

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 532 of 2005

1. Narayan Prasad Sahu, aged about 66 years, son of late Darbari Sahu, retired Lecturer, R/o Village Paraskol, PS Mahasamund, Tahsil and District, Mahasamund, CG

--- Applicant

Versus

1. Smt. Brij Bai, aged about 60 years, Ex wife of Narayan Prasad Sahu, at present R/o Village Changorabhata, PS Purani Basti, Raipur, Tahsil and District Raipur, CG

--- Respondent

For Applicant	-	Smt. Ranjana Jaiswal, Advocate.
For Respondent	-	Shri BL Dembra, Advocate

Order on Board by Hon'ble (Smt.) Vimla Singh Kapoor, J.

14.03.2019:

On 27.7.1998 Respondent - wife filed a complaint case under Section 200 of the Code of Criminal Procedure against the applicant - husband herein under Sections 494, 495 and 496 IPC stating that she was his legally wedded wife and out of their wedlock three sons and two daughters were born. Thereafter, he started beating her and drove her out of his house. After dismissal of the divorce petition filed by her she preferred an appeal which is still pending. She has alleged that without dissolution of her marriage with him, the accused/applicant married one Parania Bai and out of their wedlock one son Param Dev alias Ramdev was also born. Subsequently, he drove his second wife also out of his house

and married another woman Dulari Bai and through her also the applicant has one daughter namely Rukmani.

2. Having considered the evidence on record learned trial Court convicted the applicant under Section 494 IPC and sentenced him to undergo RI for one year with fine of Rs. 500/- vide judgment dated 7.3.2005 passed in Criminal Case No. 1089/2003. The order passed by learned Magistrate came to be affirmed by judgment impugned herein dated 28.11.2005 passed in Criminal Appeal No. 72/2005. Hence this revision.

3. Counsel for the applicant submits that both the Courts below have committed an error in convicting the accused/applicant under Section 494 IPC as there is no evidence to show that he ever entered the second marriage during the subsistence of his first marriage with the respondent herein. She further submits that the Courts below have overlooked the material questions of facts and law which resulted in failure of justice in this case.

4. Counsel for the respondent supports the judgment impugned and submits that there is ample evidence to show that the applicant entered in the second marriage with Parania Bai and thereafter with Dulari Bai without dissolution of his first marriage with the respondent herein and to both of them son and daughter were born through him, his conviction under Section 494 IPC is just and proper and no interference with the same is called for.

5. This Court has gone through the material on record carefully and having done so it emerges that during the subsistence of first

marriage with his first legally wedded wife - the respondent herein, he married Parania Bai and Dulari Bai and through them two offspring were procreated by him. Stand of complainant (CW-1) is corroborated by Parania Bai (CW-2) in categorical terms stating that the applicant married her by informing that his first wife had expired. CW-2 has further stated that first issue born to her through the applicant was son Paramdev and when she again conceived through him, he made her undergo abortion. Ashwani Kumar Sahu (CW-4) - the brother of Parania Bai (CW-3) has also stated that after marriage of his sister with the applicant, a son namely Paramdev was born in his house where the applicant had also come to attend the *Chhatti* ritual. He has also stated that the respondent herein had also come to his house and disclosed herself to be the first wife of the applicant.

6. Thus there is sufficient evidence to show that the applicant married Parania Bai and then Dulari Bai during the subsistence of his first marriage with the respondent herein and children were also born to them through him. From the statement of CW-1 it is also apparent that the appeal preferred by her against the order of dismissal of her divorce petition was also pending at the time when she filed the complaint case against the applicant. Court below has thus been fully justified in convicting the applicant under Section 494 IPC and being so it is hereby maintained.

7. However, looking to the fact that the applicant has been facing the prosecution since 1998 involving the passage of considerable long period of about 21 years and that he has already

remained in jail for about 15 days, no useful purpose is going to be served in further sending him to jail. Accordingly, his sentence is reduced to the period already undergone which would meet the ends of justice. Order accordingly.

8. Revision thus allowed in part.

Sd/-

(Vimla Singh Kapoor)
Judge

Jyotishi