

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1517-MA-2014
Date of decision: 01.05.2015

Surender Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Momi, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Applicant, by way of instant application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks leave to appeal against impugned judgment of acquittal dated 02.07.2014, passed by the learned trial Court, whereby complaint of the applicant under Section 494, 420, 506 and 120-B of Indian Penal Code ('IPC' for short) was dismissed.

Brief facts of the case, as noticed by learned trial Court in Paras 2 and 3 of the impugned judgment, are that marriage of complainant was solemnized with accused No.1 Reena on 19.03.2006, as per Hindu Rites and ceremony. After marriage, both complainant and accused No.1 started living together and one daughter namely Sania was born out of this wedlock. On 2nd March, 2010, accused No.2 to 4 came to the house of complainant and

requested to take accused No.1 to her parental home for some time. Accused No.1 went to her parental home and took away all ornaments and valuable clothes with her. On 15.03.2010 complainant went to parental home of accused No.1 and requested to send back accused No.1 to her matrimonial home. But accused No.2 to 4 requested to let the accused No.1 stay for 15 days. After waiting for sufficient time, when the accused No.1 did not come to her matrimonial home, complainant again visited the parental home of accused No.1 on 01.04.2010 but accused No.1 again did not return with him, on the ground of not feeling well. On 26.07.2010, complainant again went to his in-laws to bring back his wife. But accused No.2 to 4 had beaten complainant and did not allow him to meet his wife and also threatened to kill him. Complainant came to know that accused No.1 had been detained in illegal custody by the accused No.5 & 6. On this, he moved an application under Section 97 of Cr.P.C. for issuance of search warrants before the Court of learned SDM, Kaithal, upon which accused No.1 appeared before Court of learned SDM, Kaithal, along with other accused and gave her statement that she has solemnized marriage with accused No.7 and was residing with him as his wife. Statement of accused No.4, 6 & 7 had also been recorded, regarding solemnization of marriage of accused No.1 in Court of learned SDM, Kaithal. Upon these statements, learned Court of SDM, Kaithal sent back the accused persons.

Complainant inquired the matter and found that accused No.1 had solemnized marriage with accused No.5 and was residing with her as his wife and further, accused No.5 was already married with one Sunita daughter of Ram Kumar on 12.02.2001 and had also two children from her. Thus,

accused persons in connivance with each other had wrongly shown that the marriage of accused No.1 performed with accused No.7, whereas in fact accused No.1 married with accused No.5 illegally and without getting divorce from complainant on 19.07.2010 at Dukh Bhajan Mahadev Mandir, Kurukshetra. Thus, accused had committed offence under Sections 420, 494, 506, 120-B IPC.

Complainant-applicant led his preliminary evidence. Learned trial Court sought the report under Section 202 Cr.P.C. and thereafter accused were summoned to face the criminal trial. In compliance of the summoning order, accused appeared before the Court. In his pre-charge evidence, complainant got examined Krishan Lal, Reader to SDM, Kaithal as CW1, Sushil Kumar Shastri as CW2, Chattar Singh as CW3, Hari Singh S.I. as CW5 and Sunita Devi as CW6. Complainant himself appeared as CW4 in the witness box.

After considering the pre-charge evidence and hearing the parties, the learned trial Court found a prima facie case made out against the accused. Accordingly, the accused were charge-sheeted for the offences alleged. Accused pleaded not guilty and claimed trial. Thereafter, witnesses examined by the complainant at pre-charge stage, were produced for cross-examination and they were cross-examined by the accused.

Statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating evidence brought on record by the complainant against the accused, was put to them. Accused pleaded their innocence and alleged false implication. They opted to lead evidence in their defence. Accused examined Shamsheer as DW1, Sunil Verma hand writing and finger

prints expert as DW2 and closed their evidence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the complainant has failed to prove his case. Accordingly, the complaint was dismissed and the accused were acquitted from the charges framed against them, by impugned judgment dated 02.07.2014. Hence this application under Section 378 (4) Cr.P.C., seeking leave to file appeal.

Learned counsel for the applicant submits that the learned trial Court has misdirected itself, while not appreciating the true facts of the case as well as cogent evidence brought on record. He submits that Reena Devi accused-respondent was earlier married with the complainant-applicant. She entered into her second marriage with her co-accused Ram Kumar, thus, the case was clearly made out against the accused-respondent. Since the learned trial Court has failed to appreciate the evidence in the correct perspective, the impugned judgment has resulted in serious miscarriage of justice. He prays for allowing the present application.

