant, Baljinder Kaur, second wife of the appellant and Sanjeev Kumar @ Kala, brother of Baljinder Kaur be punished for committing the offences under Sections 191/192/193/494/419/420/468 and 34 IPC.

After perusing the preliminary evidence led by the complainant, learned Judicial Magistrate Ist Class, Jalandhar summoned the accused to face trial for committing the aforementioned offences. After securing the presence of the accused and recording pre-charge evidence, the trial Court charged the accused for the offences under Sections 193, 419 read with Section 34 IPC and Sections 468 and 494 IPC, to which they pleaded not guilty and claimed trial.

Vide judgment dated 5.1.2011, learned Judicial Magistrate Ist Class acquitted the appellant and his co-accused of the charges against them. Aggrieved of the same, complainant-Sita Devi preferred an appeal but the same was dismissed by learned Additional Sessions Judge, Jalandhar on 3.5.2011. Still not satisfied, the complainant filed Criminal Revision No. 2187 of 2011 before this Court. Vide judgment dated 10.10.2013, this Court set aside the judgment dated 5.1.2011 passed by the trial Court and judgment dated 3.5.2011 passed by the lower appellate Court. The matter was remitted to the lower appellate Court to re-appreciate the evidence and to decide the matter by

considering the evidence available on the file. Pursuant thereto, learned Additional Sessions Judge, Jalandhar vide judgment and order dated 13.3.2014 held the appellant guilty for the offence under Section 494 IPC and, accordingly, sentenced him, as mentioned above. Aggrieved of his conviction and sentence, the appellant has filed the present appeal.

The appeal was put up for preliminary hearing before a co-ordinate Bench of this Court on 20.3.2014 when after hearing learned counsel for the appellant it was admitted. On the next date of hearing, respondent No.2/complainant-Sita Devi put in appearance and requested the Court to engage a counsel for her as she was not in a position to do so. Her request was accepted and services of a legal-aid counsel provided to her. On 5.8.2015, the legal aid counsel representing respondent No.2/complainant did not put in appearance. On the other hand, the complainant was present in person and she again requested the Court to engage a legal-aid counsel for her. This time, another legal-aid counsel from out of the panel of advocates maintained by the Legal Services Authority was appointed for pleading the case of the complainant.

This Court has heard Mr. Rajiv Joshi, Advocate for the appellant, Mr. Vikram Bishnoi, Assistant Advocate General, Punjab and Mr. Sanjiv Sharma, Advocate as legal-aid counsel for respondent No.2-Sita Devi and perused the evidence with their able assistance.

Paragraphs 22 to 26 of the impugned judgment of conviction passed by the lower appellate Court for convicting the

appellant under Section 494 IPC are reproduced here-in-below :-

"22. Last, but not the least allegation of the complainant against respondents No.1 and 2 is that they have solemnised second marriage and are guilty of offence under Section 494 IPC. At the cost of repetition, birth certificate Ex.C2/1 shows that daughter Komal was born from the womb of Baljinder Kaur, respondent No.2 and name of her father is mentioned as Paramjit Kumar, respondent No.1. Respondent No.2 has herself disclosed the name of her husband as Paramjit Kumar, respondent No.1 in her statement under Section 313 Cr.P.C. whereas respondent No.1, Paramjit Kumar in his statement made before a Court i.e. in a complaint titled as 'Sita Devi Vs. Paramjit Kumar' (between the parties) admitted in the Court of Sh. K.K. Kakkar, JMJC that after his divorce with Sita Devi, complainant, he has solemnized marriage with Baljinder Kaur and two children were born out of the said wedlock. The above cogent and convincing evidence is sufficient to corroborate the allegation of the complainant Sita Devi that respondents No.1 and 2 have performed second marriage i.e. during the subsistence of earlier marriage of respondent No.1 with the appellant/complainant, as such his previous marriage has not been dissolved by any competent Court of law, so far. It is not the defence version nor any *iota* of evidence has been led that there was any custom prevalent between parties of customary divorce or that such divorce (Ex.DY) was valid under law.

23. Be so, as it may, this Court has been directed to re-appreciate the evidence led by the

complainant in view of order of Hon'ble High Court dated 10.10.2013 passed in Criminal Revision No. 2187 of 2011, Hon'ble High Court in the said order, has relied upon a judgment of Mohabhat Ali Khan Vs. Mohd. Ibrahim Khan, AIR 1929 PC 135, whereby it was laid down that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years, which presumption was rebuttable but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy as held in judgment Badri Prasad Vs. Dy. Director of Consolidation, 1978(3) SCC 527. Hon'ble High Court in case Gokal Chand Vs. Parveen Kumari, AIR 1952 SC 231 observed that continuous cohabitation of man and woman as husband and wife and their relationship as such for a number of years may raise the presumption of marriage but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

24. Judgment Andrahennedige Dinohamy Vs. Wijetunge Liyanpatabendige Balahamy, AIR 1927 PC 185, was relied upon by Hon'ble Apex Court in Tulsa's case where the parties remained together for a considerable period and conclusion was drawn that they remained as husband and wife. Similarly, in another judgment of Hon'ble Apex Court in Koppiseti Subbharao @ Subramaniam's case, the factum of marriage was presumed on the basis of long relationship as husband and wife.

