

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

TUESDAY, THE 10TH DAY OF AUGUST 2021 / 19TH SRAVANA, 1943

CRL.MC NO. 2077 OF 2017

(CC NO.2105/2013 OF JUDICIAL MAGISTRATE OF FIRST CLASS

COURT, CHAVAKKAD, THRISSUR)

PETITIONER/1ST ACCUSED:

MANOJ, AGED 40 YEARS,
AGED 40 YEARS, S/O.PUSHPANGADAN, MANAYIL HOUSE,
P.O.CHAKKUMKANDAM, PALUVAI, CHAVAKKAD,
THRISSUR DISTRICT.

BY ADVS.

SMT.P.K.PRIYA

SMT.MONCY FRANCIS

SRI.SURAJ PHILIP JACOB

RESPONDENTS/COMPLAINANTS/ACCUSED 2 TO 4:

1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2 GAYATHRI, AGED 35 YEARS, D/O.MOHANAN, PANAKKAL HOUSE,
MANNANTHALA P.O., CHAVAKKAD, THRISSUR DISTRICT.680 001.

3 PUSHPANGADAN,
AGED 75 YEARS, MANAYIL HOUSE, P.O.CHAKKUMKANDAM,
PALUVAI, CHAVAKKAD, THRISSUR DISTRICT.680 001.

4 KOMALAVALLY,
AGED 60 YEARS, W/O.PUSHPANGADAN, MANAYIL HOUSE,
P.O.CHAKKUMKANDAM, PALUVAI, CHAVAKKAD, THRISSUR
DISTRICT.680 001.

5 JINESH,
AGED 35 YEARS, S/O.PUSHPANGADAN, MANAYIL HOUSE,
P.O.CHAKKUMKANDAM, PALUVAI, CHAVAKKAD, THRISSUR
DISTRICT.680 001.

BY ADVS.

SMT.M.S.LETHA

SRI.RAJIT

SR.GOV.T.PLEADER SRI.NOUSHAD K.A.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
10.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

ORDER

At the instance of first wife, cognizance was taken for the offences under Sections 494, 114 r/w Section 34 IPC in C.C.No.2105/2013 of the JFCM, Chavakkad on the allegation that during the pendency of the appeal against the decree of divorce, her husband entered into a second marriage. Reliance was placed on **Chandra Mohini Srivastava v. Avinuh Prasad Srivastava (LAWS (SC) 1966 10 34 = AIR (SC) 1967 581)** in support of the argument that the second marriage would stand hit by Section 15 of the Hindu Marriage Act. Another decision of the Apex Court in **Tejinder Kaur v. Gurmit Singh (LAWS (SC) 1988 2 85 = AIR (SC) 1988 839)** was also placed in support of the said argument.

2. The question came up for consideration is whether the offence under Sections 494 and 114 IPC would stand attracted when a second marriage was solemnized after the decree of divorce of first marriage, but before the culmination of its appeal and what would be the legal

effect, when the appeal ended in dismissal confirming the decree of divorce.

3. To resolve the issue, it is necessary to have a better understanding of what actually amounts to the offence of bigamy as engrafted under Section 494 IPC in relation to Sections 15 and 17 of Hindu Marriage Act.

4. In order to constitute the offence under Section 494 IPC, it must be satisfied that (i) the accused must have contracted first marriage (ii) he must have married again (iii) the first marriage must be subsisting and (iv) the spouse must be living (**Pashaura Singh v. State of Punjab and Another (AIR 2010 (SC) 922 : 2009 AIR SCW 7226)**). Further, it is necessary that the second marriage should be void by reason of its taking place during the life-time of the first husband or wife (**Gopal Lal v. State of Rajasthan (AIR 1979 (SC) 713 : 1979 Cri LJ 652)**).

5. Section 15 of the Hindu Marriage Act after its amendment deals with the stage in which a divorced person can validly enter into a second marriage. It says that after the decree of dissolving the marriage, either there is no right of appeal against the decree or if there is

such a right, the time for appealing has expired without an appeal having been presented or an appeal has been presented, but has been dismissed, it shall be lawful either of the party to the marriage to marry again. Though, the section after its amendment worded in a positive way specifying the time in which a second marriage can validly be entered into, by either of the parties to the marriage, in fact, a restriction is engrafted against a second marriage during the subsistence of first marriage. On the other hand, Section 494 IPC is a provision fastening criminal liability for the offence of bigamy, subject to the exception incorporated therein. Section 17 of the Hindu Marriage Act, 1955 says that any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code (45 of 1860) shall apply accordingly.

