P. Satyanarayana and Another

Vs

P. Mallaiah and Others

Criminal Appeal No. 1635 of 1996

(M. M. Punchhi, K. T. Thomas JJ)

30.08.1996

JUDGMENT

1. Leave granted.

2. The wife-respondent filed a written complaint before the police under Section 494 of the Indian Penal Code which after investigation was put in Court for trial of the appellant as well as his alleged second wife, the second appellant. Charge was laid against him. In entering upon a plea against the charge, the husband-appellant stated :

> "True. I have not committed any crime. I have married after ten years of (sic) my wife deserted and went away."

His plea was sought to be read as if he had admitted having married a second time. The learned trial Magistrate recorded the prosecution evidence and came to the conclusion that there was no legal evidence to prove the factum of marriage on the basis of the tests laid down by this Court in Bhaurao Shankar Lokhande v. State of Maharashtra, [(1965) 2 SCR 837 : AIR 1965 SC 1564] Kanwal Ram v. H.P. Admn. [(1966) 1 SCR 539 : AIR 1966 SC 614] and Priya Bala Ghosh v. Suresh Chandra Ghosh [(1971) 1 SCC 864 : 1971 SCC (Cri) 362]. He thus acquitted the appellant. The High Court on a private revision by the wife-respondent, upset the order of acquittal mainly on the ground that there was an admission of the first appellant in response to the charge laid against him. The High Court therefore ordered a retrial.

3. In our view the High Court was in error in upsetting the well considered order of the trial Magistrate requiring due ceremonies of the alleged second marriage being proved so as to satisfy the tests laid down by this Court in the afore-referred cases. The plea of guilt afore-referred to could at best be understood to mean that the first appellant had taken a wife, but that admission did not necessarily mean that he had taken the second wife after solemnising a Hindu marriage with her after performing due ceremonies for the marriage. Such plea, which he need not have even entered upon, and which was ignorable by the Court, did not absolve the prosecution to otherwise prove its case, that the marriage in question was performed in a regular way so as to visit him with penal consequences. We therefore are of the view that a futile exercise has been enjoined upon the Magistrate by the High Court in ordering a retrial when the evidence, as it was, had been discussed and rejected threadbare. For these reasons, we think that the orders of the High Court would need upsetting, which we hereby do.

4. At the same time, we need record the statement of the learned counsel for the first appellant to the effect that the said appellant is a Class IV employee working in the State Board of Revenue,

fetching about Rs. 1600 per mensem as salary out of which, under court orders he pays, in an interim way, Rs. 400 per mensem as maintenance to the respondent-wife and his grown-up child. A genuine offer has now been made by the learned counsel to increase the said allowance, should the respondent-wife not persist in her claim in branding the first appellant as a bigamist; for if he were to get convicted and imprisoned, she would lose the maintenance altogether. We see the force of the argument. She cannot afford to kill the goose which lays the golden egg. Hard realities of the situation require that the first appellant is not deprived of his job so that he keeps providing the necessary wherewithal to the respondent-wife and his child, besides maintaining himself. Taking that into account, we should think that the appellant shall pay to the respondent and his child a sum of Rs. 800 per mensem as offered on these considerations as maintenance allowance operating with effect from 1-10-1996. We order accordingly.

5. For the afore-reasons, we allow this appeal, set aside the impugned orders of the High Court, while enhancing the maintenance payable to the respondent-wife and her child. The maintenance proceedings pending in the subordinate courts shall now be decided in tine with our order made hereinbefore.