
(1988) 02 AHC CK 0035
In the Allahabad High Court

Usha Devi

APPELLANT

Vs

Jagdish Prasad and Another

RESPONDENT

Date of Decision : 12-02-1988

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 132
Penal Code, 1860 (IPC) — Section 120, 120B, 406, 494
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Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 132
Penal Code, 1860 (IPC) — Section 120, 120B, 406, 494

Citation : (1988) 1 AWC 702 : (1988) CriLJ 1239

Hon'ble Judges : V.P. Mathur, J

Bench : Single Bench

Judgement

V.P. Mathur, J.—A criminal complaint was filed by Jagdish Prasad (present opposite party against six persons namely (i) Ashok Kumar son of Bhajan Lal, (ii) Bhajan Lal, (iii) Smt. Shivarati wife of Bhajanlal, (iv) Sunderlal, (v) Bhagwan Dass, and (vi) Jagannath. It purported to be in connection with offences under Sections 494, 406 and 120 of the IPC. The allegations were that Smt. Santosh Kumari daughter of Jagdish Prasad complainant was married to Ashok Kumar on 10-5-1973 according to Hindu rites. From this wedlock a daughter was born in the year 1975-76 but she died immediately after birth. Bhajan Lal father of Ashok Kumar and Shivrati mother of Ashok Kumar as well as Ashok Kumar himself were constantly teasing Santosh Kumari and were pestering her. One widowed mausi of Ashok Kumar also lived in the family and she was responsible for creating ill-will between Ashok Kumar and Santosh Kumari. The accused entered into a conspiracy and settled a second marriage of Ashok Kumar with

Kumari Usha Devi daughter of Sunder Lal and in pursuance of this conspiracy, the marriage was performed on 6-7-1979. In this manner it was contended that all the accused have committed an offence punishable under Sections 494, 120 and 406 of the IPC. During the course of the hearing of this complaint, an application was moved by Jagdish Prasad before the Special Judicial Magistrate asking that Usha Devi daughter of Sunderlal may be summoned as a witness. An objection was raised that if she is summoned as a witness, then she will be deposing against her own interest and it will amount to compelling her to make a statement against herself. This objection was rejected by the learned Magistrate on 22-1-1981. A revision was filed and it was disposed of by the III Additional Sessions Judge of Etawah who rejected it on 23-10-1981. Now Smt. Usha Devi comes up through this petition u/s 482, Cr.P.C.

2. The learned Counsel has simply said that the position of Usha Devi is also that of an accused in view of the allegations of the complaint. The term accused has not been defined either in the Indian Penal Code or the Code of Criminal Procedure. The Chambers 20th Century Dictionary however defines "accused" as a person or persons who have been accused and "accused" has been defined as to bring a charge against. So far as Section 494, IPC, is concerned, this will not apply to the case of the present petitioner Usha Devi. It applies only to persons who marry again during the life time of the first spouse. The very words of this section are:

That whoever having a husband or wife living marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished....

Naturally it is nobody's case that Smt. Usha Devi had any other husband living when she allegedly married Ashok Kumar. Similarly with respect to the charges under Sections 120B and 406, IPC, there is no allegation against her in the Criminal complaint. She cannot, therefore, be said to be an accused. Once it is held that she is not an accused on either of these charges and she cannot be deemed to be an accused in respect of these charges, Article 20(3) of the Constitution of India will not be applicable to her case. This Cl (3) of Article 20 only grants immunity to an accused from being compelled to be a witness against himself. It protects a person accused of an offence against compulsion to be a witness against himself. It would not, therefore, extend to parties and witnesses in proceedings. Moreover, it will be very wrong to assume at this stage as to what statement Smt. Usha Devi will make when she appears before the learned Magistrate and whether her statement will in any way implicate her in any case in the future. Section 132 of the Indian Evidence Act is enough protection in such cases. It lays down that a witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or civil proceeding or criminal proceeding upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such

witness to a penalty or forfeiture of any kind.

Provided that no such answer which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

3. The proviso is a sufficient safeguard and nothing more is needed

4. In my opinion both the learned Magistrate and the learned Sessions Judge were justified in rejecting the objection raised by Usha Devi and in directing that she should attend the Court as a witness. There is no force in this petition which stands dismissed accordingly. The stay order passed on 23-12-1981 shall stand vacated.