

Shafi Ullah Vs. Emperor

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Court : Allahabad

Decided On : Feb-19-1934

Reported in : AIR1934All589; 150Ind.Cas.139

Appellant : Shafi Ullah

Respondent : Emperor

Judgement :

ORDER

Young, J.

1. This is an application in revision from the decision in an appeal by the learned sessions Judge of Bareilly. One Shafi Ullah was convicted under Section 114 read with Section 494 of the Indian Penal Code, i.e., for abetting a bigamy. Mt. Majidan, when she was a minor, was married to one Tufail Ahmad, She did not live with her husband and after attaining the age of puberty she married again one Himayat Ullah. Himayat Ullah, Mt. Majidan and Shafi Ullah, a relation of Mt. Majidan, were charged; the lady with bigamy and the men with abetment of bigamy. The Courts below have given Mt. Majidan the benefit of Section 562 of the Criminal P.C. as a first offender. The second husband Himayat Ullah was acquitted on the ground that it was not proved whether he had known of the first marriage or not. Shafi Ullah was the only one convicted and he was given four months rigorous imprisonment. He appeals. In order to succeed in a prosecution for abetment of

bigamy the prosecution must prove that the person who is alleged to have committed bigamy was married lawfully once and has gone through a second marriage ceremony. Thirdly that the person alleged to have abetted the bigamy knew when he arranged or assisted at the second marriage that 'the person who was remarried had contracted a valid first marriage and that the husband or wife of the first marriage was still living. It appears to me that this conviction cannot be sustained. In the first place in my opinion Mt. Majidan was never validly married to Tufail Ahmad. The girl was a minor. She appointed her own vakil. This by itself was enough to invalidate the marriage. No minor can appoint an attorney, and if she does that attorney has no valid appointment under which he can act. On his ground alone there could be no bigamy and therefore no abetment of bigamy. The learned Judge in the Court below himself says that the points of law arising in the matter are distinctly technical and can be more appropriately dealt with by the civil Court and further he says as regards Himayat Ullah:

It seems doubtful 'whether with the knowledge of a former marriage, even though there might be some technical defect which might invalidate it, he should have taken the risk of entering into a bigamous marriage.

2. The learned Sessions Judge seems to have been in some doubt as to the validity of the first marriage. In any event, even though the Court before whom a charge of this sort is brought is of necessity a criminal court, that does not discharge the Judge from the necessity of coming to a decision on a point of law as regards the marriage. In my opinion, the learned Judge ought to have gone much more carefully into the question of the legality of this marriage than he appears to have done. Secondly, a minor girl, assuming the first marriage to have been valid, on attaining the age of puberty, herself remarried another man. She did not in fact consummate the first marriage by living with the first husband. Under Mahomedan Law a minor girl on attaining puberty can repudiate the marriage which she has had performed for her unless the marriage is performed by her father. In this case, the marriage was performed by a distant relation of the girl, an uncle of some sort. Therefore, the girl's right of repudiation on attaining puberty arose. The learned Judge in the Court below in considering this point says there was no evidence of any such repudiation. He apparently is under the impression

that a repudiation must be something akin to an oral repudiation before witnesses. I know of no such authority. It appears to me to be commonsense that there could be no surer repudiation than the girl of her own accord on attaining puberty marrying some man other than the man she married when she was a minor. In this case therefore there was not valid marriage in the first instance, and secondly, even though there had been a valid marriage, there was in my opinion a repudiation on the part of Mt. Majidan. For either or both of these reasons, there was no bigamous marriage celebrated. Therefore the conviction for abetment of bigamy as against; Shafi Ullah is bad and must be quashed. The appeal is allowed and the bail bond is discharged.

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