

**(2019) 01 JH CK 0139**

**In the Jharkhand High Court**

**Case No :** Letter Patent Appeal No. 566 Of 2017, 432 Of 2018, I.A. No. 7783, 7789 Of 2018

Meera Soren widow And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

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**Date of Decision :** 15-01-2019

**Acts Referred:**

Indian Penal Code, 1860 — Section 323, 494, 498  
Code Of Criminal Procedure, 1973 — Section 125

**Citation :** (2019) 01 JH CK 0139

**Hon'ble Judges :** Aniruddha Bose, CJ;Ratnaker Bhengra, J

**Bench :** Division Bench

**Advocate :** A.K. Choudhary, S.K. Mishra, D.K. Pathak, Shashi Kant Mishra, Sumir Prasad, S.K. Agarwal

**Final Decision :** Disposed Of

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## **Judgement**

Aniruddha Bose, CJ

1. Learned counsel appears on behalf of the respondent nos. 7 and 8 waives service of notice on their behalf. So far as respondent no. 9 is concerned, appearance by learned Advocate has already been made.

I.A. No. 7783 of 2018 in L.P.A No. 432 of 2018

2. I.A. No. 7783 of 2018 is an application for condonation of delay of 8 days in filing this appeal.

3. Having gone through this application, we are satisfied that the appellants were prevented by sufficient cause in preferring this appeal within time. We accordingly condone the said delay.

4. I.A. No. 7783 of 2018 stands allowed.

L.P.A. No. 566 of 2017 & L.P.A. No. 432 of 2018.

5. These two LPAs arise out of the claims of two ladies for retiral benefits of one Parmeshwar Hansda, a deceased employee of Jharkhand Government. Both of them have staked their claims as widows of said Parmeshwar Hansda. During his life time he was an assistant teacher and passed away while in service. The appellant in L.P.A. No. 566 of 2017 is one Meera Soren, who admittedly was legally- wedded wife to the deceased employee. Her claim for death-cum-retiral benefits was originally held back by the employer. She had filed a complaint case registered as P.C.R. Case No. 116 of 1995 alleging offences, inter alia, under Sections 494 and 498 A of the Indian Penal Code against her deceased husband. A criminal case, registered as Cr. Misc. Case No. 15 of 1995/306 of 2003 was also instituted by her for maintenance under Section 125 of the Cr. P.C. She had approached the employer for grant of post retiral benefits and compassionate appointment to her son Manoj Hansda. Her writ petition registered as W.P.(S) No. 2444 of 2014 was dismissed by the learned First Court, inter alia, holding:-

"4. Whether the petitioner is the legally-wedded first wife of the employee-Parmeshwar Hansda or respondent no. 7 is the legally-wedded wife of the employee-Parmeshwar Hansda, is an issue which cannot be decided in the writ proceeding, in particular, when the petitioner has failed to produce an indisputable document establishing that she is the legally-wedded wife of the employee-Parmeshwar Hansda. In her representation dated 06.04.2013 allegedly submitted to the Deputy Commissioner, Deoghar, the petitioner has addressed respondent no. 7 in most abusive term "Rakhail". In my opinion writ petition at the instance of the petitioner who has used such inappropriate term shall not be entertained."

L.P.A No. 566 of 2017 originates from the said writ petition.

6. The appellants in L.P.A. No. 432 of 2018 are one Sarojni Hembram who claims to be the second wife of the deceased employee and Manoj Hansda, his son. The latter seems at present to be living with Sarojini Hembram only. Appellant no.2- Manoj Kumar Hansda, admittedly was born within the wedlock of Parmeshwar Hansda and Meera Soren.

7. We are apprised in course of hearing by the learned counsel appearing for the appellant-Meera Soren that she has a daughter, Manisha Hansda who is living with her only.

8. Sarojni Hembram also had lodged claim the benefits as widow of Parmeshwar Hansda. Her case is that there was divorce between Parmeshwar Hasda (since deceased) and Meera Soren under the customary Santhal law on 31st August, 1994 and thereafter, he was married to Sarojani Hembram on 4th July, 1995.

9. So far as Sarojani Hembram is concerned, she has relied on the judgment delivered in the complaint case filed by Meera Soren which was eventually dismissed. In the judgment delivered on 16th November, 2011, it was, inter alia held:-

