

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

CRM-A No.1547-MA of 2014 (O&M)

Decided on: 18.04.2018

Kuldip Singh

....Applicant/Appellant

Versus

Harpreet Kaur and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Sardavinder Goyal, Advocate
for the applicant/appellant.

Mr. H.S. Rakhra, Advocate for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

This appeal has been filed against the judgment dated 27.05.2013 passed by the trial Court vide which the respondents/accused were acquitted of the charges framed against them under Sections 494 and 109 of the Indian Penal Code (in short 'IPC')

Brief facts of the case are that the applicant has filed a complaint against the respondents – Harpreet Kaur and Avtar Singh along with 11 other persons with the allegations that the applicant/complainant was married to respondent/accused No.1 – Harpreet Kaur on 11.12.1996 at village Kacha Quila Raikot, District Ludhiana, however, no child was born out of this wedlock. After some time, the accused No.1 left the matrimonial home and did not return back despite the efforts made by the complainant. Thereafter, the accused No.1 got an FIR No.93 dated 10.09.1997 registered against the complainant under Sections 406, 498-A IPC at Police Station Raikot and also filed a petition under Section 125 of the Criminal Procedure

Code (in short 'Cr.P.C') for seeking maintenance. It is further alleged in the complaint that accused No.12 – Harinder Kaur was a mediator and in the month of June, 2000, the complainant came to know that accused No.1 has solemnized second marriage with accused No.2 – Avtar Singh on 09.07.2000. It is further alleged in the complaint that the other accused instigated accused Nos.1 and 2 to perform their marriage and they actively participated in their marriage. It is also alleged in the complaint that the marriage was performed by one Parminder Singh, Granthi of Gurudwara Shashtri Nagar, Jagraon.

It is further stated in the complaint that all the accused persons knew that accused No.1 is already married with the appellant – Kuldeep Singh and despite having due knowledge of the subsisting marriage of the appellant with accused No.1, all the accused, in conspiracy with each other got the marriage of accused Nos.1 and 2 performed and has, thus, committed the offence punishable under Sections 409 and 109 IPC.

The complainant in his preliminary evidence examined himself as CW1, Parminder Singh, Granthi as CW2, one Gurdev Singh a CW3 and Gurmeet Kaur as CW4. The witnesses deposed on the line of the complaint and, thereafter, the preliminary evidence was closed and the trial Court summoned only accused Nos.1 and 2 to face the trial for committing the offence punishable under Sections 494 and 109 IPC, however, the complaint qua accused Nos.3 to 13 was dismissed.

After the accused persons appeared, they were granted bail by the trial Court. The complainant led his pre-charge evidence and apart from CW1 to CW4 already examined in the preliminary evidence,

the complainant also examined Sukhvir Singh as CW5 and Gurpreet Singh as CW6 and closed the evidence. Thereafter, the trial Court framed the charge against the accused persons under Sections 494 and 109 IPC to which they did not plead guilty and claimed trial. The accused further exercised their right to cross-examine two witnesses namely Gurdev Singh and Parminder Singh, however, only Gurdev Singh as CW3 appeared in the witness-box for further cross-examination and CW2 – Parminder Singh never appeared for further cross-examination despite granting several opportunities. Thereafter, the evidence of the complainant was closed by order of the Court.

The accused persons got their statement recorded under Section 313 Cr.P.C. and denied all the incriminating evidence put to them. The accused pleaded innocence and accused No.1 – Harpreet Kaur stated that she had solemnized the marriage with accused No.2 on 24.11.2002 after a decree of divorce was passed in her favour annulling the marriage between the complainant and accused No.1. It is also stated that since she had filed the aforesaid FIR No.93 under Sections 406 and 498-A IPC against the complainant in which he was acquitted, therefore, due to the said reason, the present complaint has been filed. Similar statement was made by accused No.2 – Avtar Singh that he solemnized marriage with Harpreet Kaur on 24.11.2002 and at that time, the marriage of accused No.1 – Harpreet Kaur was dissolved by way of a decree of divorce granted by the competent Court of law against the complainant – Kuldeep Singh.

In defence, the accused examined Nirmal Singh as DW1 and closed the evidence.

Thereafter, the trial Court vide impugned judgment dated 27.05.2013 dismissed the complaint and acquitted the respondents/accused persons.

