
(1989) 10 AHC CK 0023
In the Allahabad High Court
Case No : Criminal Revision No. 2142 of 1985

Anwar Ahmad

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 27-10-1989

Acts Referred:

Penal Code, 1860 (IPC) — Section 494, 498
Special Marriage Act, 1954 — Section 43

Citation : (1991) CriLJ 717 : (1991) 1 DMC 285 : (1991) 2 RCR(Criminal) 481

Hon'ble Judges : S.I. Jafri, J

Bench : Single Bench

Advocate : N.K. Sharma, S.D.N. Singh and Viresh Misra, for the Appellant;
A.G.A., for the Respondent

Judgement

S.I. Jafri, J.—The instant revision by Anwar Ahmad Applicant thereby impugning his conviction u/s 494/109 was admitted on the question of sentences only.

2. Initially, the applicant aforesaid was prosecuted u/s 494, 109 and 199 I.P.C. and he was tried by Sri Suresh Chandra, Chief Judl. Magistrate Aligarh in Criminal Case No. 802 of 1988 Usman Khan v. Anwar Ahmad. The learned Chief Judicial Magistrate upon a consideration of the materials on record, recorded a finding of conviction u/s 494 I.P.C. against the applicant and sentenced him to undergo R.I. for three years. However, the learned Magistrate purged the applicant of the charge u/s 199 I.P.C. Aggrieved by the order, the applicant went up in appeal before the Sessions Judge, Aligarh which came to be heard by II Addl. Sessions Judge, Aligarh, who by his judgment and order dated 17-10-85 dismissed the appeal and affirmed the conviction and sentence awarded to him by the trial court.

3. The facts of the case are that applicant Anwar Ahmad contracted a second marriage on 9-5-1981 with one Nusrat Sultana alias Shirin under the Special Marriage Act vis-a-vis the fact that his former wife Smt Hasin Begum who was married to the applicant according to Mohammadan Law, was alive and further

that while contracting second marriage, he had filed a false affidavit and declaration concealing the factum of his previous marriage.

4. I have taken through the judgment and order of the courts below. As an abundant caution, I have re-appraised the facts and evidence on record qua the fact that it merited no re-appraisal as the revision itself was admitted on the question of sentence alone. From the evidence produced by the prosecution consisting of Smt. Hasin Begum and her father namely Usman Khan, complainant coupled with Nikahnama Ex. Ka-1 vouchsafing the marriage of the accused with Smt. Hasin Begum, it is amply borne out that the applicant contracted his first marriage with Smt. Hasin Begum.

5. I have carefully scanned the evidence of Smt. Hasin Begum. SBjs has clearly stated in her evidence that she was married to the applicant in accordance with Muslim rites as ordered in Islam through a valid Nikahnama and that the amount of Mahar was fixed at Rs. 5000/- and this amount tallies with the amount shown in the Nikahnama Ex. Ka. I.I have also gone through her cross-examination and not a single word in her cross examination was put to her questioning her marriage with the applicant. In contrast, a suggestion was made that she had consented to the second marriage contracted by the applicant with the Shirin. However, the suggestion posed to the witnesses has been oppugned by them that Smt. Hasin Begum had at all consented to contracting of second marriage by the applicant. The applicant's defence is not one of denial in so far as his first marriage with Smt. Hasin Begum is concerned and it is established beyond reasonable doubt that Smt. Hasin Begum was a legally wedded wife of the applicant whose marriage preceded the second marriage of the applicant under Special Marriage Act with Smt. Shirin. Hence the finding of the trial court in so far as it held that Smt. Hasin Begum was the legally wedded first wife of the applicant merits no interference.

