

Mohinder Singh

Vs

Gulwant Singh and others

Criminal Appeals Nos. 794 with 795 of 1991

(S. R. Pandian, M. S. Fathima Beevi, Yogeshwar Dayal JJ)

17.12.1991

JUDGMENT

1. Leave granted in both cases.

2. These two appeals arise out of a common order passed by the High Court of Punjab and Haryana in CrI. M.P. Nos. 3434M/91 and 3436-M/91 dated 17-5-91 whereby the High Court allowed these two petitions filed under Sec. 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and quashed the complaint filed by the appellant herein and all the subsequent proceedings arising thereon.

3. The appellant who is the brother of Jagjit Kaur filed a complaint before the Court of the Chief Judicial Magistrate of Jullunder alleging that while the matrimonial tie between Darshan Singh and his sister Jagjit Kaur is still subsisting, Darshan Singh performed a second marriage with Mohinder Pal and the respondents in both the appeals abetted and assisted the second marriage.

4. The Chief Judicial Magistrate took the statements of the complainant and three other witnesses including Jagjit Kaur under S. 202 of the Code. Of the witnesses examined, apart from the complainant and Jagjit Kaur, one was to prove the first marriage and the other was to prove the second marriage of Darshan Singh with Mohinder Pal. The learned Chief Judicial Magistrate on being prima facie satisfied that the offence of bigamy punishable under Ss. 494 and 494 read with S. 109, 1. P. C. is made out, issued process by his order dated 14-2-91 to all the eight accused arrayed in the complaint of whom seven are the respondents herein barring Darshan Singh (A-1) who was not a party in the proceedings initiated under S. 482, Cr. P.C., and directed all the accused to appear before him on 20-3-91.

5. All the respondents/accused herein, without appearing before the CJM approached the High Court by filing a petition under S. 482 of the Code praying to quash the proceedings as against them. It may be noted here that in Criminal Appeal No. 794 of 1991 (arising out of S.L.P. (Cri.) No. 2810/91), the respondents before the High Court were accused Nos. 2 to 5. In Criminal Appeal No. 795 of 1991 (arising out of S.L.P. (Cri.) No. 2784/91), the respondents were accused Nos. 6 to 8, namely Mohinder Pal and her parents. The High Court for the reasons given in its impugned order finally concluded as follows:

"Since there is no allegation of performance of lavans in the presence of Sri Guru Grant Sahib, amidst the chanting of hymns composed by Sri Guru Ram Dass Ji, the impugned complaint does not contain any allegation of the performance of the first marriage of Jagjit Kaur with Darshan Singh and of the second marriage of Mohinder

Pal with Darshan Singh. The impugned complaint, thus, does not show the commission of the offence under S. 494, I.P.C."

6. The learned Counsel appearing on behalf of the appellant strenuously contended that the marriage of Darshan Singh with Jagjit Kaur is a legally valid one and that Darshan Singh, while his marital tie with Jagjit Kaur is united and still validly subsisting, has performed the second marriage with Mohinder Pal and thereby Darshan Singh has committed the offence of bigamy. In proof of the second marriage of Darshan Singh with Mohinder Pal, he heavily relied upon the document Exh. PW-2/ 1.

7. Learned Counsel appearing on behalf of the respondents while fairly admitting the marriage between Darshan Singh and Mohinder Pal has denied only the marriage of Darshan Singh with Jagjit Kaur and added that he is not challenging the validity of the marriage of Darshan Singh with Mohinder Pal. Further, he has stated that it is true that an engagement did take place on 31-8-82 as regards the marriage proposal of Darshan Singh with Jagjit Kaur but no marriage was solemnised as per the Sikh rites in pursuance of the said engagement since Jagjit Kaur had left India for England. According to him, Jagjit Kaur has not mentioned the alleged fact of her marriage in her passport and that this very fact indicates that no marriage of Jagjit Kaur with Darshan Singh was solemnised.

