

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CRIMINAL REVISION CASE No.1892 OF 2006

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner-A.1 challenging the judgment dated 14.11.2006 in Criminal Appeal No.19 of 2005 on the file of the I Additional Sessions Judge, Srikakulam (for short, 'the appellate court')

2. The petitioner is A.1 in C.C.No.143 of 2003 on the file of the Judicial Magistrate of First Class, Srikakulam (for short, 'the trial Court'). The trial Court, vide judgment dated 11.02.2005, found the petitioner-A.1 guilty of the offences punishable under Sections 493 and 496 IPC, while acquitting him and the other accused (A.2 and A.3) of the offence punishable under Section 498A IPC. The trial Court sentenced petitioner-A.1 for the offence punishable under Section 493 I.P.C. as the offence under Section 493 I.P.C. is grave in nature than the offence under Section 496 I.P.C., to undergo simple imprisonment for a period of two years and to pay fine of Rs.2,000/-, in default to undergo simple imprisonment for a further period of two months. Challenging the same, the petitioner-A.1 preferred Criminal Appeal No.19 of 2005, and the appellate Court, vide the impugned judgment, found the petitioner-A.1 not guilty of the offence punishable under Section 496 IPC but confirmed the conviction and sentence recorded by the trial Court for the offence punishable under Section 493 IPC. Challenging the same, the present revision has been preferred.

3. Heard the learned senior counsel Sri P.Veera Reddy appearing for the petitioner-A.1, the learned Assistant Public Prosecutor representing the respondent-State, apart from perusing the material on record.

4. Learned counsel for the petitioner-A.1 would submit that there is no evidence against the petitioner-A.1 constituting an offence under Section 493 I.P.C., as there was no dishonest or fraudulent intention on the part of the petitioner-A.1 at any point of time; P.W.1-victim was already married to one Bade Lakshmana and the said marriage was dissolved; Exs.D.1 and D.2-relevant portions of contradictions in the statements of P.Ws.1 and 2 recorded under Section 161 Cr.P.C. and Ex.D.3-relevant entry in the voters' list reveals the same; P.Ws.1 and 2 are interested witnesses; the trial Court acquitted A.1 to A.3 of the offence punishable under Section 498-A I.P.C. and the appellate court found petitioner-A.1 not guilty of the offence punishable under Section 496 I.P.C.; there is no evidence to prove the guilt of the petitioner-A.1 for the offence punishable under Section 493 I.P.C., and ultimately, prayed to set aside the conviction and sentence recorded against the petitioner-A.1 for the offence punishable under Section 493 I.P.C..

5. On the other hand, the learned Assistant Public Prosecutor would submit that there is evidence of P.Ws.1 to 3 to prove the guilt of the petitioner-A.1 for the offence punishable under Section 493 I.P.C.; P.W.1-victim had given divorce to her former husband-Bade Lakshmana and there was valid divorce; thereafter, the petitioner-A.1 induced P.W.1 by deceitful means under the belief of lawful marriage and then cohabited with her; all the requirements

of Sections 493 and 496 I.P.C. are proved by the prosecution beyond all reasonable doubt, and there are no grounds to interfere with the concurrent findings of the Courts below, and ultimately, prayed to dismiss the Criminal Revision Case.

6. In view of the contentions raised on behalf of both sides, the point for determination is, whether the conviction and sentence recorded against the petitioner-A.1 for the offence punishable under Section 493 I.P.C. are liable to be set aside?

7. Revisional jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is a truncated one. Unless the findings are based upon no evidence or perverse, or that inadmissible evidence was taken into consideration in convicting the accused or that admissible evidence was overlooked, normally the revisional powers cannot be exercised to disturb the concurrent findings of the Courts below. To know whether the findings are based on proper appreciation of the evidence on record, it is necessary to look into the evidence on record.

8. P.W.1-Milapilli Kanthamma is the victim in this case. Her evidence reveals that her mother-P.W.2 had fallen sick; the petitioner-A.1, who is a private medical practitioner, used to attend her mother-P.W.2; in that process, he wanted to have sex with P.W.1; P.W.1 did not agree for the same without there being any marriage; thereafter, in the year 2002, the petitioner-A.1 brought a new saree, tali and one gold ring and A.1 put sacred fire before the god, smeared kumkuma on the forehead of P.W.1, tied tali around her neck and put mettalu (toe-rings) to her toes, and thereafter, they also exchanged gold rings and

garlands; she believed the petitioner-A.1 and they had sexual intercourse as wife and husband and they lived as husband and wife. P.W.2-mother of P.W.1 corroborated the evidence of P.W.1 with regard to the petitioner-A.1 coming to their house to provide treatment to her, and then both petitioner-A.1 and P.W.1 living together as husband and wife. P.W.3 is an independent witness, who deposed about the intimacy of the petitioner-A.1 with P.W.1. P.W.3 also deposed that she found tali around the neck of P.W.1 and when she enquired with P.W.1, P.W.1 informed her that the petitioner-A.1 married her. There is no much dispute with regard to these factual aspects. There is record to show that P.W.1 had taken divorce from Bade Lakshmana as per their customs much before the petitioner-A.1 tied tali around her neck.

9. Section 493 IPC deals with 'Cohabitation caused by a man deceitfully inducing a belief of lawful marriage'. Under this Section, every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or having sexual intercourse with him in that belief, is punishable. The essential ingredients are (a) deceit causing a false belief in the existence of a lawful marriage; and (b) cohabitation or sexual intercourse with the person causing such belief.

10. The point for determination is whether the petitioner-A.1 induced P.W.1 by deceitful means and made her believe that she was legally wedded wife and cohabited with her for a considerable period. As per the evidence on record, P.W.1 (defacto complainant) was a divorcee. The petitioner-A.1 was a bachelor and a private medical practitioner. He was providing treatment to P.W.2, who is mother of P.W.1, and in that process, he wanted to have

sex with P.W.1. P.W.1 did not agree for sexual intercourse without there being a marriage. In the year 2002, the petitioner-A.1 brought a new saree, tali and one gold ring, and put up sacred fire before God, smeared kumkuma on the forehead of P.W.1, and thereafter tied the tali around neck of P.W.1 and gave her toe ringsj (mettalu). Thereafter, both of them exchanged gold rings and garlands believing that there was a lawful marriage between them. Both of them lived together and had sexual intercourse as husband and wife. The prosecution failed to establish that there was no lawful marriage between the petitioner-A.1 and P.W.1.

11. Further, it is pertinent to note that a charge was framed against the petitioner-A.1 and other accused for the offence punishable under Section 498A IPC. It goes to show that P.W.1 firmly believed that there was a valid marriage between her and the petitioner-A.1. Admittedly, P.W.1 is a divorcee by the date of the incident. So, P.W.1 cannot contend, on one hand, that there was a valid marriage between her and the petitioner-A.1, and on the other, that the petitioner-A.1 had sexual intercourse with her by deceitful means under the guise of marriage. Therefore, the essential ingredient that a man by deceit, caused a woman, who is not lawfully married to him to believe that she is lawfully married to him and had sexual intercourse with her in that belief, has not been proved beyond reasonable doubt. The evidence on record do not satisfy the requirements of the offence punishable under Section 493 IPC. Both the Courts below have not appreciated the evidence on record in right perspective. The findings arrived at, by both the Courts below are perverse. If the impugned judgment is allowed to stand, it

results in miscarriage of justice to the petitioner-A.1. Under these circumstances, the conviction and sentence recorded against the petitioner-A.1 for the offence under Section 493 I.P.C. are liable to be set aside.

12. In the result, the conviction and sentence recorded against the petitioner-A.1 for the offence under Section 493 I.P.C. by the Judicial Magistrate of I Class, Srikakulam vide judgment dated 11.02.2005 in C.C. No.143 of 2003, which was confirmed by the I Additional Sessions Judge, Srikakulam, vide judgment dated 14.11.2006 in Criminal Appeal No.19 of 2005, are set aside. The petitioner-A.1 is found not guilty of the offence punishable under Section 493 IPC and is acquitted of the said offence. Bail bonds of the accused shall stand cancelled. Fine amount, if any, paid by the petitioner-A.1 shall be returned to him.

13. Accordingly, the Criminal Revision Case is allowed. Miscellaneous Petitions, if any, pending in this Criminal Revision Case, shall stand closed.

Dr. SHAMEEM AKTHER, J

25.04.2018

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