

High Court Of Karnataka

CRIMINAL PETITION No.9849 OF 2021

Judgment Date:

25-05-2022

Anand C. @ Anku Gowda And Ors

..Petitioner

Smt. Chandramma

..Respondent

Bench:

{HON'BLE MR. JUSTICE M. NAGAPRASANNA }

Citation:

LQ

1. Petitioners are before this Court calling in question proceedings in C.C.No.115 of 2021 pending before the Principal Civil Judge & JMFC, Channapatna, arising out of PCR No.151 of 2018, initiated for offences punishable under Sections 494 and 109 of IPC r/w. Section 34 of the IPC.

2. Heard Sri Ravindranath K., learned counsel for the petitioners and Sri S.G.Rajendra Reddy, learned counsel for the respondent.

3. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:-

Petitioner No.1 presently aged 76 years is the husband of the complainant/wife/respondent who is aged 69 years. Petitioner Nos.2 to 6 are all either family members, close relatives or friends of the 1st petitioner/husband. Marriage between the 1st petitioner and the respondent takes place on 02.05.1968. It is stated that from the wedlock of the 1st petitioner and the respondent three children were born. Out of the three, one is no more and two others who are daughters are residing in their respective matrimonial houses. It is the averment in the petition that in the year 1972-73, the 1st petitioner with the consent of the respondent married one Smt. Savitramma who is the sister of the respondent/complainant. From that wedlock, the 1st petitioner and Smt. Savitramma have two children - one is 45 years old and the other is 43 years old.

4. The 1st petitioner again gets married in the year 1993 with the 2nd petitioner/Smt. Varalakshmi. Again the averment is that, it was with the permission and consent of the 1st and 2nd wives. It is also stated that the properties of the 1st petitioner were equally divided amongst all of them. Therefore, it is the contention that the 1st wife - Smt. Chandramma/respondent was aware of the marriage of the 1st petitioner with Smt. Savitramma, the second marriage and both Smt. Savitramma and the respondent were aware of the marriage of the 1st petitioner with the 2nd petitioner i.e., the third marriage. It is also stated that all of them lived together peacefully.

5. In the year 2008, it appears that the 1st petitioner constructed a residential house in which the 1st and the



2nd petitioners performed all the rituals in the presence of all the members of the family and the wives. On 12-01-2015, it is averred that a gift deed was registered by the 1st petitioner in favour of the 2nd petitioner of a particular property. Likewise, another property was also gifted to the 2nd petitioner. The gifts made by the 1st petitioner in favour of the 2nd petitioner did not go well with the respondent/wife referred to as the first wife. On 07-07-2017, the respondent causes a legal notice upon the 1st and 2nd petitioners contending that the 1st and the 2nd petitioners have got married on suppression of earlier marriage that took place between the respondent and the 1st petitioner. The 1st and the 2nd petitioners also replied to the notice. Another civil proceeding is instituted by the daughters of the 1st petitioner and the respondent in O.S.No.91 of 2017 claiming partition and separate possession of various properties belonging to the 1st petitioner. Both the 1st and the 2nd petitioners are defendants in the said suit.

6. Things standing thus, the respondent files a private complaint invoking Section 200 of the Cr.P.C. against the petitioners herein alleging offences punishable under Section 494 of the IPC for bigamy, Section 109 of the IPC for abatement and Section 34 of the IPC in PCR No.151 of 2018. The respondent also files an application under Section 12 of the Domestic Violence Act, 2015 on the very next day of registration of the aforesaid private complaint in Criminal Miscellaneous No.138 of 2018. The other petitioners appear to have given evidence in Criminal Miscellaneous No.138 of 2018. Later, the learned Magistrate in P.C.R.No.151 of 2018 issued summons to the petitioners on 08-02-2021 after registering the crime in C.C.No.115 of 2021 in terms of Section 204 of the Cr.P.C., which was after an order taking cognizance of the offences against the petitioners. It is this act of the learned Magistrate taking cognizance that is called in question in the subject petition.

7. The learned counsel appearing for the petitioners would vehemently argue and contend that the allegation of polygamy against the 1st petitioner is unfounded as the complainant/respondent was very well aware of the relationships of the 1st petitioner as with her consent the 1st petitioner married one Smt. Savitramma, sister of the complainant and with the consent of both the sisters married the 2nd petitioner. It is his submission that all these events have happened first in the year 1972-73 and later, in the year 1993- 94. The complaint is registered in the year 2018, after about 25 years of the marriage with the 2nd petitioner and after about 45 years of the complainant being aware of the 2nd marriage. In all, the submission of the learned counsel is that, the dispute with regard to distribution of properties is racked up by registering a private complaint 25 years after the marriage of the 2nd petitioner.

8. On other hand, the learned counsel appearing for the respondent would vehemently refute the submissions to contend that the complainant was not even aware of the marriage of the 1st petitioner with the 2nd petitioner. Suppressing the fact that the 1st petitioner is already married, he married the 2nd petitioner which would definitely amount to bigamy and there can be no delay in cases of bigamy is his emphatic submission.

