

Raghunath Padhy Vs. the State

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Court : Orissa

Decided On : Oct-01-1956

Reported in : AIR1957Ori198; 22(1956)CLT503; 1957CriLJ989

Judge : Narasimham, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 493

Appeal No. : Criminal Revn. No. 87 of 1956

Appellant : Raghunath Padhy

Respondent : The State

Advocate for Def. : H.G. Panda, Adv.

Advocate for Pet/Ap. : M.S. Rao and ;M.K.C. Rao, Adv.

Judgement :

ORDER

Narasimham, C.J.

1. This is a petition under Section 215 of the Criminal Procedure Code for quashing the commitment of the petitioner for an offence under Section 493 of the Indian Penal Code.

2. The facts found by the committing Magistrate are as follows. The petitioner is a Brahmin boy aged 22 years with his wife living. He was residing in Parlakhimedi town, close to the house of a Brahmin widow named Radbarani Dei. The two used to meet frequently and the petitioner persuaded her to marry him. The woman was somewhat reluctant chiefly because he had a wife living and insisted that the marriage should be registered. Some letters passed between the two and in one of them (Ext. 1) the petitioner told Radharani Dei that he had no objection to get the marriage registered as desired by her. He also handed over to her a bond (Ext 2) dated the 29-9-1951. in which he clearly admitted that he was going to marry her and further specified certain terms regarding their conjugal life. He also assured the woman that the bond would be registered in due course. Accepting his assurance, the unfortunate woman left her parents' house and accompanied him to Berhampur where on 24-10-1951, in a room in a choultry some sort of a marriage ceremony took place between the two, in the presence of two friends of the petitioner, namely Kailash Misra and Kamana Padhy. The woman was made to wear new clothes and put on new bangles and also vermilion mark on her forehead. There was also an exchange of garlands between the two. The petitioner assured the woman that these ceremonies were sufficient to complete the marriage. Then the two lived as husband and wife for sometime at Jagdalpore where the petitioner had secured a job. After some months she became pregnant by him but he got tired of her, deserted her. and went away to his first wife. The woman gave birth to a child which died later on. It is stated that she has filed a civil suit against the petitioner claiming maintenance and damages which is still pending.

3. The main question for consideration is whether, on the aforesaid findings of fact, the charge under Section 493, Indian Penal Code can be said to have been made out. That Section is as follows :

'493. Every man who, by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual Intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine'.

4. It will be noticed that the essence of the offence under this Section consists in the practice of deception by a man on a woman, in consequence of which she is led to believe that she is lawfully married to him even though, in fact, they are not lawfully married. The crucial question for consideration is whether on the findings of the Magistrate it may be reasonably held that the petitioner practised such deception on Radharani. To prove deception it must be conclusively established that the petitioner either dishonestly or fraudulently concealed certain facts, or made a false statement knowing it to be false. If for instance it could be held that he knew that the ceremonies which the two underwent at Berhampur on 24-10-1951, did not constitute a valid marriage between a Brahmin male and a Brahmin widow, the necessary guilty intention may be inferred. But such an inference does not follow from the proved facts of the case. The petitioner is a youth of about 22 years. If he was going to marry a virgin of his caste it may be reasonably inferred that he must have known that Homa and Saptapadi are essential requisites for such a marriage. But he was marrying only a widow and, as pointed out in Mulla's Hindu Law (Eleventh Edition) at page 548 (Section 437(2)), no religious ceremonies are necessary for the marriage of widows. Doubtless some sort of ceremony must be undergone to distinguish a valid marriage from mere concubinage as pointed out in *N. Padayachi v. A. Ammal*, AIR 1938 Rang 59 (A), but it will not be fair to assume that the petitioner must have known that the ceremonies performed at Berhampur did not constitute such valid marriage. For the purpose of the present criminal case it is unnecessary to decide this question because it will arise for decision in the civil suit pending between the parties. It is sufficient to say that the entire evidence of the prosecution is consistent with the alternative view that both parties thought that those ceremonies would suffice to constitute a valid marriage. Consequently, the element of deception is wanting in the case.

5. Apparently, the lower court thought that from the petitioner's subsequent conduct it may be reasonably inferred that he had no intention of marrying the woman and that he merely practised a fraud on her with a view to have intercourse with her and then cast her away when he got tired of her. His subsequent conduct in deserting her and in even repudiating the marriage, though an important piece of evidence will not suffice by itself to show that at the time when he participated in the ceremonies on 24-10-1951 he intended to deceive her. In most of the cases

brought by neglected wives against their husbands, under Section 488 of the Criminal Procedure Code, the usual plea taken is a denial of the marriage; and merely because of the subsequent desertion and denial of marriage it cannot be held in all those cases that the husbands were guilty under Section 493 Indian Penal Code. It must be further established that deception was practised prior to the performance of the ceremonies leading to the marriage. It was, however, urged that after executing the bond (Ext. 2) the petitioner had promised to the woman that he would get it registered and that he failed to fulfil this promise. But from Radharani's evidence it is not clear whether registration of the bond was a condition precedent to her agreeing to marry him. On the other hand her evidence is as follows:

'I told him to marry if he executes a written bond. Accordingly, he wrote a bond on the 29-9-1951 and a copy was given to me. Accordingly, I went to Berhampur and put on bangles, exchanged garlands and I thought we were married. But the bond was not registered'.

From this answer it is clear that she agreed to marry him since the bond (Ext. 2) was given to her and his promise about registration was not a condition precedent to the marriage. Hence, from the mere fact that he made a breach of his promise it cannot be inferred that from the beginning he had no intention of marrying her at all and just wanted to practise fraud on her by undergoing some sort of bogus ceremony at Berhampur knowing fully well that such a ceremony would not constitute a valid marriage. On the other hand his conduct in handing over to her a bond (Ext. 2) and another document (Ext 10) on the date of the marriage clearly admitting that he was taking her as his wedded wife and his participating in some sort of ceremony at Berhampur, would show that till the date of the so called marriage at any rate he acted in good faith. His subsequent act of desertion of a pregnant woman however censurable it may be would not suffice to make him criminally liable.

6. I would, therefore, hold that on the findings Of the committing Magistrate the element of deception which is the essential ingredient of the offence under Section 493, Indian Penal Code, is not established. Hence. I would quash the

commitment,under Section 215 of the Criminal Procedure Code.

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