6. Now I proceed to traverse upon the defence taken by the applicant. As observed above, the applicant has admitted his second marriage in his statement recorded by the Magistrate to the effect that he had contracted a second marriage with Smt. Shirin on 25-9-1984 by reason of the fact that his religion contemplates four marriages. The factum of second marriage of the applicant with Smt. Shirin is also proved by Sri Sudhakar Pachauri PW 2, who is the marriage officer appointed under the Special Marriage Act. This witness has dwelt in detail about the fulfillment of the entire procedure for contracting marriage as contemplated under Chapter III of the Special Marriage Act. Under the circumstances, the factum of a second marriage of the applicant with Smt. Shirin under Special Marriage Act on 9-5-1984 cannot be impeached. Now the entire controversy boils down to a short question for being determined whether the second marriage of the applicant solemnised under the Special Marriage Act vis-a-vis his earlier marriage solemnised under Mohammedan Law amounts to bigamy punishable u/s 494 I.P.C. To facilitate understanding of the correct position in law, it would be useful to quote Section 43 of the Special Marriage Act

1954 as below :--

"Penalty on married persons marrying again under this Act--Save as otherwise provided in Chapter III, every person who, being at the time married procures a marriage of herself or himself to be solemnised under this Act shall be deemed to have committed an offence u/s 494 of the Indian Penal Code (Act XLV of 1860), as the case may be, and the marriage so solemnised shall be void".

Another controversy for determination is midwife. It is with regard to the fact whether the provisions of Special Marriage Act take precedence over the personal law.

7. In the conspectus of the above discussions, the conclusions filtering from the above discussions are that the applicant has committed the offence which pushes him within the ambit of Section 494 I.P.C. At the risk of reiteration, I may observe that it is no doubt true that personal law applicable to Muslims in India do contemplate of four marriages by a muslim male. Notwithstanding the fact that personal law permits a Muslim male to contract four marriages, if a second marriage is contracted under the Special Marriage Act 1954 vis-a-vis the fact that a muslim male has a legally wedded wife who has been married to him under the Mohammedan Law, Section 494 I.P.C. has to claw at the erring male. The applicant cannot take refuge behind the fallacious contention that he had contracted the second marriage with a Muslim woman by virtue of the exceptions enshrined in Mohammedan Law. Mohammedan Law does not claim precedence over Special Marriage Act 1954 keeping in view that the applicant solemnised his first marriage under Mohammedan law and he contracted his second marriage under Special Marriage Act. There being no saving clause for the applicant to purge him of the charges u/s 494 I.P.C. I feel that the applicant is liable to be punished u/s 494 I.P.C.

8. Upon a consideration of the facts and circumstances discussed above, the conviction of the applicant recorded u/s 494 I.P.C. by the courts below is liable to be affirmed. At this stage, the learned counsel for the applicant commiseratingly submitted to this court that the applicant has already undergone imprisonment for six months. It is next submitted that the offence relates back to the year 1981, and by reason of the fact that the applicant stands convicted for the offence u/s 494 IPC if he is sought to be recommitted to prison in order to serve out the sentences, it would visit upon the applicant and his family with detrimental consequences. In this view of the matter the learned counsel has sought indulgence of this court in taking a lenient view of the matter in so far as the offence under which he stands convicted goes. I also feel that the offence relates back to the year 1981 and much water has flowed down the Ganges. I also feel that applicant has already languished in jail for a period of six months and hence substantial justice has been done and I see no reason to impose retributive punishment just to satisfy certain provisions of law. In view of the fact that conviction recorded against the applicant is there, blemish which goes with the conviction for the offence u/s 494 I.P.C. is also there and the applicant has

already suffered imprisonment for six months which I think has justifiably meets the ends of substantial justice, I do not propose to cling to the sentence imposed by the trial court upon the applicant. Hence I propose to reduce the sentence recorded against the applicant to the period of imprisonment already undergone by him.

9. In the result, the revision is partly allowed. The conviction recorded against the applicant u/s 494 I.P.C. is affirmed. However, the sentence of three years recorded by the trial court against the applicant is reduced to the period of sentence already undergone by him. The applicant is on bail. He need not surrender and his bonds stand discharged.