Counsel for the appellant has submitted that from the statement of CW1, it is proved that the marriage between the complainant and accused No.1 was solemnized on 11.12.1996. It is also submitted that, thereafter, the accused No.1 got the FIR No.93 registered against the complainant and also filed a petition under Section 125 Cr.P.C. which proved the factum of his marriage. It is further submitted that during the subsistence of this marriage, accused Nos.1 and 2 performed second marriage on 09.07.2000.

CW2 – Parminder Singh, Granthi of Gurudwara appeared before the pre-charge evidence stage and deposed regarding the marriage between the accused persons, however, he did not turn up, after the pre-charge evidence as the accused persons had opted to cross-examine him but the complainant failed to produce him for further cross-examination and, therefore, his testimony was not completed.

CW3 – Kuldeep Singh, the complainant, has also deposed on the line of the allegations made in the complaint as well as the FIR got registered by accused No.1 and stated that on 09.07.2000, his marriage with accused No.1 was in subsistence and was not dissolved by any competent Court of law and, therefore, the second marriage of Harpreet Kaur with accused No.2 is illegal. This witness has also proved on record the copy of Ration Card and Form D1 as Ex.C1, a letter issued by State Information Officer, District Food and Supply Control, Bathinda regarding the issuance of the Ration Card in favour

of accused No.1. The Voter list pertaining to village Gumati Kalan, Bathinda dated 14.05.2014 was produced as Ex.C2. The judgment passed in FIR No.93 was produced as Ex.C3 and the judgment and decree granting a decree of divorce under Section 13 of the Hindu Marriage Act between the complainant and accused No.1 – Harpreet Kaur was produced as Ex.C4.

In cross-examination, this witness has stated that he has not personally attended the marriage between the accused persons and he was granted the ex parte decree of divorce on 14.11.2002 vide Ex.C4. With regard to the marriage between the accused persons, he had given certain evasive reply in cross-examination regarding the name of the Granthi to whom he met, in order to enquire about the marriage and stated that he was not known to accused No.2 previously. He further stated that he cannot produce any photograph of the marriage between the accused, which was performed on 09.07.2000.

CW4 – Gurdev Singh, Chowkidar of village Gumati Kalan, Bathinda stated that he knew accused – Avtar Singh and stated that his marriage was solemnized in the year 2000 but he did not know with whom. He could not identify the accused – Harpreet Kaur. This witness has further stated that he could not tell whether the marriage of Avtar Singh was solemnized at Raikot as he did not attend the marriage.

CW5 – Sukhvir Singh, an official of the office of Food and Supply Department has produced the record pertaining to the Ration Card of Avtar Singh and also produced on record Form D1 and register D4 as Ex.C1 and CW/A.

In cross-examination, he has stated that there is no mention in his record about the date of marriage of Avtar Singh with Harpreet Kaur and further admitted that the father's name of Harpreet Kaur is not mentioned. He further admitted that there is no mention of number, date of application of Ration Card made by the then Food Inspector.

CW6 – Gurpreet Singh, Nazir has proved the Voter list pertaining to the year 2000 of village Gumati Kalan, Bathinda and stated that at Serial No.464 and 465, vote of Avtar Singh son of Jagdip Singh and Harpreet Kaur wife of Avtar Singh are there in Booth No.61. The voters list was produced as Ex.C1.

In cross-examination, he has stated that there is no photo in the voters list as it was not required in the year 2007.

It is, thus, submitted on behalf of the applicant that from the evidence of the prosecution, it is duly proved that the marriage between the accused persons was solemnized on 09.07.2000 during the subsistence of marriage of the appellant with accused No.1.

On the other hand, counsel for the respondent has submitted that the marriage between the accused persons was performed on 24.11.2002 and at that time, the decree of divorce was already granted between the complainant and accused persons. It is further submitted that the defence witness namely Nirmal Singh, who appeared as DW1 has stated that he was a Treasurer in Gurudwara Kalgidhar, Jagraon since February, 2002 and he knew Harpreet Kaur. The father of Harpreet Kaur died on 19.07.2002 and his last rites were performed in the Gurudwara and certain charity was paid to the Gurudwara by the family of accused No.1 as per the record. This

witness further stated that as per the record, the marriage between the accused persons was performed on 24.11.2002 and he has also attended the function and he identified the marriage ceremony in the photographs Mark A to Mark F, which were performed by one Surinder Singh, Granthi.

