
(2000) 01 KAR CK 0087
In the Karnataka High Court
Case No : Criminal Appeal No. 697 of 1995

Smt. Taramani

APPELLANT

Vs

B.N. Rajashekar and Others

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 395
Evidence Act, 1872 — Section 50
Penal Code, 1860 (IPC) — Section 494

Citation : (2000) 2 DMC 257 : (2000) ILR (Kar) 1309 : (2000) 3 KarLJ 188 :
(2000) 3 KCCR 1655

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Sri Mahantesh S. Hosmath, Sri G.V. Shamanna and Sri G.S. Nataraja
and Sri Mohan Shantanagoudar, State Public Prosecutor, for the Appellant;

Judgement

1. This appeal raises a pure point of law. The appellant's learned Advocate has demonstrated that the appellant who was the wife of Sri B.N. Rajashekar filed a complaint in the Court of the learned Munsiff and JMFC, Tarikere being C.C. No. 75 of 1992 alleging that the husband who was the original A-1 had gone through a ceremony of marriage with A-3 and that they are living as husband and wife and furthermore that they have one child born to them. The remaining four accused have been arraigned before the Court on the ground that they have abetted the commission of the criminal offence of bigamy on the part of the husband A-1 and A-3. Briefly stated, the defence pleaded by A-1 and A-3 was to the effect that they are only living together and that there is no evidence before the Court to the effect that they have committed the offence of bigamy. Basically, the Trial Court dismissed the complaint on the ground that the law on the point as far as Section 494, Indian Penal Code, is concerned has been expounded by the Supreme Court in the case of Kanwal Ram and Others Vs. The Himachal Pradesh Admn., and that this view has been followed by the Supreme Court in another decision in Smt. Priya Bala Ghosh Vs. Suresh Chandra Ghosh, and

thirdly, in the case of Lingari Obulamma Vs. L. Venkata Reddy and Others, . I also find that the Supreme Court has followed the law as laid down in these decisions in the case of Laxmi Devi (Smt) Vs. Satya Narayan and Others, . In all these cases, the view taken was that irrespective of what the nature of the other supportive evidence may be, that it is necessary to establish that the parties have not only gone through a proper ceremony of marriage but that the essential ingredients that constitute a valid marriage particularly the rituals that are to be performed depending on the community to which the accused belonged must be held to have been satisfied. For instance, since in all these cases the parties were Hindus the Court held that in the absence of its being established that the Saptapadi has been performed and in addition, in another case that the Datta Homa has taken place, that a conviction cannot be recorded as this is the actual proof of second marriage that is required. The complaint came to be dismissed and the accused have been discharged in view of the aforesaid legal position and the complainant wife has filed this appeal assailing the correctness of the dismissal order.

2. It was submitted before me that there is overwhelming evidence in this case of the fact that A-1 and A-3 have performed a second marriage and the first ingredient that the learned Advocate relied on is the fact that A-1 and A-3 are openly living together as husband and wife which fact has not been disputed but on the other hand, has been positively admitted insofar as A-1 contends that A-3 is living with him, but in the capacity of a "Mistress". The appellant's learned Advocate demonstrates to me that the marriage invitation has been produced and this would indicate that the A-1 and A-3 have publicly and openly solemnized a second marriage and that this invitation is proof of the fact that it has been made known to the local society many of whom were invited to the celebrations, that the two of them have contracted a second marriage. Next, what the learned Advocate points out to the Court is that A-1 and A-3 have a daughter and that having regard to the social set up in which they live and the aforesaid background namely the fact that the second marriage was publicly celebrated after which A-1 and A-3 have been living as husband and wife, that it is a circumstance on which the complainant can rely for purposes of establishing that a marriage has in fact taken place and that the couple are not merely living together. The strongest piece of evidence on which the appellant's learned Advocate relies are the letters in the handwriting of A-3 in which she in terms refers to A-1 as her husband and even uses the expression "Pathi Devaru" and his submission is that this is the strongest evidence of acknowledgement of the second marriage and the legal status of husband and wife and that A-1 and A-3 would therefore be estopped in law from contending otherwise at the Trial. Lastly, it is pointed out that as and by way of supportive evidence, the complainant has produced a letter from the friend of the husband who has been arraigned as A-6 wherein there is a clear statement that A-1 had requested him not to disclose about the second marriage to the complainant. Learned Advocate points out to me that but for the solitary requirement laid down in the aforesaid

