

CRM-A No. 1898-MA of 2015

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-A No. 1898-MA of 2015

Date of decision : 19-08-2016

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Gurmeet Kaur

.....Petitioner

Versus

Bahadur Singh and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Ashok Singla, Advocate for the applicant.

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RITU BAHRI, J.

This application has been filed for grant of special leave to appeal against the order/judgment of acquittal dated 19.10.2015 passed by the Judicial Magistrate First Class, Dhuri, whereby the respondents have been acquitted of the charges framed against them under Sections 406, 420, 427, 494, 495, 498-A, 120-B IPC.

A complaint had been filed by the petitioner Gurmeet Kaur against the respondents alleging that on 7.12.2003, she was married to respondent no.1-Bahadur Singh as per Sikh rites and ceremonies at Village Kheri Chehlan, Tehsil Dhuri. Petitioner's father spent huge amount on her marriage and gave dowry as demanded by respondent no. 1 to 5.

Complainant added that various gold ornaments and articles were entrusted

to respondents no. 1 to 5 for the use of Gurmeet Kaur being her Istri Dhan, which had been misappropriated by the accused. Out of this wedlock, a son namely Sehajpreet Singh was born on 28.8.2005. However, after some time of the marriage, she was harassed and abused by the respondents who demanded more dowry and threatened to perform second marriage of respondent no.1 in case their demand for dowry was not met by petitioner's family. Gurmeet Kaur filed a petition under Section 9 of the Hindu Marriage Act against respondent no.1 which was decided in her favour 1.9.2010. The efforts made by the parents of the complainant and other relatives to rehabilitate her in the matrimonial house proved futile. When her parents demanded back her Istri Dhan, the respondents refused to return the same. The respondents also insulted her parents and members of the Panchayat. Gurmeet Kaur also filed an application under Section 125 Cr.P.C against respondent no.1, in which maintenance was fixed by the Court, but respondent no.1 did not pay the maintenance, due to which she had filed an execution for the recovery of maintenance. Respondent no.1 did not appear in the same intentionally and court official who visited the house of respondent no.1 reported that raid had been conducted at the house of Bahadur Singh son of Nazar Singh resident of Village Fatehgarh Panjgraian where his wife Jasbir Kaur met him and informed that respondent no.1 was not available at that time. Gurmeet Kaur submitted that from the above said report, she came to know that accused no.1 had illegally performed second marriage with accused Jasbir Kaur. Accused Jasbir Kaur was having knowledge that respondent no.1 was married to petitioner and they were not divorced. When the complainant and her parents approached accused no. 7 & 8 i.e parents of accused Jasbir Kaur and

told them that complainant is married with respondent no.1 and had a child from that marriage, they replied rudely that they knew about the marriage of respondent no.1 with her and also stated that a child namely Anmolpreet Singh had been born out of the wedlock of Jasbir Kaur and respondent no.1. As per the petitioner, respondent no.1 had solemnized second marriage with Jasbir Kaur without getting divorce from her and as such, petitioner prayed that the accused may be summoned for commission of the above mentioned offences and be punished under law. Thus, she prayed that the accused persons may be summoned for the commission of the above mentioned offences and be punished as per law.

The accused were summoned vide order dated 7.7.2014 to face trial for the offences punishable under Sections 406, 427, 494, 495, 498-A and 120-B IPC. Gurmeet Kaur appeared as CW-2 and reiterated the averments in examination in chief. She placed on record certified copy of order dated 1.9.2010 passed in H.M.A case no.38 of 28.10.2010 titled as "Gurmeet Kaur vs. Bahadur Singh" filed by the complainant under Section 9 of the Hindu Marriage Act against respondent no.1 Bahadur Singh which had been decreed in her favour as Ex. C1 and its decree sheet as Ex. C2, copy of order dated 4.10.2011 in revision petition no.08 of 28.05.2011 against order dated 05.08.2009, whereby maintenance had been granted to Gurmeet Kaur and minor son Sehajpreet Singh under Section 125 of Cr.P.C as Ex.C3. She also placed on record certified copy of grounds of appeal filed by Bahadur Singh in said revision no.8 of 28.5.2011 as Ex.C4. Complainant's brother Nirbhai Singh appeared as CW-3 and in cross-examination has stated that his sister never informed him about second marriage of accused Bahadur Singh with Jasbir Kaur. He could not tell the

