
(1982) 02 BOM CK 0002
In the Bombay High Court
Case No : Criminal Appeal No. 266 of 1979

Chhababai Patil

APPELLANT

Vs

Chindu Shankar Patil and Others

RESPONDENT

Date of Decision : 03-02-1982

Acts Referred:

Hindu Marriage Act, 1955 — Section 5
Penal Code, 1860 (IPC) — Section 109, 494

Citation : (1982) 1 BomCR 507

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : R.V. Desai, for the Appellant; S.B. Patil, V.A. Gangai and D.P. Shah for respondents 1 to 6, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Pendse, J.—Twenty three accused were initially charged before the Judicial Magistrate, First Class, Sakri for having committed an offence under sections 494 and 494 read with section 109 of the Indian Penal Code. These accused were prosecuted by complainant Chhababai on the allegations that accused No. 1, her husband had contracted a second marriage with accused No. 2 on May 23, 1975 at village Balsane in sakri Taluka of Dhule District. The complaint was lodged on August 7, 1975. The trial Magistrate framed charges only against accused Nos. 1 to 4 and 11 and 12. The complainant led the evidence of Vishnu Ratan (P.W. 2) and Paraji Vishwanath (P.W. 3) in support of her case in addition to examining herself at the trial. The defence of the accused was one of denial. The trial Magistrate, after considering the evidence, recorded an order of acquittal in favour of the accused on July 26, 1978. Being aggrieved by that order, the complainant has filed the present appeal.

2. Shri Desai, the learned Counsel appearing in support of the appeal very strenuously urged that the evidence on record is more than sufficient to warrant a conviction of the respondent-accused. It is not possible to accept this

submission. The evidence of Chhababai, the complainant is of no assistance because she was not present at the time of the alleged second marriage and her complaint is based upon what Vishnu Ratan (P.W. 2) informed her. The only relevant evidence on record about the fact of second marriage is of Vishnu (P.W. 2) and Paraji (P.W. 3). Vishnu deposed that accused Nos. 1 and 2 contracted a marriage in the temple of Kanbai on May 23, 1975 at about 11 A.M. in morning. Vishnu deposed that the marriage was performed as per the Hindu religious rites and accused Nos. 1 and 2 took 5 to 7 rounds and the Brahmin chanted mantras. Paraji (P.W. 3) deposed that he was present at the marriage and the Brahmin performed the religious ceremonies and Mangalashtakas were chanted and Saptapadi were performed. Accepting the evidence of these two witnesses in its entirety, it is difficult to hold that accused No. 1 has contracted a second marriage. It is now well settled by the decision of the Supreme Court reported in Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another, in the case of Bhaurao Shankar Lokhande and another v. The State of Maharashtra & another, that before a conviction u/s 494 of the Indian Penal Code is recorded it must be established that the second marriage was performed in accordance with the provisions of Hindu Law. The two requisites which are essential for the purpose of a valid and legal marriage are the invocation of Home and Saptapadi. Both Vishnu and Paraji have not stated about the Home being performed at the time of alleged second marriage. In absence of these mandatory requirements before a valid marriage could be contracted, the trial Magistrate was perfectly justified in holding that the complainant has failed to establish that accused No. 1 mandatory requirements before a valid marriage could be contracted, the trial Magistrate was perfectly justified in holding that the complainant has failed to establish that accused No. 1 contracted a valid and legal marriage with accused No. 2. In my judgement the finding recorded by the trial Magistrate on the strength of the evidence is correct and requires no interference in this appeal. The appeal preferred by the complainant is without any substance and must fail.

3. Accordingly, the appeal is dismissed and the order of acquittal is confirmed.