

Mahalingappa Vs. Kenchamma

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Court : Karnataka

Decided On : Sep-16-2004

Reported in : ILR2004KAR4689; 2004(7)KarLJ549

Judge : S.R. Bannurmath and ;S.B. Majage, JJ.

Acts : [Constitution of India](#) - Articles 141 and 142; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397 and 401; Indian Penal Code (IPC) - Sections 494

Appeal No. : Cri. R.P. No. 794/2001

Appellant : Mahalingappa

Respondent : Kenchamma

Advocate for Def. : S.B. Pavin, Amicus Curiae

Advocate for Pet/Ap. : R.B. Deshpande, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.R. Bannurmath, J.

1. This revision petition is referred by the learned Single Judge and as per the order of the Hon'ble Chief Justice to this Bench.

2. The facts leading to the present petition and reference are as follows:-

The respondent herein Smt. Kenchamma had filed a complaint before the learned JMFC, Hiriur, in C.C. No. 712/1997 to take criminal action against Sri Mahalingappa and others for the offences punishable under Section 494, 109 r/w 34 IPC, on the ground that the 1st accused Mahalingappa is the legally married husband of the complainant, their marriage having been solemnized on 2.1.1997 as per the Hindu Customs and Rights prevailing in their caste; that after the marriage having led marital life for a period of 4 months, accused went to Aladamarahatti village and thereafter on 3.5.1997 the complainant was informed that her husband and accused No. 2 got married with one Indramma at Kanive Maramma Temple and it is the case of the complainant that thereafter the accused came back to the house, wherein the complainant was residing along with Smt. Indramma accused No. 2 and informed the complainant that he has married her and then not only both started living there but also threw out the complainant from his house. As such while the marriage of the complainant with accused No. 1 was subsisting, his (accused No. 1) marriage with the 2nd accused amounts to bigamy and hence the complaint.

3. After taking cognizance against three accused and after recording the evidence, the learned Magistrate by the order dated 11.7.2001 though acquitted all the accused for the offences punishable under Sections 494 r/w 34 IPC, however awarded a compensation of Rs. 10,000/- to be paid by accused No. 1 to the complainant within one month from the date of order. It is this part of the order viz., awarding compensation inspite of acquittal by the Trial Court, the present revision petition is filed.

4. From the impugned order, it appears that even though the Trial Court felt that the complainant has failed to prove the case of commission of offence under Section 494 r/w 34 IPC, the award of compensation was just and proper in view of the decision of the learned Single Judge of this Court in the case of SMT. TARAMANI V. SRI B.N. RAJASHEKAR AND ORS., 2000(3) KCCR 1655. It is to be noted that the decision to award compensation almost in similar circumstances by the learned Single Judge of this Court was in turn based on the pronouncement

of the Apex Court in the case of LAXMI DEVI (SMT) V. SATYANARAYAN AND ORS., : (1994)5SCC545 . When the present revision petition was posted before the Court, the learned Single Judge (Justice M.S. Rajendra Prasad) felt that in LAXMI DEVI's case the Hon'ble Supreme Court has awarded compensation by exercising its jurisdiction under Article 142 of the [Constitution of India](#) and as the similar jurisdiction under or similar to Article 142 of the Constitution is not available to this Court or to the Subordinate Courts, felt that the question of awarding compensation or even the correctness of the judgment of the learned Single Judge in Smt. TARAMANI V. B.N. RAJASHEKAR requires reconsideration. It is in these circumstances, the petition is posted before this Division Bench for reconsideration.

5. As the question of law was required to be considered even though the respondent was not represented, we have requested Sri S.B. Pavin, learned Advocate to act as Amicus Curiae to assist the Court.

6. We have heard Sri Ravi Deshpande, learned Counsel for the petitioner and Sri S.B. Pavin, learned Amicus Curiae.

7. It is to be noted that though there is no question framed for reference by the learned Single Judge, however on going through the order of reference, we feel that the doubt or question in the mind of the learned Single Judge (MSRJ) is whether it is open for the High Court or the Subordinate Courts to award compensation to a wife/complainant in a criminal case instituted by her against her husband for the offence punishable under Section 494 IPC, even if she fails to establish the guilt of the accused.

Secondly, whether the High Court or the Sub-ordinate Courts also can award compensation following the judgment of Hon'ble Supreme Court as a precedent.