6. In the instant case, the second marriage was solemnized after the decree of divorce by the Family Court, but during the pendency of an appeal and a stay

order. But it is an admitted fact that the appeal ended in dismissal subsequently confirming the decree of divorce. Then the Doctrine of Merger would come into play and the decree of the Family Court will stand merged in the appellate decree. The decree would operate not from the date of first appellate decree, but from the date of decree of divorce granted by the Family Court. In other words, the decree of divorce confirmed in appeal would stand effective from the date of original decree of divorce of the Family Court and the appellate decree will revert back to the date of decree of divorce of the Family Court. If that be so, on account of the confirmation of decree of divorce in appeal, the first marriage will stand dissolved from the date of decree of Family Court and thereafter it cannot be said that there exists a subsisting marriage relationship or a living spouse for the purpose of Section 494 IPC. The legal position settled in **Chandra Mohini Srivastava's** case and **Tejinder Kaur's** case (supra) must be understood in relation to Section 15 of the Hindu Marriage Act governing validity of a second marriage. Section 15 does not override Section 28 of the Hindu Marriage Act, which

confers a right of appeal. In Section 15, three situations alone were recognized i.e. (i) when there is no right of appeal against the decree (ii) if there is any right of appeal, the time for appealing has expired without an appeal having been presented and (iii) an appeal has been presented, but has been dismissed. The Apex Court in **Lila Gupta v. Laxmi Narain and Others (AIR 1978 SC 1351)** held that the provision is directory and a marriage in violation of the period mentioned therein is not void, but voidable and hence no offence can be said to have been committed under Section 494 IPC. Necessarily, it must be understood that once the appeal ended in dismissal confirming the decree of divorce of the Family Court, it would come under the third limb of Section 15 of the Act irrespective of the fact that the marriage was solemnized either before the presentation of appeal or before the culmination of appeal. The question whether the second marriage was solemnized during the pendency of the appeal against the decree of divorce or before preferring an appeal within the time schedule would pale into insignificance, when the decree of divorce was confirmed in the appeal, which would revert

back to the date of decree of divorce of Family Court and hence the offence under Section 494 IPC will not stand attracted.

7. The perfunctory offence alleged under Section 114 IPC will not stand attracted when the main substratum under Section 494 IPC becomes inoperative and nonest. Hence, the cognizance taken for the offence under Section 494, 114 r/w Section 34 IPC will not stand in the eye of law and the same is liable to be quashed. I do so.

The Crl.M.C. will stand allowed accordingly.

Sd/-

P. SOMARAJAN
JUDGE

SV

APPENDIX OF CRL.MC 2077/2017

PETITIONER'S ANNEXURES

- ANNEXURE A1 TRUE COPY OF THE JUDGMENT IN O.P.1173/06 DT. 16.2.16.
- ANNEXURE A2 TRUE COPY OF THE I.A.NO.2628/2012 IN MAT APPEAL NO.173/2012.
- ANNEXURE A3 TRUE COPY OF THE COUNTER FILED BY THE PETITIONER IN I.A.NO.2628/2012 IN MAT APPEAL NO.173/2012.
- ANNEXURE A4 TRUE COPY OF THE ORDER DATED 20.11.2012 ON THE FILE OF THE HON'BLE HIGH COURT OF KERALA IN IA.2378/12 IN MAT APPEAL NO.173/2012.
- ANNEXURE A5 TRUE COPY OF THE COMPLAINT NO.2105/13 FILED BY 2ND RESPONDENT BEFORE THE JUDICIAL MAGISTRATE COURT, CHAVAKKAD.
- ANNEXURE A6 TRUE COPY OF THE JUDGMENT IN CC NO.412/2010 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, CHAVAKKAD.
- ANNEXURE A7 THE TRUE COPY OF THE JUDGMENT DATED 23/10/2019 ON THE FILES OF HON'BLE HIGH COURT OF KERALA IN MAT.APPEAL NO.173/2012 AND IN MAT.APPEAL NO.280/2012.

/TRUE COPY/

P.S. TO JUDGE