

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD
DATED THIS THE 18th DAY OF MARCH 2011
BEFORE
THE HON'BLE MR. JUSTICE V. JAGANNATHAN
CRL.A.NO.1091/2004

BETWEEN

JIJABAI W/O HEMANTHA RAO MOHITE
MAJOR, HOUSEWIFE
R/AT KUKNOOR VILLAGE
YELBURGA TALUK
KOPPAL DIST

... APPELLANT

(By Sri. M M SWAMY, ADV - ABSENT)

AND

1. HEMANTHA RAO MOHITE
S/O NINGAPPA MOHITE
45 YEARS
R/AT KUKNOOR VILLAGE
YELBURGA TALUK
KOPPAL DIST
2. GOURBAI @ JANIKIBAI
W/O HEMANTHA RAO MOHITE
MAJOR
R/AT KUKNOOR VILLAGE
YELBURGA TALUK
KOPPAL DIST

... RESPONDENTS

(By Sri. B. SHARANA BASAWA, ADV. FOR R-1)

SRI. K. KRISHNA, ADV FOR R-2 – ABSENT))

CRLA FILED U/S. 378 CR.P.C. BY THE ADVOCATE FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER PASSED IN C.C.NO.134/99 ON THE FILE OF THE JMFC., YELBURGA, DATED 8.4.04 ACQUITTING THE RESPONDENTS /ACCUSED FOR AN OFFENCE P/U/S. 494 OF IPC.

THIS APPEAL COMING ON FOR HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is preferred by the complainant aggrieved by the acquittal of the respondents by the Trial Court in respect of the offence punishable under section 494 of the IPC.

2. When the matter was called, none appeared for the complainant and learned counsel for the respondent No.1 is present. This matter is of the year 2004 and more than seven years have elapsed and under the above circumstances, this court is left with



no other alternative than to dispose of the case on merits after perusing the record and hearing the learned counsel for the respondent No.1.

3. In this connection this court takes into consideration the law laid down by the Apex Court in the case of *Bani Singh and Others vs. State of U.P (1996) 4 SCC 720*. The apex Court has held in the said case that the Appellate Court is not obliged to adjourn the matter if the appellant and his counsel are absent and the Court can dispose of the appeal after perusing the record and judgment of the trial Court. The relevant observation of the Apex Court in this regard are as under:

“It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. The law does not enjoin that the court shall adjourn the case if both the appellant



and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court. If the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused/appellant if his lawyer is not present. If the lawyer is absent, and the court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so.

Even if a case is decided on merits in the absence of the appellant, the higher court can remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted.”



4. Keeping the aforesaid principles in view, I have carefully examined the records of this case and the argument addressed by Sri. Sharanabasawa, learned counsel for R-1.

5. The prosecution case in short is that, the 1st respondent though having been married to the complainant in the year 1974 according to the custom prevailing in the community and eight years marital life being led by the couple, it is alleged in the complaint by the 1st wife that her husband i.e. A-1 took A-2 as his second wife and therefore the husband had committed the offence of bigamy punishable u/s 494 of IPC. On completion of investigation, the charge sheet was filed.

6. The respondents who are the husband and said to be the second wife of the husband denied the charge levelled against them by pleading not guilty and prosecution led the evidence by examining PWs 1 and 2 and documents Ex.P1 to P4 were produced. After



recording the statement of the accused, on behalf of the accused CW-2 and CW-3 were examined.

7. After evidence appreciation, learned Trial Judge was of the view that necessary ingredients of section 494 of IPC were not established by the prosecution and therefore the accused were acquitted.

8. Submission made by the learned counsel for R-1 is that, the judgment of acquittal calls for no interference because the Trial Court has found that the complainant came with the complaint after 12 years of the marriage of A-1 with A-2. Such a long delay in approaching the court was considered as a serious defect in the prosecution case. Secondly, the Trial Court also took note of the evidence of PWs 1 and 2 wherein the said witnesses have failed to state that the marriage of A-1 with A-2 took place in accordance with the custom and traditions prevailing in the family, in as much as, though the witnesses have stated that there is



a custom of "Saptapadi" ceremony, in the evidence they do not speak about any "Saptapadi" ceremony having taken place when A-1 is said to have married A-2. As such, the Trial Court relying on the judgment of the Apex Court held that, the accused cannot be convicted u/s 494 of IPC for want of proving the requisite ceremonies necessary for the purpose of the marriage. The acquittal order therefore calls for no interference.

9. Having thus heard the learned counsel for the respondent No.1 and on going through the evidence on record, it is revealed that PWs 1 and 2 though speak about marriage of A-1 with A-2, they do not say in their evidence that "Saptapadi" ceremony was also performed. In the evidence of PWs1 and 2 they have stated that in order to perform the marriage, it is necessary that "Saptapadi" ceremony will have to be conducted. In the absence of the witnesses stating to the effect that A-1 and A-2 went through the "Saptapadi" ceremony, the question of A-1's marriage with A-2 being solemnized in



accordance with the essential ceremony applicable to the parties, does not arise. Learned Trial Judge has relied on several judgments of the apex Court and has held that to prove the second marriage, it is necessary to establish the essential ceremonies and if essential ceremonies are not established, conviction for bigamy will not be justified.

9. In the light of the said evidence on record and the complainant having failed to establish that there is a "Saptapadi" ceremony which prevails in her community, following the Apex Court decision reported in AIR 1991 S.C.816, when the performance of "Saptapadi" is not proved, the oral evidence of the witnesses is not sufficient to draw the inference as to the performance of ceremonies essential for a valid marriage and consequently the accused will have to be acquitted.



10. In the light of the aforesaid reasoning and Trial Court having referred to several decisions of the Apex Court from para.14 to 23 of its judgment, in the instant case, as the complainant has failed to establish the essential ingredients for a valid marriage viz., "Saptapadi" ceremony being performed, the question of the accused i.e. A-1 marrying A-2 in accordance with the customs of the family does not arise and therefore the Trial Court was justified in holding that the case has not been proved beyond all reasonable doubt in order to attract section 494 of IPC.

For the above reasons, this appeal lacks merit and is dismissed.

Sd/-
JUDGE

Dvr: