

Deepak Kumar Vs. Murari Lal

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Court : Allahabad

Decided On : Sep-02-2004

Reported in : I(2005)DMC161

Judge : Amar Saran, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 494

Appeal No. : Criminal Misc. Application No. 12410 of 1990

Appellant : Deepak Kumar

Respondent : Murari Lal

Advocate for Def. : S.G. Hasnain, Adv.

Advocate for Pet/Ap. : Vinay Saran, Adv.

Judgement :

Amar Saran, J.

1. Heard learned Counsel for the applicant and the learned A.G.A. appearing for the State.

List has been revised. Counsel for the opposite party is absent.

In this case, it appears that the applicant got an ex parte order of divorce from his wife on 14.8.1986. The decree was prepared on 3.9.1986. It appears that on 24.2.1988 he contracted a second marriage with Smt. Munni Devi. On 3.11.1989 a complaint was filed against the applicant and others on the basis of which only the applicant was summoned under Section 494, I.P.C. by the order dated 30.5.1990. It appears that on 18.9.1990, the first wife Sandhya daughter of the complainant Murari Lal was successful in getting the ex parte decree of divorce set aside. The question is whether the complaint against the applicant under Section 494, I.P.C. could proceed.

2. The learned Counsel for the applicant has placed reliance on the case of Krishna Gopal Divedi v. Prabha Divedi, reported in 2004 SCC (Cri) 473, wherein it has been squarely held that if an accused contracts a second marriage after an ex parte decree of divorce, no complaint under Section 494, I.P.C. is maintainable, even if that ex parte decree is set aside and to quote the Hon'ble Judges of the Apex Court even though the good days with the newly married wife did not last long as the first wife succeeded in getting the ex parte decree set aside. In view of this decision of the Apex Court, I have no option but to quash the criminal proceedings against the applicant in Criminal Case No. 726 of 1990 under Section 494, I.P.C. pending in the Court of A.C.J.M. II, Gorakhpur.

The application is allowed as above.