"32. बचाव पक्ष की ओर से संथाल परगना गजेटियर के पृष्ठ संख्या-934 को उद्धृत करते हुए कहा गया कि संथाली समाज यद्यपि कि एक विवाह की व्यवस्था के सिद्धांत पर आधारित है, किन्तु पहली पत्नी के जीवनकाल में दूसरी शादी करने की व्यवस्था भी संथाली समाज में है। विद्वान अधिवक्ता की ओर से पेज-934 पर अंकित किए गए विषय को उद्धृत करते हुए कहा गया है कि दूसरी पत्नी भी परिवार में सम्मिलित होती है तथा उसके बच्चे तथा पहली पत्नी के बच्चे समान रूप से माने जाते हैं। यद्यपि कि विद्वान अधिवक्ता ने स्वीकार किया कि दूसरी पत्नी लाने की व्यवस्था कुछ परिस्थितियों में है। विद्वान अधिवक्ता की ओर से संथाल परगना गजेटियर-937 को उद्धृत करते हुए यह बहस किया कि संथाली समाज में तलाक की व्यवस्था है और तलाक के अपने नियम हैं। विद्वान अधिवक्ता की ओर से माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित विधि-व्यवस्था 2001 ए.आई.आर. सुप्रीम कोर्ट पेज-938 डाक्टर सुरजमनी स्टेला कुजुर प्रति दुर्गा चरण हांसदा को उद्धृत करते हुए यह कहा गया कि जब तक प्रथा में किसी बात का अपराध होना स्थापित न हो तब तक किसी व्यक्ति को प्रथा का अनुसरण न करने के लिए दोषी नहीं माना जा सकता। बचाव पक्ष की ओर से किए गए तर्कों के प्रकाश में अभिलेख पर उपलब्ध साक्ष्यों को देखने से मैं यह पाता हूँ कि परिवादिनी की ओर से ऐसा कोई साक्ष्य या व्यवस्था अभिलेख पर नहीं लाया जा सका है कि पहली पत्नी के जीवनकाल में दूसरी शादी करने पर संथाली समाज और परंपरा में कोई अपराध माना जाता है और यदि अपराध माना जाता है कि तो उसके लिए क्या दण्ड है। परिवादिनी ने अपने परिवाद पत्र में कहीं भी ऐसा वर्णन नहीं किया है कि संथाली प्रथागत नियमों के अनुकूल दूसरी शादी निषिद्ध है। माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित विधि-व्यवस्था 2001 सुप्रीम कोर्ट पेज-938 में कण्डिका-13 में यह सिद्धान्त प्रतिपादित किया है कि दूसरी शादी को शून्य साबित करने के लिए यह विषय लाना आवश्यक है कि प्रथा में ऐसे नियम हैं जिसके अनुरूप दूसरी शादी शून्य है। इस प्रकार अभियोजन इस मामले में इस बिन्दू पर भी ऐसा कोई साक्ष्य नहीं ला सका है कि संथाली समाज में पहली पत्नी के जीवनकाल में दूसरी शादी को शून्य माना गया है और पहली पत्नी के जीवनकाल में दूसरी शादी संथाली प्रथा के अनुसार अपराध की श्रेणी में आती है। अभिलेख पर उपलब्ध साक्ष्यों के अनुसार अभियुक्त ने संथाली प्रथा के अनुरूप परिवादिनी के साथ छोड़ा-छोड़ी किया और उसके तलाक के पश्चात् उसने दूसरी शादी किया और इस प्रकार मैं यह पाता हूँ कि परिवादिनी इस मामले में इस विषय को भी साबित करने में सफल नहीं हुई है कि अभियुक्त के द्वारा की गई शादी भा.द.वि. की धारा-494 के अधीन अपराध की कोटि में है।

33. उपरोक्त सभी विवेचना के आधार पर मैं इस निष्कर्ष पर पहुँचता हूँ कि परिवादिनी अभियुक्तगण के विरुद्ध भा.द.वि. की धारा-498ए, 323 या 494 के अधीन अपराध साबित करने में सफल नहीं हुई है। तदनुसार अभियुक्तगण इस मामले में दोष मुक्त किए जाने योग्य हैं अतः अभियुक्त परमेश्वर हांसदा, चंद्र मौलेश्वर हांसदा, सरोजनी हेम्ब हेम्ब हंनू टुडु एवं काली दास हेम्ब को दोष मुक्त किया जाता है तथा उन्हें बंधपत्र और प्रतिभू के दायित्व से उन्मोचित किया जाता है।"

"32. Referring page no.-934 of Santhal Pargana Gazette, it is submitted on behalf of defence that the Santhali Society is, although based on the principle of system of a marriage, but there is provision of second marriage during the lifetime of first wife in Santhali society. It is submitted on behalf of learned advocate by referring the subject mentioned at page no. 934 that the second wife is also included in the family and her children are considered similar to the children of first wife. Although the learned advocate accepted that, there is provision for bringing second wife under some circumstances. Referring page no.-937 of Santhal Pargana Gazette, it is argued on behalf of learned advocate that there is provision for divorce in Santhali society and have own rules for divorce. Referring to the law established by the Hon'ble Supreme Court, A.I.R. 2001, S.C. Page no. 938, Dr. Surajmani Stella Kujur Vs. Durga Charan Hansda, it is submitted on behalf of learned advocate that unless any matter establishes a crime in any custom till then any person cannot be considered guilty for not following the customs. In the light of the argument advanced on behalf of the

defence, I find on perusal of the evidence available on record that no such evidence or provision brought on record by the complainant that second marriage during the life time of the first wife is considered as a crime in Santhali society and customs and if it is considered a crime then what are punishments for the same. The complainant has nowhere mentioned in her complaint petition that the second marriage is prohibited as per the Santhali customs and rule. This principle is established at para-13 in page no. 938 S.C. 2001 by the Hon'ble Supreme Court that for proving the second marriage to be nullity it is necessary to raise this subject that such rules are available in the customs, according to which the second marriage is nullity. In this way, the prosecution in this matter has not been able to bring any such evidence on this point that in Santhali society the second marriage is considered to be void during life time of the first wife and according to the Santhali custom the second marriage during life time of the first wife comes under the category of crime. According to the evidences available on record, the accused deserted the Complainant as per the Santhali customs and after divorce from her he solemnized second marriage and in this way, I find that the complainant is not successful in proving this issue in this matter that the marriage performed by the accused comes under the category of crime U/s 494 of I.P.C.