After hearing counsel for the parties and on perusal of the photocopies of the evidence produced by counsel for the parties during the course of arguments, I find no merit in the present appeal for the following reasons:-

(a) The only evidence regarding the second marriage between the accused persons is by way of statement of CW2 – Parminder Singh, the Granthi and admittedly at post-charge evidence stage, this witness has not appeared before the trial Court for further cross-examination by the respondents/accused and, therefore, his testimony cannot be read into evidence as the accused were denied their valuable right to cross-examine this witness and put up their defence.

The argument raised by counsel for the appellant that this witness has gone abroad and, therefore, his testimony at pre-charge stage be read into evidence as per the provisions of Section 32 of the Indian Evidence Act, does not carry any weight.

As per the provisions of Section 32 of the Indian Evidence Act, the statement of a witness is admissible in case where a person is dead or cannot be

found whereas it is the own case of the complainant that CW2 – Parminder has gone abroad and has not appeared before the trial Court. Since, the right to cross-examine a witness is an important right of defence given to the accused person and the accused has been deprived of their right to cross-examine CW2 at post-charge evidence stage, the trial Court has rightly held that the statement of CW2 cannot be read into evidence.

(b) Even, on a perusal of the statement of CW2 – Parminder Singh, the Granthi, it is apparent from the cross-examination that he was the Granthi of the Gurudwara at the relevant time, however, no such documentary evidence has come on record to prove that he was appointed as a Granthi by the management of the Gurudwara Kalgidhar, Jagraon.

(c) Even otherwise, perusal of the statement of CW1 and CW2, it is apparent that they are not witness to the marriage and they have only stated that they came to know about the marriage of the accused persons from other witnesses.

The evidence led by the complainant by way of a production of Ration Card do not prove the factum of marriage between the accused persons as it has come in the cross-examination of CW5 that in the record i.e. Form D1 and register D4, there is no mention of the date of marriage

of the accused persons and even father's name of accused No.1 is not mentioned in Form D1.

(d) The trial Court has rightly recorded a finding that if the marriage was performed in the Gurudwara, there must be some other witness who has attended the marriage on 09.07.2000 and the appellant has failed to produced any other independent evidence in this regard.

(e) A perusal of the statement of CW2 recorded at the pre-charge evidence stage also show that he has admitted in his cross-examination that he has no record of Gurudwara regarding any entry of the marriage between the accused persons.

(f) On the contrary, the testimony of DW1 – Nirmal Singh has demolished the evidence lead by CW2 that he was working in Gurudwara in the year 2000 by denying this fact. This witness has proved that the marriage between the accused persons was performed on 24.11.2002 as this witness was posted as Treasurer of the Gurudwara. This witness has further proved that even the last rites of father of accused No.1 was performed on 19.07.2002 and certain charities were also received in this regard and while performing the marriage of accused persons on 24.11.2002, again some charities were received by the Gurudwara, therefore, the trial Court has rightly recorded a finding that the complainant has failed to prove that during the subsistence of the marriage of the appellant

with accused No.1, she has performed second marriage with accused No.2 on 09.07.2000 to bring the act of accused No.1 within the purview of the offence punishable under Section 494 IPC.

(g) It is not disputed that the relation between the appellant and respondent No.2 were not cordial as the respondent No.2 on an earlier occasion has registered an FIR against the appellant under Sections 406 and 498-A IPC and also filed a complaint under Section 125 Cr.P.C. It is also not disputed that the marriage between the parties was annulled by way of a decree of divorce granted by the Court vide Ex.D4 and, therefore, the filing of the complaint under Section 494 and 109 IPC can be an outcome of settling the personal vendetta by the appellant.

In view of what has been discussed hereinbefore, I do not find any reason to set-aside the judgment of acquittal dated 27.05.2013 passed by the trial Court. Accordingly, the appeal fails and is accordingly dismissed.

Since, the appeal has been dismissed on merits, the application seeking condonation of delay of 420 days in filing the appeal also stands dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

18.04.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No