

**Channamma Vs. Dhalappa**

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**SooperKanoon Citation :** [sooperkanoon.com/373201](http://sooperkanoon.com/373201)

**Court :** Karnataka

**Decided On :** Jan-30-1958

**Reported in :** AIR1958Kant147; AIR1958Mys147; 1958CriLJ1331; ILR1958KAR137; (1958)36MysLJ171

**Judge :** A.R. Somnath Iyer, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 494 and 495; [Hindu Marriage Act, 1955](#) - Sections 5, 11, 17 and 19

**Appeal No. :** Criminal Revn. Petn. No. 424 of 1957

**Appellant :** Channamma

**Respondent :** Dhalappa

**Advocate for Def. :** A. Shamanna, Adv.

**Advocate for Pet/Ap. :** K.V. Narayanappa, Adv.

**Judgement :**

ORDER

1. This revision petition arises out of A complaint filed by one Channamma who is the petitioner against her husband the respondent complaining that ho had committed an offence of bigamy punishable under Section 494 of the Penal Code. The Court below dismissed the complaint on the ground that it had no jurisdiction

to try the case. The view taken by the Court below was that an adjudication by the District Court under the provisions of the Hindu Marriage Act that the second marriage contracted by the accused as alleged by the complaint was void, was a condition precedent to the Magistrate taking cognisance of the complaint. The complainant has preferred this revision petition to this court against the order of the Magistrate dismissing her complaint.

2. It is urged by the learned Advocate for the petitioner that the view taken by the learned Magistrate that an adjudication by the Dist. Court under the provisions of the Hindu Marriage Act that the second marriage was void should precede a prosecution under Section 494 of the Penal Code is incorrect. It appears to me that this contention has to be accepted.

3. The Hindu Marriage Act contains no provision requiring any such adjudication by the District Court. On the contrary, Section 17 of the Hindu Marriage Act provides that any marriage between two Hindus solemnized after the commencement of the Act is void if at the date of such marriage either<sup>^</sup> party had a husband or wife living and that the provisions of Sections 494 and 495 of the Indian Penal Code shall apply accordingly. In other words, what that section provides is that if two Hindus married after the commencement of that Act and if at the date of such marriage either of them had a husband Or wife living, the marriage was void.

4. The contention of the learned Advocate for the respondent that the Hindu Marriage Act requires an adjudication by a Court that the second marriage is void before the person committing the offence of bigamy could be prosecuted for that offence does not appear to me to be sound. There is nothing in Section 19 of the Act which can be regarded as having reference to any petition which requires to be presented to the District Court under the provisions of that section for any declaration that a marriage which is expressly declared to be void by the provisions of Section 17 of the Act, requires to be further so declared by a Court on a petition presented under that section. It is also clear from Section 11 of the Act that it is not a declaration by a decree of nullity for which provision is made under that section that makes the second marriage void. On the contrary it is

Section 17 of the Act that makes such marriages void.

5. Clause (1) of Section 5 of the Act provides that a marriage may be solemnized between any two Hindus if the conditions specified in that section are fulfilled and one of those conditions specified in Clause (i) of that section is that neither party has a spouse living at the time of the marriage; and Section 11 of the Act provides that a marriage solemnized after the commencement of the Act shall be null and void if it contravenes any one of the conditions specified in Clauses (i), (iv) and (v) of Section 5.

6. If as stated by the complainant in her complaint the accused in this case had a wife living at the time of his marriage with Lakshamma, it is clear that as provided by Section 17 of the Hindu Marriage Act the marriage between the accused and Lakshamma is void. It may be open to the accused or Lakshamma the second wife, under the provisions of Section 11 of the Act to apply for a decree of nullity declaring that second marriage void. But the fact that either of those two persons is entitled to apply for such a decree does not mean that either the husband or the wife who has committed an offence punishable under Section 494 of the Penal Code by reason of his or her marrying again during the lifetime of his wife or her husband as the case may be cannot be prosecuted for that offence until a declaration is obtained under the provisions of Section 11 of the Act that the impugned second marriage was void.

7. It is, I think, clear that the effect of section 17 of the Act is to make Section 494 of the Penal Code applicable to Hindus. There is nothing in the Act forbidding a prosecution for an offence punishable under Section 494 of the Penal Code not preceded by a declaration obtained under the provisions of the Act that the second marriage is void.

8. That being so, in my opinion, the order of the Magistrate dismissing the complaint is unsupportable and has to be set aside. I do so and direct that he should now dispose of the case according to law.

9. Petition allowed.

