

(2002) 08 PAT CK 0066
In the Patna High Court
Case No : Criminal Revision No. 630 of 1999

Upendra Singh

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Citation : (2002) 08 PAT CK 0066

Judgement

B.P.N. Singh, J.—After Sudama Devi (opposite party No. 2) was wedded to Upendra Singh (the petitioner) in the year 1984, her happiness was quite short lived, as though she was blessed with a child during their wedlock, the husband contracted another marriage with a lady, namely, Parmila Devi. The aggrieved wife sought prosecution of her husband and instituted a complaint case before the Chief Judicial Magistrate, Vaishali at Hajipur for sexual aberration of her husband and consequently for bigamy. At trial, she examined four witnesses, while defence too examined two witnesses. The defence of the petitioner at trial , was that since there was no second marriage, he could not be prosecuted for bigamy.

2. The explicit defence of the petitioner at trial was that said Parmila Devi who was said to be the second wife during subsistence of first marriage, was in fact married to his younger brother, Sunil Kumar Singh. The Trial Court, however, rejecting plea of innocence of the petitioner, convicted him and rendered finding of guilt u/s 494 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for a term of two years.

3. When aggrieved husband carried the matter in appeal Additional Sessions Judge, Vaishali too affirmed the finding of guilt, recorded by the Trial Court, in Criminal Appeal No. 29 of 1993.

4. At the outset the learned Counsel appearing for the petitioner not oblivious to concurrent finding of both the Courts below, leaving little scope for this Court, in revisional jurisdiction, to non est the finding has brought to my notice that even at the stage of appeal, pursuant to retoration of good feelings between the

parties, the petitioner placed on record petition of compromise duly testified by husband and wife in anticipation to remove deadlock in marital relationship of spouse, but unfortunately the Appellate Court, without little realising the sensitiveness of the situation, rejected petition of compromise, with observation that LTI of Sudama Devi put on the petition of compromise was not in conformity with her early thumb impression, which was on record. Learned Counsel for the petitioner urges that even when matter was taken up by this Court, at early stage, for admission, the parties put in a duly affidavited compromise petition on the record, and though it is not evidenced by the record of this Court, it is urged that even the wife entered her appearance through her Counsel and gave her accord and consent for compounding of offence. Learned Counsel for the petitioner would bring to my notice the celebrated judgment of the Apex Court of the land reported in *Narotam Singh Vs. State of Punjab and Another*, , in which considering prospect of restoration of conjugal relationship between the spouse, the Apex Court permitted compounding of offence, even though spouses were not living under the common roof, and saddled the husband to pay Rs. 40,000/- as compensation to the wife.

5. Learned Counsel urges that here situation is different before us, as both the husband and wife are living under the common roof and hence they invoked jurisdiction of this Court for composition of offence. The relationship between the spouse due to alleged bigamy had already been severed and now they on their own accord, have come together. They have spent their days under a common roof and I do feel that the punitive incarceration of the husband may not restore marital relationship between them and in these circumstances, the parties are permitted to compound the offence and as a consequence of that, the petitioner is acquitted of the charges, of which he was found guilty.

6. This revision petition is accordingly disposed of.