decisions namely that apart from all this evidence for a conviction, it will have to be necessarily established through unimpeachable evidence that the essential ingredients of the second marriage namely the Saptapadi or the other rituals have taken place which fact also would have to be proved; that consequently the case has ended in favour of the accused. His further submission is that the complainant could not bear any children, that she was subjected to protracted physical and mental torture by A-1 who has even broken her nose on one occasion and dislocated her finger and permanently handicapped her after which she has been sent away from the matrimonial home and that her rights and status have been seriously endangered. He has projected a strong grievance that despite all this material, the accused has got away and is capitalising on the situation and he makes a strong plea that it is very necessary to reconsider the legal position particularly in cases of this type where the evidence is conclusive as otherwise, the complainant would not be in a position to secure justice. Learned Advocate has relied heavily on the decision in Laxmi Devi's case, supra, wherein the Supreme Court, realising the plight of the wife who has been displaced awarded a monetary compensation to her and he submits that for the time being, in keeping with decision the complainant should be awarded exemplary compensation. He points out to me that having regard to the economic status of the poor lady that she is not in a position to carry the case to the Supreme Court either by way of and appeal or a review but at the same time, he has made a strong plea to this Court that the issues and the question involved be placed before the Supreme Court with a request that the law on the point be reconsidered.

3. On behalf of the respondent-accused, the simple submission that is canvassed is that in the light of the law on the point which I have already referred to, that the Trial Court has rightly dismissed the complaint and that no other view is permissible. I have carefully gone through the facts of the cases referred to by me earlier and even though as inevitably happens, there is a variation particularly as far as the type or quality of evidence is concerned, but at the same time the law laid down by the Supreme Court is binding on this Court and all the subordinate Courts in the country and therefore, there is no option except to confirm the decision of the Trial Court which follows the Supreme Court judgment.

4. Section 395, Criminal Procedure Code makes provision for a reference to the High Court in situations where the validity of a rule or regulation is in dispute or where the law otherwise requires resolution. This section however will not enable the High Court to make a reference to the Supreme Court. The learned State Public Prosecutor has also fully supported the submissions canvassed by the appellant's learned Advocate, that the case be placed before the Supreme Court for reconsideration of the law as in this State alone, that as many as 167 accused persons have got away with the offence of bigamy and over 3,000 such prosecutions have failed all over the country on this point alone, the result being that bigamy can be committed with impunity. He added that because of the

technical requirement which is near impossible to fulfill that serious injustice is caused to the aggrieved wife. To my mind, where there is no specific provision, it would still be permissible for the High Court in exercise of its inherent powers, particularly since the interest of justice so requires, to forward the proceedings to the Supreme Court with the request that the law on the point be reconsidered. The reasons for this are briefly set out below:

(1) That in none of the decisions referred to has it been pointed out to the Court that the offence of bigamy being a serious one, understandably the parties who are desirous of entering into a second marriage while the earlier one is subsisting, for purposes of their own personal status or inter se protection would take the elementary precaution to ensure that they do not leave any detectable evidence of the ceremony. Bigamy is essentially an offence of a clandestine nature and it goes without saying that the aggrieved wife will never be one of the invitees at that marriage or celebration. None of her relations and friends would also be there nor will they be informed and invariably, a secret location and occasion will be chosen which is virtually impossible to trace out. Even if as a result of enquiries, it is possible to find out where the ceremony took place the chances of any of the witnesses or invitees coming forward to give evidence with regard to what transpired at the ceremony is remote and the same position applies as far as the celebrant of the marriage is concerned. In other words, the handicaps as far as the proving of the ceremony and the rituals are concerned are so overwhelming and experience has shown that in every one of the bigamy cases that are coming up before the Courts in the last few years that the charge has failed only because of this one head of evidence not being available. The end result of this situation is, as has happened in the present case that despite it being as clear as daylight that the couple has acted in breach of the provisions of law that they still continue to be immune from the consequences of that breach itself because of this requirement.

