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

+ CRL.L.P. 469/2017

MRS PUSHPA SHAW

..... Petitioner

Through: Mr Lalit Bhardwaj and Mr Shubhanan
Chaturvedi, Advocates.

versus

MR DEV KUMAR SHAW

..... Respondent

Through: Mr Rajeev Singh Chauhan and Mr
Sanjay Kumar Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **12.12.2019**

1. The petitioner has filed the present petition seeking leave to appeal against a judgment dated 29.05.2017, passed by the learned MM, Tis Hazari Courts, in Sessions Case no. 522382/2016. In terms of the impugned judgment, the respondent was acquitted of the offences punishable under sections 498A/494/506 of the Indian Penal Code, 1860 (IPC).
2. The said proceedings had commenced pursuant to a complaint dated 23.11.2006 filed before the learned MM, Tis Hazari Courts. On 22.11.2011, charges were framed under sections 494/498A/506 of the IPC, registered with P.S. Subzi Mandi. The said complaint was registered at the instance of the petitioner (the Complainant), who is the respondent's wife. The appellant is aggrieved by the impugned judgment to the extent that it acquits the accused of an offence under section 494 of the IPC.

3. In view of the above, the limited question to be considered is whether the impugned judgment is erroneous inasmuch as it acquits the respondent of the alleged offence under Section 494 of the IPC.

4. It is the Complainant's case that her marriage with the respondent was solemnized on 12.12.1994. At the material time, the respondent was unemployed. After two months, they shifted to Delhi. She stated that on 06.10.1997, the respondent was appointed on the post of sorter with Railway Mail Services and after securing the said Government Job, the respondent and his family (mother, father and sister) started harassing and subjecting her to cruelty. It is alleged that after the respondent got a government job, his parents started harassing the Complainant (petitioner) for not bringing sufficient dowry. It is also alleged that the accused used to beat the Complainant for not bringing further money from her parents. It is further alleged that the respondent planned to marry some other woman for dowry and subsequently, on 18.05.2006, he got married to one Ms. Seema. Consequently, the petitioner filed the present complaint.

5. It is stated by the Complainant that thereafter, she had filed several complaints against the respondent, which included (i) complaint dated 30.06.2006 to the concerned department where the respondent was working; (ii) complaint dated 07.07.2006 before the Delhi Women Commission; (iii) complaint dated 17.07.2006 before the National Human Rights Commission (NHRC); and (iv) complaint dated 04.09.2006 before National Commission for Women (NCW).

6. Thereafter, the Complainant filed a complaint before the learned MM,

Tis Hazari Courts. On the basis of pre-charge evidence, charges for the offences punishable under sections 498A/494/506 of the IPC were framed against the respondent, who pleaded not guilty and claimed trial.

7. In post charge evidence, four witnesses were examined on behalf of the Complainant.

8. The Complainant was examined as CW-1. She deposed that she got married to the respondent/accused on 12.12.1994. She further deposed that the respondent got re-married on 22.05.2006 with one Ms. Seema and she got to know about the same through her mother (CW-2), who came to know about the same when she visited Chhapra (Bihar) on the death of her brother. Thereafter, she alongwith her father (CW-3) visited Chhapra where the respondent and his family members misbehaved with them. She went back to Calcutta and thereafter to Delhi and filed a complaint against the respondent in Human Rights Commission, Women Commission, CAW Cell and to the office of the respondent.

9. In her examination-in-chief, she further deposed that the respondent had married one Ms. Seema d/o Sh. Janak Shaw, Garhbazar Village Mazhi, PS Arvind Saran, Distt. Chapra, Bihar. She also lodged complaint against the respondent with his employer. After conducting an inquiry, the respondent was terminated by his employer as it was proved that he had re-married.

10. In her cross-examination, CW-1 deposed that the respondent left her on 18.05.2006 and thereafter, on 05.06.2006, she came to know that the respondent was in his native village and he had re-married. It was deposed

that her mother had gone to the village to attend to her brother's funeral. However, on further cross-examination, she denied remembering as to who had informed her about the second marriage of the respondent. She stated that several villagers of the said village had informed her about the marriage. She further deposed that though she alongwith her father had gone to the native village of the respondent in June 2006 – which was after learning about her husband's re-marriage – she did not file any complaint with the local police station against the respondent or Seema or any of their family members. Further, she did not have any photographs or any written proof of the alleged marriage between the respondent and Seema.

11. The Complainant's mother, Mrs. Chandrawati Devi was examined as CW-2. She deposed that in the year 2006, her brother namely Ram Ji Shaw had expired and she had visited to her village for attending his funeral. There, she learnt from distant relatives that the respondent had re-married. Thereafter, she informed about the same to her daughter (CW-1).

