

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 20th February, 2015
Judgment Pronounced on: 27th February, 2015

CRL.REV.P. 470/2008

JAGDISH PRASAD

..... Petitioner

Through: Ms. Geeta Luthra, Senior Advocate
with Mr. Aditya Alok and
Ms. Naina Dubey, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. P.K. Mishra, APP for the State.
None for Respondent No.2

CORAM:
HON'BLE MR. JUSTICE P.S. TEJI

P.S. TEJI, J.

1. Aggrieved by the judgment of conviction dated 14.09.1999 and order on sentence dated 24.09.1999 passed by the learned Metropolitan Magistrate, convicting the petitioner under Section 494 IPC and awarding the sentence to undergo rigorous imprisonment for a period of three years and fine of Rs.2,000/- for offence under Section 494 IPC, in default to further undergo six months simple imprisonment and upholding the judgment of

conviction and sentence by the learned Additional Sessions Judge vide judgment dated 28.07.2008, the present revision petition has been filed by the petitioner. However, the sentence was modified from three years rigorous imprisonment to one year rigorous imprisonment. The petitioner was also directed to pay compensation of Rs.25,000/- to the complainant.

2. Factual matrix, as emerges from the record, is that one Smt. Kailash Wati (respondent No.2) filed a criminal complaint against the petitioner and other accused persons. It was alleged that marriage of the petitioner and respondent No.2 was solemnised in the year 1951. They remained together from 1951 to 1958 and from March, 1968 to April, 1968. Three children were born out of the wedlock. Thereafter, they separated. The complainant filed maintenance proceedings in which the maintenance was allowed, whereas the petitioner filed proceedings for judicial separation which was dismissed. It was alleged that during subsistence of marriage, petitioner performed another marriage with Har Pyari. Since the petitioner had committed the offence of bigamy, the criminal complaint was filed by the respondent No.2 against petitioner and other accused persons.
3. After summoning the accused persons, the petitioner was charged under Section 494 IPC whereas other co-accused were charged under Section 109 read with Section 494 IPC. The accused persons pleaded not guilty to the charges framed.

4. To prove its case, the complainant/respondent No.2 examined 6 witnesses. After conclusion of complainant evidence, the statements of the petitioner and other accused persons were recorded under Section 313 Cr.P.C. in which they had claimed innocence. The learned Metropolitan Magistrate vide judgment dated 14.09.1999 held the petitioner guilty for the offence punishable under Section 494 IPC and convicted him for the said offence. The order on sentence was passed on 24.09.1999. The other co-accused were acquitted of the charges framed against them.
5. Thereafter, the petitioner filed criminal appeal. The learned Additional Sessions Judge vide judgment dated 28.07.2008, confirmed the conviction of the petitioner, however, modified the sentence of imprisonment from three years to one year and in lieu of fine, directed the petitioner to pay compensation of Rs.25,000/- to the respondent No.2.
6. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the judgments rendered by the Courts below and claiming acquittal.
7. Learned Senior counsel for the petitioner has argued that the allegations of bigamy against the petitioner were not proved inasmuch as the alleged second marriage was '*Kareva*' marriage which was not a valid marriage as no customs or traditions were followed while doing so. In support of this contention, judgment in

case of *Bhaurao Shankar Lokhande and another vs. The State of Maharashtra and another AIR 1965 SC 1564* has been referred. In this judgment, it was observed that it is essential for the purpose of Section 17 of the Hindu Marriage Act that the marriage to which Section 494 IPC applies, should have been celebrated with proper ceremonies and in due form. Merely going through certain ceremonies with the intention that the parties be taken to be married, will not make the ceremonies prescribed by law or approved by established custom. On similar point, judgment in case of *Smt. Giano vs. Puran & Ors. AIR 2006 P & H 160* has been referred.

8. The contention raised by the learned Senior counsel for the petitioner that the 'kareva' marriage was not a valid marriage and there was no evidence of bigamy against the petitioner, is a matter of fact which has already been dealt with by the Courts below. The learned Metropolitan Magistrate has discussed the evidence in detail in arriving at a conclusion that the petitioner has committed the offence under Section 494 IPC. Similarly, the findings of learned Additional Sessions Judge are concurrent on the facts of the case.
9. I have gone through the ratio of judgment in case of *Ram Briksh Singh and Others vs. Ambika Yadav and Another (2004) 7 SCC 665* in which it was observed that the revisional court does not function as a court of appeal and, therefore, cannot re-appreciate the evidence. Sections 397 to 401 of the Code are group of sections

conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. The jurisdiction can be invoked to correct the wrong appreciation of evidence. Though the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice. The High Court is not required to interfere in the concurrent finding of facts. *This Court is of the considered opinion that the present case is not a fit case where the revisional jurisdiction is required to be exercised on the concurrent finding of facts recorded by the Courts below.* The judgments referred by the petitioner in case of ***Bhaurao Shankar Lokhande*** (supra) and ***Smt. Giano*** (supra) are of no assistance to him.

10. On the quantum of sentence, the submission made by the learned Senior counsel for the petitioner is that the petitioner is aged about 85 years and suffering from old aged ailments. It is submitted that a lenient view may be taken while awarding sentence to the petitioner keeping in view his old age and facing of protracted trial.
11. In the present case, it is apparent from the record that the marriage of the petitioner with the complainant/respondent No.2 had taken place in the year 1951. The complaint was filed against the petitioner in the year 1971. The trial concluded and judgment of conviction was passed on 14.09.1999. The criminal appeal filed by the petitioner was dismissed on 28.07.2008 and now we are in the year 2015. The petitioner is stated to be about 85 years old as on

today. The petitioner has faced the protracted trial for about 44 years and stated to have remained in the jail for about 40 days.

12. In view of discussion made above, the judgments passed by the Courts below are upheld. However, this Court is of the considered opinion that it would not serve any purpose to send the petitioner behind the bar keeping in view the old age of the petitioner. So, the sentence of imprisonment is modified to the period already undergone by the petitioner. The payment of compensation by the petitioner is maintained.

13. The present revision petition is disposed of accordingly. File of the trial court be sent back.

P.S.TEJI, J.

February 27, 2015
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