8. For the purpose of considering these questions, it is necessary for us to consider the power of the Apex Court under Article 141 of the [Constitution of India](#) and the binding nature of the same on all other Courts.

9. Under Article 141 of the [Constitution of India](#), the law declared by the Hon'ble Supreme Court shall be having binding effect on all Courts within the territory of India. From a bare reading of Article 141 of the Constitution, what is to be noted is that the law declared by the Hon'ble Supreme Court is binding on all the Courts within the territory of India. The emphasis has to be laid down on the words 'the law declared'. It is well settled that it is only 'the law declared' and not the result, which is having binding precedent.

10. In this regard it is noted that in the case of PRAKASH CHANDRA V. STATE OF U.P., AIR 1969 SC 195, the Apex Court has observed thus:

'Decisions even of the highest Court on questions which are essentially questions of fact, cannot be cited as precedents governing the decision of other cases which must rest in the ultimate analysis upon their own particular facts.'

Similarly in the case of AMRITSAR MUNICIPALITY V. NAZARA SINGH : [1975]3SCR914 it is observed that even though obiter dictum of the Supreme Court should be accepted as binding precedent, but statements on matters other than law have no binding force since on facts no two cases are similar. The Supreme Court's decisions, which are essentially on questions of fact, cannot be relied upon as precedents for decision in other cases.

11. The Hon'ble Supreme Court in the case of PRAKASH AMICHAND SHAH V. STATE OF GUJARAT AND ORS. : AIR 1986 SC468 has laid down that what is binding as precedent is the principle underlying the decision. The Apex Court has further observed that a decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. Hence, while applying the decision as a precedent to a latter case, the Court, which is dealing with it, should carefully try to ascertain the true principles laid down by the previous decision. The well settled principles are also to the effect that the ratio decidendi is based on the facts actually decided and is an authority for those facts, however, what is binding is the ratio of the decision and not any findings on facts. It is also well settled that the reasoning of one decision cannot be applied in any another case in the absence of parity of situation or circumstances. In the case of

STATE OF PUNJAB V. SURINDER KUMAR, : [1992]194ITR434(SC) that while considering the question of precedents the Hon'ble Supreme Court has observed as follows:-

'A decision is available as a precedent only if it decides a question of law'.

In the case of AMICA QUARRY WORKS V. STATE OF GUJARAT : [1987]1SCR562 the Hon'ble Supreme Court has laid down that:

'The ratio of any decision must be understood in the background of the facts of the case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it'.

A three Judges Bench of the Hon'ble Supreme Court in the case of STATE FINANCIAL CORPORATION V. M/S. JAGADAMBA OIL MILLS, 2002 AIR SCW 500 9 has observed thus:-

'Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for the judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.'

Similarly in the case of DIVISIONAL CONTROLLER, KSRTC V. MAHADEVA SHETTY, : AIR 2003 SC4172 the Apex Court has observed thus:

'The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a

later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge, however, eminent, can be treated as an ex cathedra statement having the weight of authority.'

12. Keeping in view these well settled principles along with basic fact that in criminal cases normally the law of precedent is not applicable, as facts of each case always differ with another except in respect of technical pleas like jurisdiction, limitation, etc., any pronouncement whether of Apex Court or High Court in a criminal cases is mainly based on appreciation of evidence in our view, may not have the effect of binding precedent but have to be considered as guidelines or guiding principles of the Hon'ble Supreme Court. We hasten to add here itself that it is not as if none of the pronouncements of the Hon'ble Supreme Court in respect of criminal cases do not having binding precedent. Even in criminal cases where the Hon'ble Supreme Court declares law regarding question of jurisdiction of Court, law of limitation, procedural aspect, etc., it may have binding precedent effect in other cases wherein similar situation is placed. But the fact remains that even in these latter cases, the Court is required to see the facts and circumstances of each case and only if they are similar or on parity, it has to implement or follow the binding precedent of the Hon'ble Supreme Court.

13. In the case of NAIB SINGH V. STATE OF PUNJAB, : 1986 CriLJ2061 the Apex Court has made it clear that there is nothing like precedent in criminal cases but there are certain guiding principles. In the case of SHANKARLAL V. STATE OF MAHARASHTRA, : 1981 CriLJ325 the Hon'ble Supreme Court has observed

that 'legal principles incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment.'