12. In her cross-examination, she deposed that she did not know the name of the relative who had told her about the re-marriage of the respondent. She stated that the said person was a native of the village of the respondent and his daughter was married to a person from that village. However, she did not even know the name of the said girl. She further stated that she could not remember the name of the relative, who had informed her for the first time about the second marriage of the respondent. She stated that she did not remember the year and month in which the said relative had informed her about the re-marriage. She further denied having any knowledge about the date of the second marriage of the respondent or having seen any papers or

photographs pertaining to the same.

13. Mr. Kamal Kishore, who was summoned as a witness from the Law Division, National Human Rights Commission (NHRC), was examined as CW-3. In his cross-examination, he stated that he did not have copies of the documents as the same were already available on the judicial file. He stated that the dispatch register maintained in NHRC contained the particulars of letters dispatched (Ex.PW-3/1, Ex.PW-3/2 and Ex.CW-3/2) and the same had also been weeded out. He further denied personally participating in the proceedings of the case (case No. 988/4/2006-07 WC titled “Smt. Pushpa Shaw v. Dev Kumar Shaw) or dispatching the said letters.

14. Mr Krishnan Rana, Inspector Superintendent, Railway Services, D Division, Nanak Pura, Delhi was examined as CW-4. He presented some documents as evidence – copy of the chargesheet with annexures; copy of the order appointing Mr. G.D. Gupta as Inquiry Authority; reply given to the RTI application of the respondent; order of the disciplinary authority vide which the respondent was dismissed from service; date wise synopsis given to the NCW; and the information supplied to NCW.

15. In his cross-examination, he stated that he had been posted at the Delhi office since September 2012 and hence, none of the aforesaid documents had been made or issued in his presence. He further stated that the file brought by him only contained the photocopies of the aforesaid documents. He was also not able to identify the signature of the Superintendent on the said documents. He further remained silent as to why the original documents were not produced.

16. After examining all the witnesses and the evidence, the Trial Court found the respondent not guilty of bigamy under section 494 of the IPC. The Trial Court held that the Complainant (petitioner) had failed to produce any direct evidence, documentary or oral, in regard to the alleged second marriage of the respondent with Ms Seema and thus, the said allegation of the second marriage of the respondent remained unproved. The Trial Court noted that in the event the respondent got married for the second time, the Complainant could have examined the priest who had solemnized the said marriage or she could have specified details about the said marriage ceremony. The Trial Court further noted that the Complainant had two contradicting versions as to her knowledge of the factum of second marriage of the respondent; first, that the Complainant got to know about the said marriage from her mother who had visited the village of the accused, and second, that she had been informed about the same by several villagers of the village of the respondent. The Complainant also failed to make any complaint regarding the same, in the local police station of the village of the respondent at the time she had allegedly visited the said village alongwith her father. She further failed to produce any photographs or any written proof regarding the alleged second marriage of the respondent. In this view, the Trial Court held that the testimony of the Complainant in regard to the factum of the said marriage was nothing more than hearsay and therefore, inadmissible.

17. In regard to the testimony of the Complainant's mother (CW-2), the trial court held that the testimony of CW-2 was of no assistance to the Complainant in proving the alleged second marriage of the respondent, as

the same was hearsay and further she failed to furnish details of the source of her information regarding the said marriage.

18. The Trial Court further examined the testimony of CW-3 and found that the letter (Ex.PW-3/2), which was sent by the Assistant Registrar (Law), NHRC to the Complainant, could not be proved as neither the author of the said letter was summoned nor CW-3 could identify the signature of the Assistant Registrar appearing thereon. Further, the record of NHRC including the dispatch registrar was also not produced. Similarly, the Complainant also failed to prove the other documents (Ex.PW-3/1 and Ex.CW-3/2) produced as evidence by him through CW-3. The Court noted that the document Ex.PW-3/1 was a computer-generated print out of a notice, which was issued by the NHRC to the Superintendent of Police, Saran (Chapra), Bihar calling for his report upon the complaint dated 17.07.2006 of the Complainant. The said print was attested by someone whose name or designation were not mentioned. Keeping in mind the aforesaid, the court held that the said documents could not be proved by the Complainant and thus, were not admissible as evidence. Consequently, the said documents were of no aid to the Complainant in proving the factum of the respondent's second marriage.

19. The Trial Court further held that the testimony of CW-4 was also of no assistance to the Complainant's case, as he was unable to identify the Superintendent's signature on the documents produced by him and his testimony was also silent as to why he failed to produce the original documents. The order of the disciplinary authority dismissing the respondent from service as well as the other documents – copies of the documents

submitted as evidence by CW-4 and attested by the Superintendent – could not be proved, as the court noted that the Complainant failed to summon the persons, whose signatures appeared on the said documents, and make them identify the said documents.

