

(1962) 10 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Criminal Ref. No. 10 of 1962

Smt. Padi and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-10-1962

Acts Referred:

Hindu Marriage Act, 1955 — Section 11, 17, 5
Penal Code, 1860 (IPC) — Section 494, 495

Citation : AIR 1963 HP 16 : (1963) CriLJ 760

Hon'ble Judges : C.B. Capoor, J.C.

Bench : Single Bench

Advocate : K.C. Pandit, Govt., K.S. Sautha, on behalf of B. Sita Ram, for the Appellant; M.L. Aukta, for the Respondent

Judgement

C.B. Capoor, J.C.

1. This reference and reference No. 11 of 1962 have been made by the learned Sessions Judge Mahasu recommending that the charge framed against the petitioners for offences under Sections 494 and 494 read with Sections 109, 114 and 116, I. P. C., be quashed. Charges under the aforesaid sections were framed against Smt. Padi, Sarvashri Narainu, Chet Ram, Paras Ram, Kehru, Ram Dass and Dip Ram. Two separate applications in revision against the aforesaid order were filed one by Smt. Padi, Sarvashri Chet Ram, Paras Ram, Dip Ram and Ram Das and the other by Sarvashri Kehru and Narainu--which were disposed of by the learned Sessions Judge by a common judgment and I propose to dispose of both the references by this order.

2. Briefly stated the facts giving rise to these references were that Kharia was married to Smt. Mathi about 20 years back. On 8th Manghar 2017 B. after the coming into force of the Hindu Marriage Act 1955 he contracted a marriage with Smt. Padi. Shortly after the aforesaid marriage Smt. Padi left her husband's house and went to her parent's house and contracted marriage with Narainu respondent No. 2. The aforesaid Kharia filed a complaint against the petitioners

and two others. The learned Magistrate framed a charge for offences under Sections 494 and 494 read with Sections 109, 114 and 116, I. P. C. against the petitioners who filed two applications in revision against the aforesaid order and the learned Sessions Judge made the references under consideration.

3. It has not been disputed that the petitioner was married to Smt. Mathi about 20 years back or that she was alive at the time when he married Smt. Padi or that the last mentioned marriage took place after the coming into force of the Hindu Marriage Act 1955. Section 5 of the aforesaid Act inter alia provides that a marriage may be solemnized between two Hindus if neither party has a spouse living at the time of the marriage. Section 11 thereof lays down that any marriage solemnized after the coming into force of the Act shall be null and void and Section 17 emphasizes that any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party has a husband or wife living and applies the provisions of Sections 494 and 495 of the Indian Penal Code. The conjoint effect of the aforesaid sections is that if a marriage is solemnized after the commencement of the Hindu Marriage Act between persons either of whom has a spouse living at the time of the marriage the marriage is void and the provisions of Sections 494 and 495 are attracted to marriages between Hindus also. In the instant case it has already been noticed that at the time when the petitioner married Smt. Padi his wife Smt. Mathi was alive and there is thus no escape from the conclusion that the marriage between the petitioner and Smt. Padi was void. A thing which is void has no existence in the eye of law. Since in the eye of law the relationship of husband and wife did not exist between the petitioner and Smt. Padi her subsequent marriage with another person will not attract Section 494, I. P. C.

4. On behalf of the respondents it has been contended that unless Smt. Padi obtained a decree of nullity of marriage she had no right to marry another person and she was, therefore, liable to be, convicted of the offence u/s 494, I. P. C. The point missed by the learned counsel for the respondent is that Section 17 of the Hindu Marriage Act does not provide that Sections 494 and 495, I. P. C., will not be attracted unless a declaration as to nullity of marriage is obtained by either party to the marriage. According to Webster's New International Dictionary Second Edition "wife" inter alia means a woman united to a man in lawful wedlock. Thus if the marriage between the petitioner and Smt. Padi was not lawful legally she cannot be described to be wife of the petitioner.

5. On behalf of the respondents reliance has been placed upon a ruling of the Punjab High Court in the case of Mst. Payari Vs. Faqir Chand Alakha and Others, The facts of that case were that Smt. Piyari and Faqir Chand who were both Indian Christians were married in accordance with Christian rites about 7 years back. Faqir Chand contracted another marriage according to Hindu rites with Smt. Jito. Smt. Jito brought a complaint u/s 494, I. P. C., against her husband Faqir Chand as well as against his father and the second wife and her father Sarwan. The complaint was dismissed by the learned Magistrate on the ground

that the marriage between Faqir Chand and Smt. Jito was not valid according to law and as such Section 494, I. P. C., did not come into play. The matter was taken up in appeal and the order of the learned Magistrate Was set aside. The Hon"ble Court differing from the view of the Calcutta High Court in the case of Swapna Mukherjee Vs. Basanta Ranjan Mukherjee and Others, and relying upon the cases of Mt. Allah Di v. Emperor AIR 1928 Lah 844 (1), Sant Ram v. Emperor AIR 1929 Lah 713, Gurbaksh Singh v. Sham Singh 19 Pun Re 1876 Cr., In re Millard ILR 10 Mad 218 Emperor v. Lazar ILR 30 Mad 550 and Emperor v. Mt. Soni AIR 1936 Nag 13 and some English cases held that for an offence u/s 494, I. P. C, it was not necessary that the second marriage should be valid according to law and that what was required was that under the law the act of undergoing marriage during the life time of the husband or wife as the case, might be was void.

6. The ratio on which the aforesaid view is based is that if a marriage is contracted by either party to a marriage in the life time of the other party then in the very nature of things the second marriage would not and cannot be valid. The interpretation placed on the word "marries" as used in Section 494, I. P. C. cannot be a guide for the interpretation of the words "husband or wife" as used in that section. In the instant case it is not the case of either party that the marriage of Smt. Padi with Narainu was invalid (except for this that according to Kharia it was solemnized in his life time) and the rule of law laid down in Mst. Payari Vs. Faqir Chand Alakha and Others, is not attracted although I, with respect, find myself in agreement with it. It has been held in the cases of Usman v. Budhu AIR 1942 Sind 92 and Benodini Howladar and Another Vs. Emperor, that in order that an offence of bigamy can be committed, there must be at the time of the second ceremony of marriage a previous valid subsisting marriage.

7. The contention advanced on behalf of the respondents was put forward in the case of Channamma v. Dhalappa AIR 1958 Mys 147 and was repelled. It was held in the aforesaid case that the effect of Section 17 of the Hindu Marriage Act is to make Section 494 of the Penal Code applicable to Hindus and that there was nothing in the Act forbidding a prosecution for an offence punishable u/s 494 of the Code not preceded by a declaration obtained under the provisions of the Act that the second marriage was void.

8. Thus on the proved and admitted facts no charge for an offence u/s 494, I. P. C., could legally be framed. If an offence u/s 494, I. P. C., is not made out against respondent No. 1 the other respondents could not be found to be guilty of having abetted the said offence.

9. I, therefore, accept the recommendation made by the learned Sessions Judge and quash the charges framed against the respondents. Let a copy of this order be placed on the record of Criminal Reference No. 11 of 1962.