Having heard the learned counsel for the applicant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar fact situation of the present case, instant one has not been found a fit case, warranting interference at the hands of this Court, against the impugned judgment of acquittal. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned judgment of acquittal would show that the learned trial Court has recorded cogent and well-convincing

findings, before arriving at a judicious conclusion, holding that the complainant has failed to prove his case. The evidence led by the complainant was not found plausible, reliable and sufficient to record conviction. Having said that, this Court feels no hesitation to conclude that the learned trial Court committed no error of law, while passing the impugned judgment of acquittal and the same deserves to be upheld.

The learned trial Court considered each and every relevant aspect of the matter, while passing the impugned judgment of acquittal. The relevant observations made by the learned trial Court, which deserve to be noticed, read as under: -

“Before proceeding further, it is pertinent to mention here the essential ingredients of offence under Section 494 IPC: -

- 1. That the accused has contracted a marriage with complainant.*
- 2. That the marriage should be subsisting at the time when accused contracted a second marriage.*
- 3. That the marriage must be valid and must be strictly according to law governing for the parties.*

*Thus, for proving the offence under Section 494 IPC against a person, the solemnization of first and second marriage is to be proved. The word '**solemnized**' means in connection with the marriage to celebrate the marriage with proper ceremonies and in due form. It follows that unless the impugned marriage is celebrated or performed with proper ceremonies and in due form it cannot be said to be solemnized. For proving these facts,*

complainant has adduced oral as well as documentary evidence. Complainant has examined CW1 Krishan Lal, Reader to SDM, Kaithal who has tendered statements of accused No.1, 4, 6 & 7 recorded before Court of learned SDM, Kaithal. Perusal of these statement reveals that Reena has married accused No.7 Rajesh. But complainant in his complaint alleged that the second marriage by accused No.1 is performed with accused No.5 Ram Kumar and not with accused No.7 Rajesh. Thus, this averment of complainant itself shatters the relevancy of above-mentioned statements of accused. Moreover, it is burden upon complainant to prove that second marriage is solemnized as per the essential ceremonies of law applicable to them. In present case, parties are governed by Hindu law and as such a marriage between parties be performed according to Satpati or Homa Ceremony. It is burden upon complainant to prove that the second marriage performed by accused No.1 is according to Satpadi or Home ceremony. The performance of second marriage as per essential ceremonies is necessary to be proved for holding accused No.1 guilty for committing offence of bigamy. For proving offence under Section 494 IPC, ingredients of a valid marriage in case of first marriage as well as second marriage are to be proved. Merely cohabitation with other person does not itself prove the offence of bigamy. This view of mine proves suggestion from law laid down by Hon'ble Supreme Court in Havrao Vs. State of Maharashtra, AIR 1965, SCC 1564 and Kanwar Ram Vs.

Himachal Pradesh Administration, AIR 1966, SC 614. Wherein Hon'ble Court has clearly laid down that number performance of Homa or Satpadi not proved than accused is entitled for acquittal on charged by gamy.

Reverting back to facts of the present case, from the testimony of CW1 the performance of essential ceremonies in second marriage are not proved. For proving these ceremonies, complainant has examined CW2 Sushil Kumar Tiwari, CW2. CW2 Sushil Kumar Tiwari submitted that he has performed the marriage of Reena and Ram Kumar as per Hindu Rites and ceremonies. But perusal of testimony of CW2 raises doubt about his credibility. In his cross-examination, CW2 submitted that he did not maintain any record of marriages performed by him. He was not able to tell the name of bride or bridegrooms of any other marriages performed by him. But it is very strange that he remembered the date of alleged marriage and names of Reena and Ram Kumar when he himself admitted that he does not know them personally and saw them first time on date of marriage and only one time after their alleged marriage in the Court. He also shows his inability to tell even the date or name of parties of any other marriage performed by him during time span of 8 to 20 years. The statement of CW2 Sushil Kumar Tiwari that all accused were present at the time of marriage itself further raises doubt about his credibility as he has seen them first time on day of marriage and does not know personally. Considering these

circumstances it cannot be ruled out that CW2 is deposing at the direction of complainant.

