

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-A-1652-MA of 2015
Date of decision: 05.12.2016**

Sikandar Pal

...Applicant

Versus

State of Punjab & Another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arnav Sood, Advocate
for the applicant.

JAISHREE THAKUR, J. (Oral)

This is an application filed under Section 378(4) of the Code of Criminal Procedure for grant of special leave to appeal from the judgment dated 06.08.2015 passed by learned Sub-Divisional Judicial Magistrate, Balachaur.

In brief, the facts of the case are that the applicant herein filed a complaint under Section 494 read with 120-B of the IPC against respondent No. 2 herein alleging that during the subsistence of marriage between the applicant and respondent No. 2, respondent No. 2 had contracted another marriage with one Des Raj and out of this wedlock, one male child had born. It is contended that the applicant and respondent No. 2 solemnized marriage on 17.06.2005. They lived together for one day and thereafter respondent No. 2 left for her paternal home and did not come back. The applicant herein filed a petition under Section 9 of the Hindu Marriage Act for restitution of the conjugal rights and the same was allowed by an order dated 10.04.2008. Against the said decree that was passed, respondent No. 2 preferred an appeal which is pending in the High Court. Respondent No. 2

also filed a petition under Section 13 of the Hindu Marriage Act against the applicant seeking dissolution of their marriage but the same divorce petition was dismissed, vide order dated 30.04.2009. Respondent No. 2 also preferred an appeal against the order dismissing her petition under Section 13 of the Hindu Marriage Act. It is alleged that as on date, no divorce has taken place between the applicant and respondent No. 2 but she has contracted a second marriage on 28.10.2009 and out of this wedlock, one male child was born on 13.06.2013. It is urged that in the subsistence of the marriage between the applicant and respondent No. 2, the marriage that has been contracted by respondent No. 2 amounts to an offence under Section 494 of the IPC and, therefore, the order passed by learned Sub-Divisional Judicial Magistrate, Balachaur acquitting respondent No. 2 of the charges framed against her is illegal and deserves to be set aside.

I have heard learned counsel for the applicant and gone through the paper book. The arguments as raised by the counsel for the applicant that respondent No. 2 has wrongly been acquitted is not sustainable. In order to prove the offence of bigamy, it is incumbent upon the prosecution to prove the ceremonies of a valid marriage i.e. taking of seven steps around the holy fire or the holy book or registration of the marriage.

In the instant case, there is no evidence of a marriage being performed between respondent No. 2 and Des Raj. Even the witnesses, though in their examination-in-chief professed to the knowledge of the marriage having taken place between respondent No. 2 and Des Raj but in cross-examination they have not submitted to being present at the marriage ceremony or being witness thereto. In the absence of any evidence, no presumption can be raised that merely because the parties are residing

together and out of this relationship a child has born, a valid marriage has taken place.

Therefore, in the absence of any evidence to prove the factum of second marriage during the subsistence of marriage between the applicant and respondent No. 2, there is no infirmity in the order that has been passed.

Accordingly, the present application is dismissed.

December 05, 2016
Ansari

(JAISHREE THAKUR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>