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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 3/2016 & CrI.M.A. Nos.18-19/2016

SHAKUMBHARI DEVI

..... Petitioner

Through: Mr. Aditya Vikram, Advocate

versus

OM PRAKASH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
28.02.2017

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1. The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 19.09.2015 passed by the learned MM-01, Dwarka Courts in CC No.92/1 for the offence under Section 494 IPC. By the impugned judgment, the respondent/ accused has been acquitted by the Trial Court.

2. The petitioner also seeks condonation of 29 days delay in filing the leave petition vide CrI.M.A. No. 18/2016. Vide CrI.M.A. No. 19/2016, the petitioner seeks to place on record additional evidence, namely, the statement made by the respondent/ accused in CC No.1014/1/11 titled Shakumbari Devi v. Om Prakash, which are proceedings under Protection of Women from Domestic Violence initiated by the petitioner against the

respondent. The petitioner also seeks to lead in evidence the record of the proceedings in Vidhata Devi v. Shakumbhari Devi being civil suit No.65/2013 pending in Dwarka Courts before the learned SCJ/RC/South West.

3. I have heard learned counsel for the petitioner and perused the impugned judgment as also the aforesaid applications. The petitioner has also tendered in court the certified copies of additional evidence sought to be led by the petitioner, which are taken on record. Since I do not find any merit in the leave petition, no useful purpose would be served in issuing notice either in the leave petition or in either of these applications aforesaid.

4. The petitioner/ complainant preferred the aforesaid complaint on the premise that the accused no.1 was married to the complainant/ petitioner on 12.03.1975 according to hindu rites and ceremonies in Uttranchal. Out of that wedlock, two female and one male child were born. The complainant alleged that the accused on a visit to Delhi found that the accused was living with one lady, Vidhata Devi and she learnt that the accused had married her. Out of that association, one son called Mohan was born. The complaint also alleged that she was beaten by the complainant and her son on four days and also intimidated. On that premise, the aforesaid complaint came to be instituted by the petitioner.

5. The complainant led the evidence, whereafter the statement of the accused was recorded under Section 313 Cr PC. He claimed himself to be innocent and alleged false implication. The Trial Court has acquitted the accused on the premise that the complainant had failed to establish the solemnisation of the marriage between the accused and Vidhata Devi. Neither the marriage certificate was produced nor the performance of

marriage ceremony i.e. saptapadi, which is essential for conduct of a hindu marriage proved on record. At the same time, the fact that the accused had shown himself to be the father of the child begotten to Vidhata Devi was also not held to be sufficient proof to establish the charge under Section 494 IPC. Consequently, the accused was acquitted.

6. Learned counsel for the petitioner does not dispute the fact that the formalisation of the marriage between the accused and Vidhata Devi could not be proved by leading any evidence before the Trial Court. He, however, submits that the accused was admittedly living with Vidhata Devi as her husband. Learned counsel submits that in his statement recorded in the proceedings under Protection of Women from Domestic Violence Act, the accused has admitted that *“It is correct that Vidhata Devi is my second wife”*. He volunteered to state that *“I have not married Vidhata Devi according to hindu rites and ceremonies”*. He also stated that *“It is also correct that Shakumbari Devi is my first wife. It is also correct that I have not given divorce to Shakumbari Devi till date. I have been considering Vidhata Devi as my second wife since 1991”*.

7. The aforesaid statement of the accused, even if led in evidence, does not change the situation in the present case. At the highest, what could be said is that the accused is in a live-in relationship with Vidhata Devi. However, the said relationship cannot assume the status of a hindu marriage. To attract the offence under Section 494 IPC, it was essential for the prosecution to establish the formalisation of a marriage by the accused with another lady. Thus, the additional evidence sought to be brought on record does not advance the case of the petitioner any further.

8. In view of the aforesaid, I do not find any error in the impugned judgment and the same does not call for interference by grant of leave. Dismissed.

VIPIN SANGHI, J

FEBRUARY 28, 2017

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