14. Considering all these decisions of the Hon'ble Supreme Court on the question of precedents or binding nature of its pronouncement, we have to reiterate that though normally under Article 141 of the [Constitution of India](#), the pronouncement of the Hon'ble Supreme Court, which is law of the land, has binding force on all other Courts in the Country, it is only the law declared which would be binding on other Courts. Hence, in our view, so far as the pronouncements of the Apex Court in the criminal cases especially like in respect of sentence, amount of compensation, etc. are concerned, normally they do not have any binding force on other Courts except being considered as guidelines or guiding principles.

15. Coming to the facts of the present case as well as to the decisions of the Hon'ble Supreme Court in LAXMIDEVI'S case and the decision of the learned Single Judge of this Court in Smt. TARAMANI's case, we have to note that in LAXMIDEVI's case the Hon'ble Supreme Court though upheld the judgment of acquittal of a husband for the offence under Section 494 IPC,. on the ground of absence of proof of essential ceremonies like sapthapadhi, the factum of second marriage was held not proved. However, on finding that though the first wife Laxmidevi was unable to prove the factum of second marriage but,, still had led sufficient evidence to disclose that her husband/respondent/Satyanarayan was living with another woman Smt. Bimla (the alleged second wife), as husband and wife, the Hon'ble Supreme Court felt that the first wife Smt. Laxmidevi should not be left in lurch and as such, exercising its extra ordinary jurisdiction under Article 142 of the [Constitution of India](#), awarded a compensation of Rs. 25,000/- to be paid by the respondent/husband to his first wife Laxmidevi for neglecting her. In TARAMANI's case, Hon'ble Mr. Justice M.F. Saldanha though felt that LAXMIDEVI's case requires reconsideration, in view of the fact that in many areas or communities and castes, the basic Hindu religious functions like sapthapadhi or homa are not performed during the marriage and directed the Registry to forward the proceedings to Hon'ble Supreme Court for reconsideration of law on that point, we are informed by the Registry that the said case of B.N. RAJASHEKAR V. SMT. TARAMANI is still pending consideration before the Hon'ble Supreme Court. Be

that as it may. As almost similar situation like one in the case of LAXMIDEVI's case was in existence, Hon'ble Mr. Justice Saldanha pending reconsideration of the question of law, directed the respondent/husband therein to pay a compensation of Rs. 10,000/- to the wife.

16. In the present case, the learned Magistrate has blindly following the pronouncement of this Court in Smt. TARAMANI's case even though it did not discuss the existence of similarity between these two cases, though dismissed the complaint for taking penal action against the offence of bigamy also awarded compensation to the wife.

17. On plain reading of the decision of the Hon'ble Supreme Court in LAXMIDEVI's case, it is clear that the Hon'ble Supreme Court had passed the order of payment of compensation in peculiar facts and circumstances of that case even though the accused stood acquitted and this award of compensation, in our humble view, was by exercising its special power under Article 142 of the [Constitution of India](#).

18. Considering these aspects, in our view, this part of the order of the Hon'ble Supreme Court of awarding compensation in bigamy case even where the offence under Section 494 IPC, is held to be not proved, cannot be treated as binding precedent. However, applying the principles of ratio decidendi, we have to observe that in any other case, if such situation, akin to the case of LAXMIDEVI is found, it is open for the Courts to award compensation, hastening to add that it is not a universal principle to be invoked in each and every case wherever the accused is acquitted of an offence under Section 494 IPC, but still to be fastened with liability of paying compensation.

19. Considering all these aspects, we answer the reference as follows:

1) The order of the Apex Court in the case of LAXMIDEVI's case (supra) of awarding compensation to a wife, who has failed to establish the second marriage, has no effect of binding precedent under Article 141 of the [Constitution of India](#) as the same has been exercised by the Apex Court exercising special power under Article 142 of the [Constitution of India](#) and same holds good to the decision in the case of Smt. TARAMANI; and

2) The High Courts or the Sub-ordinate Courts have no such power to award compensation, even by applying pronouncement of the Hon'ble Supreme Court in LAXMIDEVI's case as binding precedent.

20. As such, on going through the impugned judgment as we find that the learned Magistrate has not all considered this aspect, his applying the decision of this Court in TARAMANI's case blindly is illegal and that portion of the impugned order is liable to be set aside.

21. In the result and for the reasons stated above, the petition is allowed. The order of the learned Magistrate awarding compensation is hereby set aside.

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