33. On the basis of all above analysis, I arrive at the conclusion that the complainant has not been successful in proving the crime under section 498A, 323 or 494 of I.P.C. against the accused persons. Accordingly, the accused persons are fit to be acquitted in this case. Therefore, accused persons namely Parmeshwar Hansda, Chandra Mauleshwar Hansda, Sarojini Hembrom, Pothal Hembrom, Henu Tudu and Kali Das Hembrom are acquitted and they are relieved from the liabilities of their respective bail bonds and securities."

(translated version)

10. On the other hand, learned counsel appearing for the Meera Soren relies on a decision in the maintenance application in which the Family Court held;

"12. As I have discussed above, the petitioner is the legally wedded wife of the opposite party and from their wedlock there is two children. It has come in the evidence of the witnesses examined on behalf of the opposite party itself that he is a school teacher by which he is getting a salary, apart from this, he has got agricultural land also. It has also come in the evidence of the witnesses that the petitioner is residing with her father and she has got no independent income to maintain herself and her children. Therefore, being the husband of the petitioner and father of the children the opposite party who has got sufficient means of income is liable to give the maintenance amount to the petitioner."

11. The writ petition of Sarojni Hembram was dismissed by the learned First Court, inter alia, holding;

"5. Reference of the judgment in Complaint Case No.116 of 1995 which has been finally dismissed by an order dated 16.11.2011, in my opinion, would not confer

the status of legally married wife of the employee-Premeshwar Hansda on petitioner no.1. This complaint case was filed for prosecution of the said Premeshwar Hansda for committing offence under section 494, 498A and 323 I.P.C. The trial judge, while holding that it has not been established that second marriage of the accused-Premeshwar Hansda in the life time of the first wife would be an offence, finally held that the said accused cannot be prosecuted for offence under section 494 I.P.C. In fact, judgment in Complaint Case No.116 of 1995 proceeds on the premise that the petitioner no.1 has admitted that her marriage with the employee-Premeshwar Hansda was performed on 04.07.1995, during life time of the first wife. May be the petitioner no.1 has taken a stand that her marriage was performed after the employee-Premeshwar Hansda divorced his first wife namely, Meera Soren on 31.08.1994 under the customary Santhal law, the issues whether marriage of the petitioner no.1 with employee-Premeshwar Hansda is valid or not and whether she can be treated as the legally wedded wife of the said employee are the issues which can be decided by a competent court of civil jurisdiction. This issue cannot be decided by a criminal court and this issue cannot be conclusively decided in a writ proceeding. On the plea that the petitioner no.1 has been made a nominee by the employee in his G.P.F form, suffice would be to indicate that nomination by itself does not confer a status upon the nominee. All that a nominee in law is entitled to, is to receive the amount of the provident fund and the nominee ipso-facto does not become the owner of property, that is, provident fund.

6. In view of the serious dispute on the status of the petitioner no.1 and said Meera Soren and the fact that the status of the parties cannot be determined in a writ proceeding, no direction for payment of post-retiral benefits to the petitioners can be issued. Insofar as claim for compassionate appointment to the petitioner no.2 is concerned, it is pertinent to record that no evidence, particularly documentary evidence, has been produced by the petitioners to establish that he is the son of the employee-Premeshwar Hansda. It is not the claim of the petitioners that name of petitioner no.2 appears in the service record of the employee. In this state of pleadings and evidence, no direction for compassionate appointment to petitioner no.2 can be issued."

12. Though there are some observations in the decisions of the Judicial Magistrate in the criminal proceeding and by the Family Court in the action for maintenance about the status of respective appellants, there is no definite finding upon consideration of evidence that Meera Soren was divorced by the deceased employee under the customary Santhal Law. In the judgment under appeal delivered in Sarojni Hembram's writ petition (W.P.(S) No. 1261 of 2014), the learned First Court opined that a dispute of this nature can only be decided by a competent Court of civil jurisdiction. We do not find any reason to interfere with this finding. The parties are at liberty to approach a competent Court of civil jurisdiction for determination of their status. So far as the individual claim for death-cum-retiral benefits are concerned, the same shall be guided by the decree or order that may be passed by a Court of competent civil jurisdiction, if

any such action is brought. So far as the question of compassionate appointment is concerned, both the appellants want Manoj Kumar Hansda to be considered for engagement through that route. Let the authorities consider the question of compassionate appointment of appellant no.2- Manoj Kumar Hansda in L.P.A. No. 432 of 2018.

13. Both the appeals stand disposed of in the above terms and connected application (I.A. No.7789 of 2018) shall also stand disposed of accordingly. There shall be no order as to costs.