



Criminal Appeal No.466 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Appeal No.466 of 2015

Krishnaveni

W/o.Rajendran

... Appellant/Complainant

Vs.

1.Rajendran

S/o.Thangaraj

2.Kousalya

W/o.Rajendran

3.Saraswathi

W/o.Thangaraj

... Respondents/Accused 1, 2 & 4

Prayer : Criminal Appeal filed u/s.378 of the Code of Criminal Procedure against the judgment and order dated 05.01.2015 passed by Judicial Magistrate I, Erode, in C.C.No.330 of 2010.

For Appellant : Mr.M.Rajkumar
for Ms.P.T.Ramadevi

For Respondents : Ms.L.Margaret



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JUDGMENT

This criminal appeal has been filed against the judgment and order passed by the Judicial Magistrate I, Erode, in C.C.No.330/2010, dated 05.01.2015, acquitting the respondents [A1, A2 and A4] from all charges and setting them at liberty u/s.248(1) Cr.P.C.

2. The appellant filed the private complaint on the ground that she got married to A1 on 21.02.1986 and after the marriage, she was living with A1 in a joint family. A3 and A4 are the father-in-law and mother-in-law of the appellant. It is alleged that A1 to A3 harassed the appellant demanding dowry. At one stage, the appellant was sent back to her parents house and she started living with her parents.

3. The further case of the appellant is that in the year 2008, she came to know that A1 had a child and on enquiry, she was informed that the child born to A1 was through a marriage that was conducted between A1 and A2 and the child was born to A1 and A2 on 01.09.2003. When this was



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questioned by the appellant, she is said to have been abused and threatened by A1 to A4. Under these circumstances, the private complaint came to be filed by the appellant against the accused persons. According to the appellant, A1 and A2 committed offence u/s.494 IPC and A3 and A4 have committed offence u/s.494 r/w 34 IPC.

4. The appellant examined herself as PW-1 and another witness PW-2 was examined on the side of the appellant. Exs.P1 and P2 were marked.

5. The trial Court, on considering the facts and circumstances of the case and on appreciation of the available evidence, came to a conclusion that the offence has not been made out against the accused and accordingly, the accused persons were acquitted from all charges. Aggrieved by the same, this criminal appeal has been filed before this Court.

6. Heard Mr.M.Rajkumar, learned counsel for appellant and Ms.L.Margaret, learned counsel for respondents.



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7. The main ground that was urged on the side of the appellant is that Exs.P1 and P2, which are the birth certificates of the children born to A1 and A2, clearly establish that A1 had married A2 during the subsistence of the marriage with the appellant and thereby, the offence of bigamy has been committed by A1 and A2. Since A3 and A4 have solemnized the marriage between A1 and A2, they are liable to be punished u/s.494 r/w 34 IPC.

8. Section 494 of the Indian Penal Code reads as under:

"494. Marrying again during lifetime of husband or wife — Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception— This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge."



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9. In order to prove the charge of bigamy, the complainant, being the first wife, has not only to prove that she is lawfully married with the accused, she is also expected to prove that the accused has married for the second time. Therefore, the fact of second marriage is the crux of the offence of bigamy and unless the same is proved, the charge of bigamy will fail. Useful reference can be made in this regard to the judgment of the Apex Court in ***Lingari Obulamma v. L.Venkata Reddy and others* [AIR 1979 SC 848]**.

10. In the light of the settled law, this Court has to see if the appellant has established the second marriage between A1 and A2. In the present case, the appellant had married A1 on 21.02.1986 and hence, there is a lawful marriage between the appellant and A1 and the appellant is the legally wedded wife of A1. There is also no dispute with regard to the fact that the marriage was subsisting between the appellant and A1 and it was not dissolved in the manner known to law. Hence, the only other ingredient that has to be satisfied is that there was a marriage between A1 and A2.



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11. The appellant is attempting to prove the marriage between A1 and A2 by virtue of the birth certificates marked as Exs.P1 and P2. According to the appellant, these birth certificates show that A1 and A2 are the father and mother of the children, viz., Arunraja and Mohanapriyan. The question is whether these two documents by itself establish a marriage validly conducted between A1 and A2 ?

12. The marriage between A1 and A2 cannot be a matter of presumption and it has to be necessarily proved. This in view of the fact that there is a mandate to that effect u/s.494 IPC and while interpreting a penal law, the strict interpretation test must be applied. Hence, the marriage cannot be a matter of presumption or surmise and it has to be necessarily proved. Children born to a man and woman need not necessarily be as a result of marriage and it is enough if a man and woman live together. Insofar the children born out of such a relationship, they may look at the man and woman as their parents. However, law will not look at that relationship like how those children have looked at the man and woman and consider them to



be their parents. Therefore, if a document is relied upon to prove the factum of marriage, it must have a direct nexus to the fact of marriage. In other words, the document must relate only to the marriage between a man and woman and only then, it can be taken to be an evidence as a proof of marriage. The birth certificates, at the best, only prove that the children were born to A1 and A2 and it is definitely not a proof for valid marriage between A1 and A2. Exs.P1 and P2 that were marked on the side of the appellant does not have a direct nexus to the proof of marriage between A1 and A2 and at the best, it only proves that A1 and A2 are living together and out of such a relationship, two children were born. Criminal law does not admit proof on the test of preponderance of probability and the strict proof beyond reasonable doubt is the only determinative factor, which will ultimately establish the alleged offence.

13. While dealing with this question, the trial Court had carefully considered the evidence of PWs.1 and 2. In the first place, the trial Court found that there were contradictions between the evidence of PWs.1 and 2.



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That apart, both these witnesses were not able to prove that there was a marriage performed between A1 and A2. A marriage by itself cannot be proved by means of two birth certificates. It can be proved only by examining the witnesses and bringing some materials before the Court to satisfy that there was a valid marriage between A1 and A2. The Court below found that the same was not proved in the present case and such a finding rendered by the Court below does not suffer from any perversity and it is a possible view based on the evidence available on record.

14. The Apex Court in *N.Vijayakumar v. State of Tamil Nadu [2021 (1) MWN Crl. 602]* has categorically held that once the trial Court on assessing the materials acquits an accused and if it is a 'possible view', the same cannot be reversed in an appeal. An appellate Court can interfere only when there is a glaring infirmity in the appraisal of evidence or where the findings suffer from perversity.



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15. In the light of the above discussion, this Court does not find any ground to interfere with the judgment and order passed by the Judicial Magistrate I, Erode, in C.C.No.330/2010, dated 05.01.2015 and the same is hereby confirmed.

In the result, this Criminal Appeal stands dismissed.

15.03.2023

Index : Yes
Speaking Order / Non Speaking Order
Neutral Citation: Yes
gm

To
The Judicial Magistrate I,
Erode.



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N. ANAND VENKATESH, J

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