20. After examining all the evidence and witnesses, the court concluded that the Complainant was unable to prove charges under Section 494 of the IPC, as she failed to produce direct evidence to prove the factum of solemnization of second marriage of the respondent during the subsistence of his marriage with the Complainant. The court held that the reliance of the Complainant on the order passed by the Superintendent, Railway Mail Service was of no assistance to the Complainant, as the said order did not, in any manner, prove that respondent has committed the offence of bigamy. The court stated that any inquiry or finding of any authority other than a judicial authority, could not have a bearing on judicial proceedings, specially in a criminal trial. The fact that an authority, which is non-judicial in nature, gave a finding that the respondent had committed bigamy, cannot in any manner lead to hold the respondent guilty of the alleged offence. The Court further observed that the Complainant failed to bring on record any additional witnesses or documents – like the priest who solemnized the alleged second marriage of the respondent or any other person who attended the alleged marriage or the relatives – which could prove the charges under section 494 of the IPC. The relevant extract of the impugned judgment is set out below:

“39. In order to prove the charge in respect of the offence punishable under Section 494 IPC against the accused, the

Complainant was required to produce direct evidence of the factum of solemnization of second marriage by the accused during the subsistence of his marriage with the Complainant. The Complainant has relied heavily on the order dated 20.12.2010 passed by the Superintendent, Railway Mail Service, 'D' Division, New Delhi Ex-. CW4/4. As already noted above, the said document has not been proved. Even otherwise, said document does not in any manner assist the complainant in proving the guilt of the accused with regard to the alleged bigamy. No inquiry or finding of any authority, other than that of a judicial authority,- can have any bearing, much less be conclusive, in judicial proceedings, more so a criminal trial. The complainant was required in the present case to have examined witnesses or tendered material evidence to prove the guilt of the accused. The fact that a non-judicial authority, then be it the Superintendent, Railway Mail Services, or the National Human Rights Commission or the Delhi Women's Commission, has found that the accused had contracted/solemnised a second marriage, and acting on the said finding dismissed the accused from service, is no evidence or basis to hold the accused guilty of the offence punishable under Section 494 IPC. The standard of proof to be employed in criminal cases is of proof beyond reasonable doubt. On the other hand, non-judicial authorities may not even be applying the rules of evidence strictly. For instance, while dismissing an objection taken by the accused in his representation against the inquiry report to the effect that the Complainant had not produced any witness who had attended the alleged second marriage, the Superintendent, Railway Mail Service, observed in his order Ex. CW4/4, "in this case Smt. Pushpa Shaw is herself in a capacity of a state witness he is not suppose to produce any witness. No where in the rules is proscribed that a State witness will further produce any witness in support of his/her deposition." The principles of inadmissibility of hearsay evidence etc. appear to have been alien to the said authority, Thus, the aforesaid document Ex.CW4/4 is of no assistance to the Complainant in the present case.

40. The Complainant has failed to bring any direct evidence of the alleged second marriage between the accused and alleged Ms. Seema. The Complainant could have examined the priest who had solemnized the marriage of the accused with the alleged Ms. Seema. However, not only has the Complainant failed to examine the priest, she has nowhere even specified the ceremony by which the alleged marriage was performed. Further, the Complainant has not examined any person, who had attended the alleged marriage of the accused with the alleged Ms. Seema. The Complainant has not even examined the relative(s) who had informed her mother regarding the second marriage of the accused with alleged Ms. Seema. In fact, CW-2, mother of the Complainant, could not even name any such relative. Further, the Complainant has not filed any documentary proof, such. as photographs, certificate of marriage etc., of the marriage of the accused with the alleged Ms. Seema. In fact, in her cross-examination, CW-1 stated that she neither had any photographs nor any written/documentary proof of marriage of the accused with alleged Ms. Seema. Even CW-2 stated that she had not seen any photographs of the alleged marriage.”

21. In view of the above, the Court concluded that evidence, both documentary and oral, produced by the Complainant was insufficient to prove the guilt of the accused under section 494 IPC.

22. The standard of proof required to prove a charge in a domestic enquiry is materially different from proving a charge of a criminal offence. In order to secure a conviction, the Complainant was required to establish that the respondent had married another person during the subsistence of their marriage, beyond any reasonable doubt.

23. It is well settled that no interference with an order of acquittal is

warranted in an appeal unless the court finds compelling reasons for the same (See: *Ghurey Lal v. State of Uttar Pradesh: (2008) 10 SCC 450; Niraj vs. Ramesh Pratap Singh, 2012: SCC OnLine Del 3813*).

24. This Court is of the view that the Trial Court has evaluated the evidence as obtaining in the present case and has concluded that the allegations of bigamy have not been established beyond reasonable doubt. This Court finds no compelling reason to interfere with the impugned judgment.

25. Accordingly, the present petition seeking leave to appeal against the impugned judgment is rejected.

VIBHU BAKHRU, J

**DECEMBER 12, 2019
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