

Ram Karan and ors. Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Sep-25-1980

Reported in : 1980WLN(UC)592

Judge : M.B. Sharma, J.

Appeal No. : S.B. Criminal Misc. Petition No. 105/1979

Appellant : Ram Karan and ors.

Respondent : The State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

M.B. Sharma, J.

1. The learned Magistrate took cognizance of an offence under Section 494 read with Section 114 of the Indian Penal Code, against the accused-petitioner and others. A revision petition was filed in this Court, by the same was dismissed as the same was time barred, and hence, the present petition has been filed.

2. Smt. Nathi alias Krishna Kumari is the first wife of one Bhagirath. Bhagirath during the subsistence of the first marriage, is said to have contracted a second marriage with Guddi, who, at the time of the marriage is said to be 12 years of age. A complaint was filed by Smt. Nathi against the accused-petitioner and 13

others in the court of learned Magistrate, who, after recording the evidence of the complaint and her witnesses, vide his order dated August 14, 1973, took cognizance of the offence Under Section 494, 494/109, or 495/114 of the India Penal Code against the accused-petitioner and seven others.

3. It is contained by the learned advocate that there is no evidence on record to prove the second marriage of Bhagirath with Guddi, aged 12 years, and therefore, no offence under Section 494 is made out. He further submits that so far as Guddi is concerned, she was only 12 years of age, at the time of marriage, and she could not have given her consent to the marriage, and if her parents married her to Bhagirath, who was already having a wife living, Guddi cannot be held liable 494 of the Indian Penal Code It has also been contended that Ram Karan, accused-petitioner is the grand father of Guddi, and Sultan, accused-petitioner No. 2 is her uncle. Merely because they were present in the marriage, it cannot be said that they are liable under Section 494/109 or 114 of the Indian Penal Code.

4. In case, there is some evidence on which, the cognizance of an offence can be taken, no case for interference under Section 482 of the Indian Penal Code can be made out. Therefore, it is to be seen as to whether there is any such evidence on record on which it can be said that there is sufficient ground for proceeding against the accused persons.

5. There is the evidence of Brijlal recorded under Section 202 of the Code of Criminal Procedure, from which prima facie it can be said that he was present in the marriage and the marriage of Gudi with Bhagirath was celebrated in accordance with the Hindu Marriage and customs. The presence of all the accused-petitioners at the time of marriage prima facie can be said on the basis of the statement of Brijlal recorded under Section 202 of the Code of Criminal Procedure. Whether or not these persons by their mere presence instigated or intentionally aided the celebration of the marriage, is a question to be decided at the stage of trial. But the question is as to whether by the mere presence in the marriage, a person can be said to have abetted the commission of the offence of bigamy. Besides the presence of the grandfather and the uncle, there is no material on record as to what part was played by them at the time of the marriage.

Therefore, I am of opinion that so far as the grand-father, the uncle, and a girl of 12 years of age is concerned, hereby a case under Section 494, 494/109 or 394/114 is made out, and on the material on record, it cannot be said that, there was sufficient ground for proceeding against these three accused persons.

6. In the result, the application of Ram Karan grandfather of the girl, Sultan here uncle, and of Guddi, a girl of 12 years of age at the time marriage, is allowed. The order the learned Magistrate taking cognizance against them, is set aside. But the petition of Hanuman, and Savitri, under Section 482, is here by dismissed.

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