(2) There is a principle applicable to criminal trials that where direct evidence is not available or could not be procured, that the next best evidence such as circumstantial evidence, documentary evidence and even other indirect evidence can be adduced before the Court and one of the strongest heads of evidence is where admissions are relied upon by the prosecution, the settled position under English Law is that if the parties openly proclaim and acknowledge themselves to society as husband and wife, that they will be precluded from contending otherwise before a Court of law. Furthermore, if there is an acknowledgement inter se between the spouses and more importantly an acknowledgement to third parties then again, that acknowledgement will bind the parties to it. Even in cases of bigamy where the evidence indicates that the parties have acknowledged each other as husband and wife, that this acknowledgement binds them is a circumstance that can be used against them.

(3) The learned State Public Prosecutor draws the Court's attention to Section 50 of the Evidence Act regarding opinion as regards relationship and he points out

that the opinion expressed by conduct as to the existence of such relationship is not only relevant but that it is also admissible in evidence. While conceding that this may not be conclusive, he submits that it is a very important head of evidence which a complainant is entitled to rely upon.

(4) The learned State Public Prosecutor also brings it to the notice of the Court that there are several occasions such as where mass marriages are solemnised or situations where the parties quietly go to the Registering Authority and solemnize a marriage or where the parties clandestinely go to the institutions which are specialising in clandestine marriages, where no documents are retained wherein, it will be impossible to prove Saptapadi or any such rituals and he submits that in such a situation, it would really appear incongruous and a miscarriage of justice if the aggrieved wife who has been at the receiving end cannot obtain justice in the true sense and the parties who have breached the law and openly flouted it, are still immune from action.

(5) The learned State Public Prosecutor also demonstrates that marriage customs vary from community to community and from region to region but more importantly from religion to religion and that depending on the socio-religious set up, that there are many communities in which there is no Saptapadi or Homa or no special designated rituals and that in such situations complying with the requirements of proving offences u/s 494, Indian Penal Code, as laid down in the aforesaid decisions, would be an impossibility. It is his submission that having regard to all these factors, the Courts must review the legal position.

(6) Lastly, the appellant's learned Advocate made a strong plea to the Court that in the present case where the birth certificate of the child and even the service record of the A-3 in terms acknowledges a marriage, that it would be a travesty of justice if with this degree of evidence the accused cannot be convicted because of a technical requirement and he submitted that this case is the strongest ground on which a fresh look at the law is necessary. Since it is not permissible for this Court to do that as the decisions in question are all of the Supreme Court, the only option is to forward the case to the Supreme Court with a request that this be done.

5. In the light of the aforesaid position where there is enough of evidence other than proof of the actual solemnisation of the marriage and the rituals, the question that arises is as to whether the Court would be justified in relying on the presumptions and inferences that could clearly establish the case. These are aspects of the law which apparently were not placed before the Supreme Court when the aforesaid cases were decided and having regard to the consequences that emanate from the earlier judgments, it is eminently desirable both from the point of view of public interest and in order to do justice to the aggrieved party that the law on the point be reconsidered.

6. As far as the present proceeding is concerned, there is no doubt about the fact that the complainant is seriously aggrieved by what has happened and in keeping

with the decision of the Supreme Court in Laxmi Devi's case, supra, it would be necessary to compensate the complainant who is the appellant before me monetarily. The A-1 who is the R-1 to this appeal is directed to pay to the appellant a sum of Rs. 10,000/- as and by way of compensation which amount shall be deposited in the Trial Court within an outer limit of twelve weeks from today. If the amount is not deposited, the Trial Court to issue notice to the A-1 and afford him time of not more than three months to deposit the said amount failing which, the same shall be recovered from him. Notice shall thereafter be issued to the original complainant and the amount of Rs. 10,000/- shall be paid over to her.

7. The appeal succeeds to this extent and stands disposed of.

8. In view of the observations made in this judgment, the Registrar General to forward the proceedings in this case to the Registrar General of the Supreme Court at New Delhi with the request that the case be placed before the Court for purposes of reconsidering the law on the point.