

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 387 of 2019**

Saroj, W/o - Mahadev Parbiya, Aged about - 48 Years, R/o - Hudco Sector, House No. - 398, MIG -1, Bhilai, Police Station-Sector-6, Kotwali - Bhilai, Tehsil and District - Durg (C.G.)

---- **Petitioner**

Versus

1. Mahadev Purbiya, S/o - Manglu Ram Purbiya, Aged about - 52 Years, R/o - Genderdehi, District - Durg (C.G.)
2. Ganeshiya Bai, W/o - Manglu Purbiya, Aged about - 79 Years, R/o - Genderdehi, District - Durg (C.G.)
3. Bhagwat Sonkar, Aged about - 50 Years, R/o - Genderdehi, District - Durg (C.G.)
4. Saraswati, W/o - Bhagwat Sonkar, Aged about - 46 Years, R/o- Genderdehi, District - Durg (C.G.)
5. Gendi Sonkar, W/o - Birju Sonkar, Aged about - 70 Years, R/o- Khudmudha, Police Station - Patan, Tehsil - Patan, District - Durg (C.G.)

---- **Respondents**

For Petitioner : Shri Avinash Chand Sahu Advocate with
M/s. Priya Sharma, Advocate.

For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

26/06/2019

1. Heard on I.A. No. 01/2019, an application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, same is allowed and delay of 91 days in filing the petition is hereby condoned.
3. Also heard on application filed under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.
4. On due consideration, leave is granted.

5. This appeal is preferred against the judgment dated 31st July, 2018 passed by Judicial Magistrate First Class Durg, District – Durg (C.G.) in Criminal Complaint Case No. 31053/2010 wherein the said Court acquitted all the respondents for charge under Section 494 read with Section 34 of IPC, 1860.
6. In the present case, name of the complainant is Saroj. It is alleged that Saroj was married with respondent Mahadev Purbiya. It is further alleged that Mahadev Purbiya remarried on 12th March, 1990 with one Shushila at Village – Khudmuda.
7. To substantiate the charge, the complainant side examined Saroj (PW-1), Subhash Chandra Gupta (PW-2), Santosh Sonkar (PW-3) and Ramesh Joshi (PW-4). The complainant is under obligation to establish that second marriage was performed as per law or custom prevailing in the society. No one deposed before the trial Court that Saptpadi took place in second marriage between Mahadev and Shushila. Though, the witnesses deposed that they attended the marriage and remain till completion of marriage, but bald statement is not sufficient to establish that Saptpadi was really taken place between Saroj and Shushila. Unless Saptpadi took place, the marriage is not completed as per law. Only bald statement is not sufficient to establish that valid marriage was performed between Mahadev and Shushila. No custom is pleaded before the trial Court and it is not also established that the marriage was performed as per custom prevailing in the society.
8. The trial Court elaborately discussed the entire evidence and recorded finding that second marriage as per law or as per custom is not established. After going through the record to take a contrary

view. It is not a case where respondents should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.

9. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

Vasant