Bhunda Vs. Chetram

Bhunda Vs. Chetram

SooperKanoon Citation : sooperkanoon.com/501256

Court : Madhya Pradesh

Decided On : Jul-21-1975

Reported in : 1977CriLJ134

Judge : R.K. Tankha, J.

Appellant : Bhunda

Respondent : Chetram

Judgement :
ORDER

R.K. Tankha, J.

1. This is a petition under Section 417(3) of the old Crinimal Procedure Code for grant of special leave to appeal against an order of acquittal dated 20-11-1973 passed by the First Additional Sessions Judge, Jabalpur, in Criminal Appeal No. 181 of 1973.

2. The facts of the case are that a private complaint was filed by applicant Bhunda for an offence punishable under Sections 497 and 494 of the Indian Penal Code against the non-applicants 1 and 2 respectively with an allegation that non-applicant No. 2 Mst. Nanhi Bai was his legally married wife but during the subsistence of the said marriage she remarried Chetnam (non-applicant No. 1 on 19-7-1968 and thus they committed an offence punishable under Sections 497

and 494 of the Indian Penal Code. The trial Court convicted Chetram under Section 497 and Mst. Nanhi Bai under Section 494 of the Indian Penal Code respectively. In appeal filed by both the accused-non-applicants they both were acquitted of the respective charges by the learned First Additional Sessions Judge. Hence this petition for grant of special leave to appeal against that order of acquittal.

3. Having heard learned Counsel of the parties, I am of opinion that there is no merit in this petition and the same must be dismissed. The crucial point that arises for consideration in this case is whether the factum of first marriage between the complaint and non-applicant No. 2 was legally proved or not. If it is held that the first marriage was not valid, the question with regard to the second marriage being legally performed or not would not arise and the non-applicants would be held to have been rightly acquitted. In a prosecution under Section 497 and 494 of the Indian Penal Code the question of marriage must be strictly proved and any inference, tacit or otherwise, for example, a tacit admission on the part of the husband or wife that they are husband and wife would not be sufficient to prove the factum of first marriage. In a case of this kind it is necessary for the complaint or some other person in his or her behalf to give strict proof of the marriage. Under Section 50 of the Evidence Act a presumption which arises under the first part of the section as to the relationship is particularly excluded in cases in which the relationship of husband and wife is in issue. In a country like India where system of registration of marriages is not common, it is absolutely necessary on the part of the prosecution to prove the facts and circumstances relating to the alleged ceremony of marriage so that the Court be in a position to determine whether legal marriage aid take place and the relationship of husband and wife came into existence. Amongst a large majority of people of this country marriage is concluded with much ceremonies and publicity and as such there cannot be any difficulty on the part of the prosecution for leading evidence to prove the legality of the marriage by adducing evidence. In the absence of such evidence, mere statement of the complaint that he was legally married is difficult to be relied upon. It is, therefore, necessary in such cases that good evidence must be led to give strict proof of legal marriage having been performed. I am supported in my view by a Full Bench decision of the Calcutta High Court in Empress v. Pitambur Singh

(1880) ILR 5 Cal 566 and that of the Allahabad High Court in Emperor v. Buddhu (1920) ILR 42 All 401 : 21 Cri LJ 368.

4. Applying the aforesaid rule to the facts of the present case, I find that Bhunda (P, W. 1) only speaks of marriage by Bhanwar but does not speak of Home. Even that statement is casual one without giving any details of the ceremonies. This statement makes it clear that the Hindu Marriage Act is applicable to the parties. The other two witnesses examined by him on the factum of marriage are Mihilal (P.W. 2) and Jaganlal (P.W. 3). A perusal of their statements shows that they did not go to the marriage and as such their evidence is of no value to the complaint that his marriage with Mst. Nanhibai was legally performed. Learned Counsel for the applicant tried to wriggle out of this position by contending that in para. 1 of the memo of appeal before the Lower Appellate Court, notice (document C. 2) given by non-applicant Mst. Nanhibai to the complaint and the statements of both the non-applicants under Section 342 of the old Criminal Procedure Code, the fact that Mst. Nanhibai was the wife of the complaint was not disputed and it constitutes an admission on the part of the non-applicants, and as such even if the evidence is lacking about the factum of first marriage being legally performed, the defect is cured. In my opinion, such an admission on the part of the accused persons cannot amount to a confession and relieve the prosecution of the burden to prove the legality of the first marriage in the strict form. Two persons may feel that they are married and on that basis may be living together. But that by itself cannot lead to an inference, in a prosecution for matrimonial offences, that they have been legally married unless the prosecution gives strict proof that the two were married by performance of ceremonies required to make the marriage legal or in case of custom the customary rites were proved. Therefore, reference to the aforementioned admissions on the part of the accused non-applicants about the first marriage does not in any way advance the cause of the prosecution and on that basis it cannot be held that the first marriage was lawfuly performed.

5. In the present case, the lower appellate court has rightly held on the basis of the evidence that the complaint -applicant completely failed to establish the legality of his marriage with non-applicant No. 2 Mst. Nanhibai. That being so, the said Court was also right in holding that no offence was made out against the non-applicant

No. 2, who was alleged to be the wife of applicant Bhunda under Section 494 as also against the non-applicant No. 1 Chetram under Section 497 of the Indian Penal Code. No doubt, the Lower Appellate Court has also held that even the second marriage of Mst. Nanhibai (non-applicant No. 2) with non-applicant No. 1 has also not been legally proved. In this connection I would like to refer to the case of the Supreme Court in Bhaurao Shanker Lokhande v. State of Maharashtra : 1965 CriLJ544 which has laid down the principle with regard to the proof of second marriage relied upon by the appellate Court. I would also like to add a later decision of the Supreme Court in Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh : 1971 CriLJ939 . But in view of my decision with regard to the first marriage, I do not think it necessary to go into the aspect of second marriage.

6. In the result, this petition fails and is hereby dismissed.