date, time and place when the second marriage was contracted by accused Bahadur Singh. CW-1 Piara Singh in his cross-examination stated that he was not witness to the marriage of Bahadur Singh and Jasbir Kaur. He stated that he had no knowledge about the complaint preferred before SSP, Barnala or any panchayati compromise having been effected between accused Bahadur Singh and his family. The complainant had produced the photographs to show that Bahadur Singh had solemnized the marriage with Jasbir Kaur as Mark A and B. However, at the same time, she admitted that there was no evidence to prove the marriage of Bahadur Singh and Jasbir Kaur. She said that this information was given to her by the Village Sarpanch. However, she failed to depose the name of said Sarpanch. She stated that she could not tell the date when the alleged marriage was effected. CW-3 Nirbhai Singh and CW-4 HC Sadhu Ram stated that they were not a witness to the marriage of Bahadur Singh and Jasbir Kaur.

After closure of the evidence, the statements of the accused were recorded under Section 313 Cr.P.C and they pleaded innocence

The trial Court framed the following question:

1. Whether accused Bahadur Singh after 05.08.2009 after hatching criminal conspiracy with above named co-accused contracted second marriage with accused Jasbir Kaur during the subsistence of his lawful marriage with complainant Gurmeet Kaur?

After going through the evidence led by the complainant, the trial Court came to a conclusion that no witness has deposed that second marriage of Bahadur Singh was performed in their presence. Mere

admission made by the accused Bahadur Singh in Revision No.08 dated 28.5.2011 would not be sufficient to prove the existence of marriage as contemplated by Section 494 Cr.P.C and even presumption cannot be drawn in terms of Section 50 of Evidence Act. The prosecution had failed to prove the second marriage in terms of the provisions of the Hindu Marriage Act. The complaint was dismissed in the absence of any cogent evidence to show marital alliance and charge of conspiracy hatched by all the accused to get such a marriage performed went uncorroborated and for these reasons, all the accused were acquitted of the charges framed against them.

The trial Court has rightly dismissed the complaint as there was no witness who had deposed that he had witnessed the second marriage. The admission of the accused would not be sufficient to draw a presumption in terms of Section 50 of the Evidence Act. At this stage, reference can be made to a judgment of Hon'ble the Supreme Court in the case of **Lingari Obulamma vs. L. Venkata Reddy and others 1979 AIR (SC) 848**. *In this case, appeal was filed against the order whereby while acquitting the respondents, Andhra Pradesh High Court held that there was absolutely no evidence to prove that any of the two essential ceremonies had been performed and therefore, the marriage was void in the eyes of law. In this view of the matter, it was held that the conviction under Section 494 Indian Penal Code could not be sustained. On appeal by the appellant, Hon'ble the Supreme Court held that it is well settled that before a conviction can be recorded under Section 494, the following ingredients must be proved:*

(1) That the complainant had been married to the accused.

*(2)That the accused contracted a second marriage
while the first marriage was still subsisting;*

*(3)That both the marriages were valid and strictly
according to law governing the parties.*

*Hon'ble the Supreme Court held that the High Court was fully
justified in acquitted the respondents and the appeal was held to be without
any substance and was accordingly dismissed.*

In view of the judgment in **Lingari Obulamma's case (supra)**
and in view of all that has been discussed above, the impugned
order/judgment dated 19.10.2015 passed by the Judicial Magistrate First
Class, Dhuri is upheld and the present application for leave to appeal is
hereby declined.

19-08-2016

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**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No