

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

202

CRA-AD-817-2019

Date of decision : 20.05.2022

Santosh Kumari

....Appellant

V/s

Rajender

....Respondent

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. P.P.S. Duggall, Advocate for the appellant

G.S. SANDHAWALIA, J. (ORAL)

The present appeal is directed against the judgment of the learned Additional Sessions Judge, Faridabad, whereby the respondent had been acquitted of the charges framed against him for the offences punishable under Sections 323, 376, 493, 506 IPC in case FIR No.145 dated 22.12.2017 registered at Police Station Women, Sector 16A, Faridabad.

The reasoning, which prevailed with the learned trial Court to come to the said conclusion that no offence was made out, was that as per the evidence on record and as per the admission of the appellant herself, she knew that the respondent had not dissolved his marriage and there was also dispute between her and her husband and there was no divorce inter se between them. In such circumstances, the trial Court came to the conclusion that the marriage between the appellant and the respondent could not be legally finalized and the appellant knew that the same cannot be solemnized on account of subsistence of her earlier marriage. The stand that she did not have the knowledge about her previous subsisting marriage as well as the marriage of the respondent was misplaced. It was also noticed that she along with her son from the earlier marriage had

travelled out of station to Bhuvneshwar with respondent. She remained with respondent for about 2½ years and resultantly, the trial Court came to the conclusion that she was a consenting party. Reliance had been placed upon various judgments of this Court and the Apex Court in *Manjit Singh vs. State of Haryana*, 2013 (4) RCR (Crl.) (P&H)-345; *Parvati vs. State of Haryana*, 2013 (3) RCR (Crl.)-315; *Tej Parkash vs. State of Punjab*, 2016(4) RCR (Crl.)-983, *Musaddin Ahmed vs. The State of Assam*, 2009(4) RCR (Crl.)-857 and *Alamelu vs. State Rep. by Inspector of Police*, 2011(1) RCR (Crl.)-499 (SC).

Counsel has vehemently submitted that there is a DNA report that there was a child from the relationship and therefore, the trial Court was in error in not convicting the respondent. It is further submitted that at least compensation should have been granted.

We have perused the paper-book. We are of the considered opinion that the trial Court was justified in coming to the conclusion which it has arrived at. The same was done on proper appreciation of the evidence which was in the form of inasmuch as 10 witnesses including the FSL report, showing the parentage of the respondent, with the child from the relationship.

It has come on record that the appellant was residing separately since 2006 along with her son and mother in Faridabad. She had requested a person to help her in purchasing a plot/house. In the year 2014, she met the respondent while in the process of purchasing the plot. They had entered into a relationship out of which, she had delivered the girl child. As noticed, the relationship continued for 2½ years and they travelled to various parts of the country also. Apparently, on account of the relationship going sour, the criminal proceedings as such had been lodged. It is not a case that the appellant is a person who was not aware of the fact that she is entering into relationship with a married

man and without having been legally separated/divorced from her husband. It has come on record that it was her own statement that before entering into relationship, she knew that the accused was in the process of getting divorce. She herself deposed that the accused took her to his house at Palwal and tried to rehabilitate her and her son. It was her own case that the accused got her son admitted at Saint Siyar School, Palwal on 24.04.2014.

The allegation that accused got her signatures on some typed papers and the court marriage was solemnized, is the argument raised by the counsel that there was a fraud as such being played. Out of the said relationship, one female child was born. Thus, it is apparent that it is a case of consent inter se between the two mature persons. It has also come on record that respondent got the appellant introduced with his parents including other relatives like sister and brother in law. In such circumstances, it is apparent that there is no allurement made by the respondent. It was conscious decision on the part of the appellant and their relationship inter se is between two mature persons who would be aware of the consequences of their actions. In such circumstances, may be because appellant has been blessed with a girl child from the said relationship, she is trying to hold the appellant criminally liable, as sought to be done now, on account of the relationship having gone sour.

We are of the considered opinion that the reasoning arrived at by the learned trial court is not liable to be interfered. It is time and again held that evidence has to be weighed and interference should be rare and in exceptional cases and reliance can be placed upon the judgment in *Gamini Bala Koteswara Rao and others vs. State of Andhra Pradesh, AIR 2010 SC 589*.

In such circumstances, the argument raised that some compensation should be awarded for the child while placing reliance on judgment in *Manohar*

Singh vs. State of Rajasthan and others, 2015(1) RCR (Crl.) 747, is mis-conceived. The conviction as such in that case was for the offence under Section 323 IPC on the basis of which provisions of Sections 357 and 357A were invoked to grant compensation since the person had been released on probation. The sentence was to come into play if the compensation was not paid within the time frame fixed. Resultantly, we are of the considered opinion that the said judgment is not applicable in the facts and circumstances of the present case.

Accordingly, there is no merit in the present case and the same is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

May 20, 2022
Ajay

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