

Gopal Divedi Vs. Prabha Divedi

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Court : Kerala

Decided On : Feb-23-2002

Reported in : II(2002)DMC773

Judge : K.T. Thomas and; R.P. Sethi, JJ.

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

Appeal No. : Crl. A. No. 224 of 2001

Appellant : Gopal Divedi

Respondent : Prabha Divedi

Disposition : Appeal allowed

Judgement :

ORDER

1. Leave granted.

2. It appears that the appellant secured an ex parte decree divorcing his first wife on 6.7.1990, though the wife says that she never had notice of the said decree or the proceedings commenced by her husband. What the appellant did was to undergo a marriage with another lady on 25.5.1993 presumably on the strength of the ex parte decree secured by him. But his good days with the newly married wife did not last long as the first wife succeeded in getting the ex parte decree set aside

on 31.3.1994. The fact remains that there is no decree of divorce as between the appellant and his first wife ever since 31.3.1994.

3. The first wife filed complaint against the appellant on 28.3.1995 alleging that the appellant has committed the offence under Section 494 of the I.P.C. On receiving the process issued by the Criminal Court the appellant moved the High Court of Allahabad for quashing the criminal proceedings. The main plank adopted by the appellant is that on the date when he conducted the second marriage the first marriage was not subsisting in view of the ex parte decree which continued in force on the said date.

4. Learned Counsel for the respondent (first wife) did not dispute the fact that she moved for setting aside the ex parte decree and succeeded in it when an order was passed on 31.3.1994. As per that order the ex parte decree of divorce dated 6.7.1990 was set side. If that be so, appellant cannot possibly be convicted for the offence under Section 494 of I.P.C. on premise that he had undergone a ceremony of marriage with another lady on 25.5.1993.

5. Learned Counsel for the respondent contended that the appellant is guilty of adultery at least from the date 31.3.1994. We are not considering that aspect since no complaint has been filed by the first wife against the appellant on that store.

6. As it is, we feel that the criminal proceeding now pending against the appellant for the offence under Section 494 of the I.P.C. is only an exercise in futility. We do not want the Criminal Court to waste its time for that purpose.

7. We, therefore, allow this appeal, set aside the impugned order and quashed the proceeding taken pursuant to the criminal complaint filed by the first wife. It is needless to say that this order is without prejudice to the right, if any, of the first wife filing any complaint against the appellant for any other offence.