8. Both the learned Counsel have cited certain decisions of this Court in support of their respective cases. Mr. S. S. Chadda, learned Counsel for the appellant in support of his submission that the enquiry under S. 202 of the Code is extremely restricted, drew our attention to the decision of this Court in *Smt. Nagawwa v. Vecranna Shivalingappa Konjalgi*, (1976) 3 SCC 736 : (AIR 1976 SC 1947), wherein the following dictum has been laid down (at p. 1951 of AIR):

"It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have."

9. Learned Counsel for the respondents strongly relied upon the decision of this Court in *State of Karnataka v. L. Muniswamy*, (1977) 3 SCR 113 : (AIR 1977 SC 1489), wherein Chandrachud, J. (as he then was) has pointed out that in the exercise of the wholesome power under Section 482 of the Code corresponding to S. 56 1 (A) of the Code of 1898 "the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed".

10. The decision in *Muniswamy's case* (AIR 1977 SC 1489), in our view cannot be availed of by the respondents because that decision was rendered by this Court while examining the powers of the Sessions Court to frame appropriate charges as warranted by the facts and circumstances of the case.

11. This Court as well as various High Courts in a catena of decisions have examined the gamut and significance of Section 202 of the Code and settled the principle of law, the substance of which is as follows:

The scope of enquiry under S. 202 is extremely restricted only to finding out the truth or otherwise

of the allegations made in the complaint in order to determine whether process should issue or not, under S. 204 of the Code or whether the complaint should be dismissed by resorting to S. 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under S. 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under S. 202 of the Code. To say in other words, during the course of the enquiry under S. 202 of the Code, the Enquiry Officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. Vide *Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar*, (1961) 1 SCR 1 (AIR 1960 SC 1113) and *Pramatha Nath Talukdar v. Saroj Ranjan*, 1962 Supp (2) SCR 297 : (AIR 1962 SC 876).

12. In the present case, the High Court appears to have exceeded the scope of the enquiry contemplated under S. 202 of the Code and has gone into the question of sufficiency of evidence for conviction of the offence of bigamy. Further, in view of the admission made by the learned Counsel for the respondents admitting before us the marriage of Darshan Singh with Mohinder Pal the conclusion arrived at by the Court in the impugned order that the complaint does not contain any allegation of the performance of the marriage of Mohinder Pal with Darshan cannot be sustained and is liable to be set aside.

13. Lastly relying on a decision of this Court in *Shanti Deb Berma v. Smt. Kanchan Prava Devi*, AIR 1991 SC 816, to which one of us (S. Ratnavel Pandian, J.) was a party, it was submitted by the learned Counsel for the respondents that in the absence of an allegation that the marriage of Darshan Singh with Jagjit Kaur was celebrated in accordance with the customs dispensing with the requisite ceremonies and usage applicable to the parties, the alleged first marriage should be held to have been not proved in the eye of law. This submission is not available to him at this stage because that can be determined only at the stage of the trial of the case.

14. However, on a thorough examination of the materials placed before us, we are of the view that there is no sufficient material for proceedings as against Lal Singh and Charanjit Kaur who are arrayed as accused Nos. 4 and 5 in the complaint as having abetted the offence of bigamy, though there is sufficient ground as against the rest of the respondents.

15. In the result, we set aside the impugned order of the High Court so far as the respondents other than respondents 4 and 5 are concerned and direct the trial Court to proceed with the case and expeditiously dispose of the same on the merits of the case without being influenced by any of the observations made by us in justification of this order.

16. Criminal Appeal No. 795 of 1991 (arising out of S.L.P. (Crl.) No. 2784/91) is allowed in its entirety and Criminal Appeal No. 794/91 (arising out of S.L.P. (Crl.) No. 2810/91) is allowed only in respect of Gulwant Singh and Balboa Singh, respondents 1 and 2 and dismissed in respect of Lal Singh and Charanjit Kaur. Order accordingly.

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