

In Re: Ram Kumari

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Court : Kolkata

Decided On : Feb-18-1891

Reported in : (1891)ILR18Cal264

Judge : Macpherson and ;Banerjee, JJ.

Appellant : In Re: Ram Kumari

Judgement :

Macpherson and Banerjee, JJ.

1. The petitioner in this case has been convicted by the Additional Sessions Judge of 24-Pergunnahs under Section 494 of the Indian Penal Code of the offence of marrying again during the lifetime of her husband, and has been sentenced to rigorous imprisonment for one month. The sentence not being an appealable one, the case comes before us by way of revision.

2. The facts found by the Court below are shortly these. The petitioner and one Dukhi were originally both Hindus belonging to the Chattri caste, the former being, however, an illegitimate offspring of Chattri parents. They were duly married according to Hindu rites. Some time after the marriage the petitioner Ram Kumari became a convert to Mahomedanism, and after her conversion married a Mahomedan named Guzaffer.

3. Upon these facts the learned Sessions Judge has held that the petitioner's marriage with Dukhi was a valid Hindu marriage, that it was not dissolved by her conversion to Mahomedanism, and that her subsequent marriage to Guzaffer was consequently void; and he has accordingly convicted her under Section 494 of the Indian Penal Code.

4. It is now contended for the petitioner before us that the conviction is wrong: first, because the marriage between the petitioner and Dukhi could not have been a valid marriage under the Hindu law by reason of the illegitimacy of the petitioner, and the consequent difference of caste between the parties; secondly, because the former marriage became dissolved under the Hindu law by the conversion of Ram Kumari to Mahomedanism; and thirdly, because the second marriage was not void by the Mahomedan law, which is the law governing the parties to it, by reason of its taking place in the lifetime of the petitioner's former husband.

5. We do not think there is any force in the first contention, regard being had to the facts of this case. In our opinion illegitimacy is no absolute disqualification for marriage, and where one or both parties to a marriage are illegitimate, the correct view seems to us to be to regard the marriage as valid if they are in point of fact recognized by their castemen (as the parties in this case are in effect found to have been) as belonging to the same caste. In this view of the case it is unnecessary for us to say more upon this point.

6. In support of the second contention, namely, that the marriage of the petitioner with her first husband became dissolved under the Hindu law by her conversion to Mahomedanism, we were referred to the case of *Rahmed Beebee v. Rokeya Beebee* 1 Norton's Leading cases on Hindu law p. 12. That case, no doubt, supports the petitioner's view, but we are unable to accept it as correct. It was argued that the Hindu law would regard the apostate wife as beyond its pale and as a person that is civilly dead. That may be so as regards her civil rights, but we find no authority in Hindu law for the position that a degraded person or an apostate is absolved from all civil obligations incurred before degradation or apostasy. So far as the matrimonial bond is concerned, such a view would, we think, be contrary to the spirit of the Hindu law which regards that bond as

absolutely indissoluble (see *Manu V*, 156-158; IX, 46). This view is in accordance with the case of *The Government of Bombay v. Ganga* I.L.R. 4 Bom. 330 and also with those of *Administrator-General of Madras v. Anandachari* I.L.R. 9 Mad. 467 and *In re Millard* I.L.R. 10 Mad., 218.

7. It remains now to consider the third contention for the petitioner, which raises important questions not altogether free from difficulty. The conviction of the petitioner under Section 494 of the Indian Penal Code can stand only if her second marriage is void by reason or its taking place during the life of her former husband. Now the validity or otherwise of this second marriage, the parties to which are both Mahomedans, must be tested with reference to the Mahomedan law; and as that law does not allow a plurality of husbands, the second marriage would be void or valid according as the first one was or was not subsisting at the time. It was contended for the petitioner that her marriage with her Hindu husband became dissolved under the Mahomedan law by her conversion to the Mahomedan religion, and in support of this contention we have been referred to the *Hedaya*, Bk. II, Ch. V (Grady's edition of Hamilton's translation, pp. 64-65), and *Baillie's Digest of Mahomedan Law* (2nd edition, pp. 180-181). According to these authorities, when the wife becomes a convert to the Mussalman faith, and the husband is an unbeliever, the magistrate is to call upon him to embrace Islam, and if he does so, the woman continues his wife, but if he refuse, the Magistrate must separate them; and if the wife embrace the Mahomdean faith in a foreign country, and the husband is an unbeliever, separation takes place on the expiration of three terms of the wife's courses. These rules may be said to favour conversion to Islam; but the former meets the obvious requirements of justice by allowing an equal freedom of conscience to both parties and giving due notice to the non-converted husband, and is somewhat similar to the provision laid down in Act XXI of 1866 in the case of native converts to Christianity, while the latter rule is justified in the *Hedaya* upon the express ground of necessity, as requiring the other party to embrace the faith is impracticable in a foreign country.

8. The second marriage in this case has taken place without any notice to the former husband.

9. If, therefore, it could be held that British India was a foreign country within the meaning and intention of the foregoing rules, it would have been necessary to take further evidence to ascertain whether the second marriage took place before or after the expiration of three terms of the wife's courses, as the evidence on the record is not sufficient to clear up this point. But we cannot hold that British India is a foreign country within the meaning and intention of the above rules, so that a Hindu marriage would here become dissolved by the conversion of the wife to Islam, on the expiration of a certain interval without any notice to the husband.

10. There does not exist in the case of persons residing in British India that necessity upon which alone is based the latter of the two rules referred to above, by which the prior marriage of a convert to Islam is said to become dissolved without any order of a Court or notice to the other side. In British India, to use the words of Lord Justice JAMES in *Skinner v. Order 14 Moore's I.A. 309* 'all or almost all the great religious communities of the world exist side by side under the impartial rule of the British Government. While Brahmin, Buddhist, Christian, Mahomedan, Parsee and Sikh are one nation enjoying equal political rights and having perfect equality before the tribunals, they co-exist as separate and very distinct communities having distinct laws affecting every relation of life.' The petitioner did not give any notice to her former husband, nor did she seek the intervention of the Courts of Justice as she might have done by instituting a suit after notice to the husband for a declaratory decree that under the Mahomedan law, which was her personal law since her conversion, her former marriage was dissolved and that she was competent to marry again. That being so, we do not think that the rule of Mahomedan law which declares a convert to Mahomedanism in a foreign country absolved from any prior matrimonial tie upon the expiration of a certain time, without notice to his or her spouse, can have any application here. A sacred and solemn relation like marriage cannot, we think, be regarded as terminated simply by the change of faith of either spouse without notice to the other, or the intervention of a Court of Justice.

11. The questions that arise in this case are, as we have already observed, not free from doubt and difficulty, but after giving our best attention to them, the conclusion we arrive at is that the first marriage of the petitioner was not dissolved

by reason of her change of faith according to the Hindu law or the Mahomedan law, and that her second marriage was in consequence void. In this view of the case we must reject the application and affirm the conviction and sentence complained against.

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