25. It is most relevant to mention here that respondents have not been able to adduce any evidence to rebut prime allegation of the complainant that they are living as husband and wife and that daughter Komal and son Balwinder Kumar were born from the said wedlock and even the documents produced by the complainant were false or fabricated by her or anybody else to implicate them.

26. The ratio of law in the judgments relied upon learned counsel for the respondent cannot be denied at all but same are not applicable to the facts and circumstances of the case at all, due to nature of evidence produced by the complainant before the trial Court."

In order to establish the charge under Section 494 IPC, the prosecution has relied upon the following circumstances:-

- (i) Birth certificate Ex.C2/1 showed that daughter Komal was born from the womb of Baljinder Kaur and name of her father was mentioned as Paramjit Kumar;
- (ii) Her statement under Section 313 Cr.P.C., Baljinder Kaur herself disclosed the name of her husband as Paramjit Kumar; and
- (iii) The appellant in his statement made in complaint titled 'Sita Devi Vs. Paramjit Kumar' in the Court of Shri K.K. Kakkar, Judicial Magistrate Ist Class that after his divorce with the complainant, he solemnized marriage with Baljinder Kaur and two children were born from the said wedlock.

The lower appellate Court referred to the judgment in Mohabhat Ali Khan Vs. Mohd. Ibrahim Khan, AIR 1929 PC 135, wherein it was laid down that the law presumed in favour of marriage and against a concubinage when a man and a woman cohabited continuously for a number of years. Reference was also made to Badri Prasad Vs. Dy. Director of Consolidation, (1978)3 SCC 527 and Gokal Chand Vs. Parvin Kumari, AIR 1952 Supreme Court 231, where also it was observed that the law presumed in favour of legitimacy and the continuous cohabitation of man and woman as husband and wife and their relationship as such for a number of years may raise the presumption of marriage. Similarly, reference was made to another judgment Andrahenndige Dinohamy Vs. Wijetunge Liyanpatabendige Balahamy, AIR 1927 PC 185, wherein it was held that the parties remaining together for a considerable period is sufficient to draw conclusion that they remained as husband and wife. Holding that the appellant had not been able to adduce any evidence to rebut allegation of the complainant that he was living with Baljinder Kaur as her husband and daughter Komal and son Balwinder Kumar were born from their wedlock, the lower appellate Court proceeded to convict the appellant under Section 494 IPC.

While relying upon an earlier judgment Kanwal Ram Vs. The Himachal Pradesh Administration, (1966) 1 SCR 539, the Hon'ble Supreme Court in Smt. Priya Bala Ghosh Vs. Suresh Chandra Ghosh, AIR 1971 Supreme Court 1153, held that in a prosecution of bigamy, the second marriage has to be proved as a fact and it must also be proved that the necessary ceremonies had been performed. It was

also held that admission of marriage by an accused is no evidence of marriage for the purpose of proving an offence of bigamy or adultery. Accordingly, on the evidence, it was held that the witness had not proved that the essential ceremonies have been performed. Similarly, in Anup Singh Kohli and others Vs. Ravinder Kaur and another, 1992 (3) RCR (Criminal) 183, this Court while disposing of the petition for quashing of the complaint under Sections 494, 498-A 120-B and 109 IPC, observed that the second marriage therein had remained a secret. Though the complainant and her family members had stated about collecting information regarding the second marriage of the husband of the complainant but the entire evidence was based on hearsay and not on their own knowledge. No effort was made to bring forth any witness who might have seen the performance of the second marriage. There was also no evidence about the accused having entered into a criminal conspiracy and abetted the commission of offence of bigamy. Even the tape recorded conversation of the Raggi was found to have no evidentiary value. Accordingly, while observing that there was no evidence before the trial Court for summoning of the accused to stand a trial for offence under Section 494 read with Section 109 IPC, the Court quashed the criminal complaint. In Kulwant Singh and others Vs. Surjit Kaur, 2002 (3) RCR (Criminal) 261, it was held by this Court that the living of the husband with another woman and their names being entered in the voter-list was not proof of marriage. The performance of essential ceremonies of Anand Karaj marriage had to be proved.

In the present case, there is no evidence on the record that

the appellant got married to Baljinder Kaur and that the essential ceremonies of marriage were performed. The offence of bigamy cannot be presumed on the ground that while getting the birth of Komal registered with the authorities, the appellant was mentioned to be the father and Baljinder Kaur to be the mother and it was not enough to hold that the appellant had got married to Baljinder Kaur during the subsistence of his first marriage with the complainant. Similarly, the statements made by the appellant as well as by Baljinder Kaur before the Court that they were married is not sufficient to hold the appellant guilty for committing the offence under Section 494 IPC.

In view of the above, this Court finds that the complainant has failed to prove its case qua the commission of offence under Section 494 IPC by the appellant.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence dated 13.3.2014 is set aside and the appellant is acquitted of the charge under Section 494 IPC.

The appellant, who is in custody, be released forthwith, unless required in some other case.

September 24, 2015
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(T.P.S. MANN)
JUDGE