Then CW3 Chatter Singh is examined who in his cross-examination-in-chief claimed that he was present at the time of marriage of Reena and Ram Kumar. Perusal of his cross-examination reveals that he is not relative of accused and has no direct relation with them. He could not even tell the number of children of father of accused No.1 and himself admitted that he came to know the name of accused No.1 at the time of marriage. The alleged presence of CW3 at the time of marriage of Reena and Ram Kumar itself raised doubt about his credibility because as per CW2 Suresh Kumar's version the marriage was performed in a simple manner and only some persons were present. In these circumstances, the presence of a person who is not close relative or near and dear of parties does not inspire any confidence of the Court. Further perusal of his cross-examination shows that he only knows about the day and place of alleged marriage of Reena and Ram Kumar and nothing else because in his cross-examination he was unable to give answers of several questions related to family of accused No.1. Further the testimony of CW3 also nowhere proves that the alleged second marriage of accused No.1 was solemnized as per Hindu Rites and ceremonies.

Then complainant appeared as CW4 and reiterated the contents of complaint. In his cross-examination, he admitted that he was not present at the time of marriage of Reena and Ram

Kumar. Thus the testimony of CW4 does not prove the solemnization of second marriage of accused No.1 as per Hindu rites and ceremonies. CW5 Hari Singh has proved the complaint given by one Sunita Devi (alleged first wife of accused No.5) against accused No.5. From the perusal of several documents produced by CW5 the solemnization of alleged second marriage of accused No.1 nowhere proved. Then Sunita Devi appeared as CW6 and submitted that she is wife of accused Ram Kumar and he has performed second marriage with accused No.1 Reena without getting divorce from her. In her cross-examination she admitted that she was not present at the time of alleged second marriage and came to know about this fact later on. Thus the essential ingredients for proving alleged second marriage of Reena and Ram Kumar are not proved by testimony of CW6.

The other contention of learned complainant counsel that accused persons has admitted a second marriage in their statement before Court of learned SDM, Kaithal is of no help for complainant as it does not itself prove that the same was performed as per essential Hindu rites & ceremonies. Prosecution is not absolved of its responsibility to prove second marriage as per prescribed ceremonies. This view of mine is supported by law laid down by Hon'ble Apex Court in P. Satyanaraina Vs. P. Mallaiah, 1996, Volume 6, cases SCC 122. In present case, alleged second marriage is not proved to have been validly performed by observing essential ceremonies and

customs prevailed in the community of parties. Thus the essential ingredients of Section 494 are not proved against accused.

The allegation against accused for committing offence under Section 420 IPC be read with charges under Section 494 of IPC. As per above discussions, the charges under Section 494 IPC has not been proved against accused and in the same way charges under Section 420 IPC read with Section 120-B of IPC are not proved against accused.

The accused has also been charge sheeted for criminal intimidation under Section 506 of IPC. During entire evidence, complainant has not produced an iota of evidence except his statement to prove his allegation that accused persons threatened him of life. Thus, the offence under Section 506 IPC is also not proved against accused.”

During the course of hearing, learned counsel for the applicant could not point out any jurisdictional error or patent illegality apparent on the record of the case, so as to convince this Court to take a different view than the one taken by the learned trial Court.

It is the settled principle of law that wherever two views are possible, the view which goes in favour of the acquittal, deserves to be adopted by the Courts. It is not even the argued case on behalf of the applicant that the view taken by the learned trial Court was not one of the possible views. In this view of the matter, it can be safely concluded that the impugned judgment of acquittal does not suffer from any illegality and the same deserves to be upheld, for this reason also.

The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in the case of ***Arulvelu & anr.vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638.*** The relevant observations made by the Hon'ble Supreme Court in para No.39, 40 and 41 in **Arulvelu's case (Supra)**, read as under:

“In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*
- 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better*

position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009 (11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.

Reverting back to the facts of the present case and respectfully

following the law laid down by the Hon'ble Supreme Court in **Arulvelu's case (supra)**, it is unhesitatingly held that the learned trial Court was well-justified on facts as well as in law, for passing the impugned judgment of acquittal and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant application is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant application under Section 378 (4) Cr.P.C., seeking leave to file appeal against the judgment of acquittal, stands dismissed.

[**RAMESHWAR SINGH MALIK**]
JUDGE

01.05.2015
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