

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :02/01/2020

Order passed on : 03/02/2020

CR.R. No. 958 of 2017

Dilip Ratre, S/o. Late Panchram Ratre, Aged About 35 Years, R/o. Village Kohdiya, Chauki- C.S.E.B., Thana Kotwali, Korba, District Korba, Chhattisgarh.

---- Applicant

Versus

Veena Ratre, W/o. Dilip Ratre, Aged About 33 Years, R/o. Kerajhhariya Road, Pali, Tahsil- Pali, District Korba, Chhattisgarh.

-----Respondent

For Applicant : Mr. Arvind Shrivastava, Advocate

For Respondent : Mr. Sudeep Verma, Deputy Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

03/02/2020

1. This revision petition has been brought challenging the judgment dated 06.10.2017, passed in Cr.A. No.29 of 2017, by the learned Additional Sessions Judge, Katghora, dismissing the appeal against judgment of conviction and sentenced passed by the learned trial Court against the applicant vide judgment dated 29.06.2017, in Criminal Case No.89 of 2009, by the learned Judicial Magistrate First Class- Pali, District – Korba (C.G.).
2. The applicant was prosecuted in a private complaint by the respondent under Section 494 of the Indian Penal Code. The learned trial Court conducted the trial and found the applicant

guilty for the offence punishable under Section 494 of the Indian Penal Code and on that basis he was sentenced with R.I. for two years along with fine of Rs.1,000/-. The challenge to this judgment in criminal appeal has been dismissed by the impugned order.

3. It is submitted by the learned counsel for the applicant that the judgment of conviction against the applicant passed by the Court below is erroneous, incorrect and against the provisions of law. The complainant had totally failed to prove that marriage of the applicant was performed in accordance with the rituals that are necessary for performance of marriage. Relying on the order of this Court in Criminal Revision between **Rajesh Boyra Vs. State of M.P.**, reported in **2014 SCC OnLine Chh. 150**, it is submitted that in case of bigamy under Section 494 of the Indian Penal Code, requirements of proof of second marriage is strict and that must be proved by bringing evidence regarding the performance of essential ceremony as required by law or customs. There is no such evidence present in this case. Reliance has also been placed on the judgment of High Court of Guahati in in case of **Mon Mayur Sharmah & Anr. Vs. State of Assam & Anr.**, reported in **2019 SCC OnLine Gau 5217**. Therefore, it is a case in which respondent/complainant has failed to bring evidence against the applicant beyond reasonable doubt. Therefore, the applicant was entitled for acquittal.

4. The private respondent in this case has been represented by the State counsel, who has submitted that the complainant has proved her case beyond reasonable doubt. Therefore, there is no need of interference in the impugned judgment.
5. I have heard learned counsel for the parties and perused the record of the Courts below.
6. Respondent had filed a private complaint against the applicant and 8 other persons on 05.06.2008. The learned trial Court passed the order dated 25.04.2009 by dismissing the complaint case under Section 203 of Cr.P.C.. The order was challenged in revision petition, in which the order dated 25.04.2009 was set-aside and complaint case was restored. Subsequently the cognizance was taken against the applicant and others by order dated 09.04.2010. The evidence before the charge was recorded and charge was framed vide order dated 17.09.2012 and the applicant was charged under Section 494 of the Indian Penal Code, whereas rest of the persons arrayed as an accused were discharged. Subsequent to that trial Court has convicted and sentenced the applicant and that conviction and sentenced has been upheld by the appellate Court.
7. Rajkumar (P.W.-1) has stated in examination-in-chief that on 20.04.2008 marriage of the applicant with daughter of Govind Mathur was performed. He had received the invitation for that marriage and witnessed the Bhanwar, Lagna, Saptpadi and

Tikawan customs. He had gifted one wall clock in that marriage. Later on he also came to know that the marriage he witnessed was second marriage of the applicant as it was informed by Govind Mathur in a meeting. In cross-examination, he admits that his knowledge that the applicant has performed second marriage, is based only on the information given by father of the respondent. His statement in examination-in-chief about his presence in the marriage of the applicant and with daughter of Govind Mathur and his witnessing of performance of marriage rituals has remained unrebutted in his cross-examination.

8. Sarit Bhardwaj (P.W.-2) is hear say witness, who got information from others. Veena Ratre, who has been repeatedly numbered as (P.W.-1) has stated in her examination-in-chief that the applicant has performed second marriage with one Sukh Bai. Her marriage with the applicant was performed on 21.06.2007 customarily. As her relation could not go on well with the applicant, she had moved her matrimonial home and lodged FIR against the applicant for his prosecution under Section 498-A of the Indian Penal Code. She has stated that her marriage with the applicant was continuing and there had been no divorce between them, then she came to know that her husband, the applicant has performed second marriage with Sukh Bai, who is daughter of Govind Mathur. She enquired about it and received information in confirmation. In cross-examination, she has remained firm on this statement.

9. Sukhsagar (P.W.-4) is the father of the complainant, who has stated accordingly and his statement has remained unrebutted on the point of his knowledge about the second marriage of the applicant. Similar is the statement of Malikram (P.W.-3). M.L. Khunte (P.W.-5) has stated that he went to enquire about the second marriage of the applicant in village Baloda and met the members of community and also Govind Mathur, the father of Sukh Bai, who admitted that his daughter has been married to the applicant. This statement given by him has remained unrebutted in cross-examination. Gangaram (P.W.-7), Laxmikant Ratre (P.W.-8), Kishan (P.W.-9) have also given statement about second marriage of the applicant, which has been remained uncontradicted in their cross-examination.
10. Applicant Dilip Ratre has examined himself as defence witness (D.W.-1). He has made a statement that respondent is his married wife and he has not performed second marriage. In cross-examination he denied adverse suggestions given to him by the respondent/ complainant side.
11. Rajju Lal Ratre (D.W.-2) has not given statement regarding the marriage or against the marriage of the applicant. Panchram Ratre (D.W.-3) is the father of the applicant has made plain statement that his son has not performed second marriage. He has denied the suggestion given by the complainant side.

12. On perusal and appreciation of whole evidence present in the complaint case, I am of this view that the learned trial Court as well as the appellate Court have not committed any error in coming to this conclusion that the allegation of performance of second marriage by the applicant during the existence of earlier marriage has been found proved. Specially the witness Rajkumar (P.W.-1) has given statement regarding the performance of rituals and other ceremony of the marriage of the applicant with Sukha Bai in his presence, which is an unrebutted statement, holds ground of conviction against the applicant. Therefore, the reliance on behalf of the applicant on the judgment cited hereinabove do not come to his help in any manner. Therefore, I am of this view that this revision petition is without any substance, which is dismissed accordingly.
13. The applicant is reported to be on bail, his bail bonds are cancelled and he is directed to surrender to serve out the remainder of the sentence.

Sd/-
(Rajendra Chandra Singh Samant)
Judge