

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 502 OF 1994***

Smt. Gayatri Nand Bindrani.

... Appellant.

V/s.

Mr. Nand Mulchand Bindrani and Ors.

... Respondents.

Mr. Ishwar S. Badigannavat i/b. Ms. Pramila J. Bharadwaj for the Appellant.

Mr. S.V. Marvadi a/w. Mr. Kartik Garg for Respondent 1.

Mr. P.H. Gaikwad Patil, Asstt. Govt. Pleader for the State.

CORAM : N.M. JAMDAR, J.

DATE : AUGUST 10, 2017.

P.C. :-

Pursuant to the order passed earlier, the learned Counsel for the Appellant has submitted a praecipe for amendment of the Appeal Memo to delete certain words which are not appropriate. Leave to amend is granted. Amendment to be carried out forthwith.

2. This Appeal is filed by the Original Complainant in Criminal Case No. 903 of 1985 which was disposed of by the learned Chief Judicial Magistrate, Thane on 20 June 1994. The learned Chief Judicial Magistrate, Thane acquitted the Respondents

– Accused of the offences punishable under Sections 494, 495, 498-A read with Section 112 and 114 of the Indian Penal Code.

3. It was the case of the Appellant - Complainant that she was the legally wedded wife of the Respondent – Accused No.1. The marriage took place on 3 December 1979. It was her case that after the marriage, when she went to stay with the Respondent – Accused No.1 – husband alongwith his parents and sisters, the other accused, she was ill treated. It was further her case that on 31 July 1984, the Respondent - Accused No.1 - her husband married Accused No.2. According to the Complainant, since this marriage was performed while her marriage with the Respondent No.1 was subsisting, the Respondent No.1 had committed an offence of bigamy. The learned Magistrate after considering the evidence on record held that the marriage between the Complainant and the Accused No.1 was not valid. The learned Magistrate held that in view of this position, the question of second marriage did not arise and even assuming the first marriage was valid, the second marriage was not performed with requisite ceremonies which are required, were not performed. The learned Magistrate accordingly came to the conclusion that no offence was made out.

4. Heard Mr. Badigannavat, learned Counsel for the Appellant and Mr. Marvadi, learned Counsel for Respondent No.1 and Mr. Gaikwad-Patil, Asstt. Public Prosecutor for the State.

5. The marriage between the Appellant and the Respondent – Accused No.1 was stated to be performed in the year 1979 and the incidence of second marriage as alleged of the year 1984. The criminal case was filed in the year 1985 i.e. almost 32 years ago. The Appeal has reached hearing in the year 2017. All the parties concerned are now senior citizens. It is informed that the Accused No.1 has now retired from the service so also the Appellant – Complainant.

6. After arguing the matter for some time, the learned Counsel for the Appellant upon taking telephonic instructions from the Appellant for which the matter was kept back, submitted that the grievance of the Appellant in the Appeal is the finding given by the learned Magistrate that the marriage between the Appellant and the Respondent No.1 is not valid. The learned Counsel submitted that he is not oblivious of the fact that due to the passage of time the things are moved on in life and conviction entailing the accused to be sent in jail in this stage of life, may not be the only solution. He submitted that however something needs to be done to relieve the suffering of the Appellant – Complainant due to the actions of the Respondents – Accused. The learned Counsel for the Respondents – Accused, upon instructions from the Respondent – Accused No.1 who is present in the Court, submitted that, in acknowledgement of what is submitted by the learned Counsel for the Appellant, the Respondent No.1 is ready to pay some amount to the Appellant to

help her to maintain herself. The learned Counsel for the Respondent – Accused No.1 submitted that it is not that the Appellant is on the streets, but she is also retired as a Senior Officer from a Bank. It is also pointed out by the learned Counsel for the Respondent No.1 that the offence of bigamy is compoundable.

7. Considering the fact that for prosecuting the husband under Section 494 of the Indian Penal Code the prosecution is to be initiated by the wife and considering the stand taken by the learned Counsel for the Appellant and the offence is compoundable and the passage of time, I do not find that it is necessary to take the matter further.

8. As far as the finding that the marriage between the Appellant and the Respondent No.1 is not valid as rendered by the learned Magistrate, it is a finding given in the context of a criminal prosecution and it is not a finding in *rem* as such, so as to affect the civil rights of the Appellant, if any. The learned Magistrate was also not a matrimonial court. Therefore, the finding of the learned Magistrate that the marriage between the Appellant and the Respondent No.1 is not valid cannot be stated to apply as a *res-judicata* or a final pronouncement for all times to come binding in all jurisdiction. This finding will have to be restricted in the context of the criminal case and in the context of the jurisdiction of the learned Magistrate. Therefore, the apprehension of the learned Counsel for

the Appellant that it will bind the parties to all time to come, is not warranted. The learned Counsel for the Appellant states that he is satisfied with this observation. The learned Counsel for the Respondent also does not dispute this position and submits that the rights of the Appellant will have to be independently determined.

9. As far as the offer of payment of some amount is concerned, the learned Counsel for the parties agree to the amount of Rs.3,00,000/-, since this unfortunate dispute is pending since last more than 35 years. The learned Counsel for the Respondent No.1, on instructions, states that the demand draft will be given to the Appellant within period of two weeks from today. The statement is accepted.

10. In view of the above position and the observations, the Appeal is dismissed.

(N.M. JAMDAR, J.)