

In Re: Ponnuswami and anr.

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Court : Chennai

Decided On : Mar-31-1950

Reported in : AIR1950Mad777; (1950)IIMLJ200

Judge : Chandra Reddi, J.

Acts : Hindu Law; Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 - Sections 4(2); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 439

Appeal No. : Criminal Revn. Case No. 150 and Cri. Revn. Petn. No. 137 of 1950

Appellant : In Re: Ponnuswami and anr.

Advocate for Def. : Government Prosecutor

Advocate for Pet/Ap. : A. Dorairaj, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Chandra Reddi, J.

1. In this case the two petitioners have been convicted of an offence under Section 4(2), Madras Hindu (Bigamy Prevention and Divorce) Act, VII (7) of 1949 and sentenced to imprisonment till the rising of the Court and to pay a fine of Rs. 50/-

or one month simple imprisonment in default. The case against the petitioners is that the first accused married the second accused while his marriage with the complainant was subsisting. He married the complainant on 30th June 1947 and having abandoned her after illtreating her, he married the second accused on 2nd May 1949 thereby committing an offence under Section 4 (2) of Act VII (7) of 1949.

2. The plea of the accused was that there was no second marriage as spoken to by the prosecution witnesses.

3. In support of the prosecution case P. Ws. 2 and 3, who witnessed the marriage in the Mallikeswaran Koil, were examined. According to these two witnesses the first accused tied the tali round the neck of the second accused in the temple in the presence of the idol.

4. The evidence of these two witnesses was believed by the trial Court and the conviction of the petitioners based thereon,

5. It is argued in this petition that the evidence on record is not sufficient for convicting the petitioners and that in any event since the marriage was not solemnised as contemplated under Section 4 (2) of the Act no offence can be said to have been committed by the accused. According to the petitioner's counsel, if the marriage was not performed in the presence of a priest clothed with authority, the marriage is not a valid one and therefore no offence can be said to have been committed. I do not think I can accept either of these two contentions.

6. So far as the evidence is concerned the trial Court which had seen the witnesses and watched their demeanour has chosen to accept their evidence. There are no reasonable grounds for taking a different view of the evidence. I therefore see no reason to disturb the finding as regards the guilt of the accused.

7. As regards the second contention viz., that unless the marriage took place in the presence of a priest who is clothed with authority, it cannot be said to be a, valid one, I do not think there is any basis for it. According to the learned counsel for the petitioner, the word 'solemnised' in Section 4 (2) of the Act implies the performance of marriage before a priest who has authority for performing

marriages. There is no warrant for this proposition. I do not think that any such requirement is contemplated under the Hindu law to constitute a valid marriage. The word 'solemnised' only means, performed or conducted : see Queen Empress v. Paul, 20 Mad. 12. Under the Hindu law it is not necessary that a marriage should take place in the presence of a priest or any person who is clothed with authority. Tying of a thali in the presence of an idol is one of the forms of marriage known to Hindu law and in no sense can such a marriage be said to be an invalid one. I therefore find that the petitioners were rightly convicted of an offence under Section 4 (2) of the Act.

8. The only question to be considered now is whether the sentence of Rs. 50/- is excessive having regard to the status of the petitioners. The first accused is a porter working in a railway station. I therefore think that the ends of Justice will be met if each of them is sentenced to a fine of Rs. 25/-. In other respects the petition is dismissed.

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