9. I have given my anxious consideration to the submissions made by the respective learned counsel appearing for the parties and perused the material on record.

10. The afore-narrated graphic details of dates and events are not disputed and are therefore not reiterated. The 3rd marriage of the 1st petitioner is admitted even in the petition. Therefore, the only issue that false for my consideration is,

“Whether the offence of bigamy is a continuing offence or the proceedings instituted for offence punishable for bigamy under Section 494 of the Cr.P.C. can be obliterated on the ground of delay?”

11. A few dates that would be needed for the said consideration are that, the marriage of the 1st petitioner with the complainant is on 02-05-1968. Marriage with the sister of the complainant is in the year 1972-73. From the wedlock, the 1st petitioner with the complainant or her sister has three and two children respectively, who are all aged more than 45 years. During the subsistence of these two marriages, the 1st petitioner marries the 2nd petitioner on 12-04-1993. Therefore, the 1st petitioner has admitted that he has contracted three marriages. The complainant being aware of subsequent marriages are not would be legally immaterial. The Apex Court in the case of STATE OF BIHAR v. DEOKARAN NENSHI AND ANOTHER¹, has interpreted the phrase ‘continuing offence’ and holds as follows:-

“5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule

or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

The Apex Court holds that a continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. Following the aforesaid judgment, a learned single Judge of the High Court of Gujarat in the case of JAFAR ABBAS RASOOLMOHAMMAD MERCHANT v. STATE OF GUJARAT², holds that bigamy is a continuing offence. The learned Judge has held as follows:

"56. In interpreting Section 494 of the IPC, one should look into the purpose of enactment and also to the mischief to be prevented. The object of enacting Section 494 of the Penal Code, 1860, to my mind, clearly was to punish persons, who in defiance of the law applicable to them in matters of marriage and divorce, etc., take a second wife during the existence of the first, but for the Personal Law of the Muslim, as discussed above, the applicant would be guilty of the offence of bigamy, if ultimately proved, on the basis of the evidence recorded in the course of the trial. He is able to get away with which by misinterpreting and misusing to his advantage, the message of the holy prophet Mohmmad, which is reflected in the holy 'Quran'. The 'Quran' does not say that a Muslim can treat his wife cruelly, drive her out and without dissolution the first marriage in accordance with law, he can marry for the second time and upto four times. The message of the holy prophet is loud and clear. Everyone knows about it, but still do not want to follow it.

... ..

77. In the case of State of Bihar v. Deokaran Nenshi, reported in (1972) 2 SCC 890 : (AIR 1973 SC 908), it was observed by the Apex Court that a continuing offence is one which is susceptible of continuance and is distinguished from the one which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

Several other High Courts have also taken the similar view that bigamy is a continuing offence. If admitted facts as deliberated hereinabove are taken note of, it cannot be in doubt that the 1st petitioner has contracted second and even third marriages during the subsistence of the 1st marriage with the complainant. In the teeth of the admitted fact, no further interpretation need be given, as even to day, the 1st petitioner admits that he is the husband of three women. Therefore, he is in the web of the offence punishable under Section 494 of the IPC. The proceedings against the 1st and 2nd petitioners cannot be quashed as the offence is admitted by the 1st petitioner in the petition. It being with the consent of the 1st wife or with the consent of the 1st and 2nd wives for the third time would become immaterial for consideration of offence of bigamy. In the teeth of the admitted facts of the petitioner marrying thrice and its subsistence even as on day, the plea of delay in registration of the crime would pale into insignificance, as bigamy in the case at hand is a continuing offence. The 1st petitioner, the 2nd petitioner and the other two wives of the 1st petitioner have all married the 1st petitioner during the subsistence of each others marriage and being fully aware of the preceding marriage. Therefore, the proceedings will have to be continued against them.

12. Insofar as the case of petitioner Nos.3, 4, 5 and 6 is concerned, it will have to be viewed with a different lens. The act of bigamy generally is a triangle involving the husband, the 1st wife and the 2nd wife. This is a peculiar case where it is a quadrangle, though the 2nd wife is not before the Court. Therefore, the 1st petitioner, 2nd petitioner and the complainant will have to resolve the issue amongst themselves. Petitioner Nos.3, 4, 5, and 6 who are other family members or friends of the 1st petitioner cannot be hauled into these proceedings unless

there are instances to demonstrate that they were responsible for the commission of second marriage or even the third marriage. That is not the averment in the complaint. The 2nd marriage has taken place in the year 1973 and the third marriage in the year 1993. Dragging all other members of the family and friends into the web of these proceedings sans countenance.

13. Therefore, criminal proceedings against petitioner Nos.3, 4, 5 and 6 require to be obliterated and the charge sheet against petitioner Nos.1 and 2 is required to be sustained only for the offence under Section 494 of the IPC and not under Section 109 of IPC.

14. It is for the protagonists in the quadrangle to resolve the issue amongst themselves and not drag other persons into these proceedings. If the proceedings against other petitioners are not quashed, it would become an abuse of the process of law, result in miscarriage of justice and quadruplet harassment to petitioner Nos.3 to 6.

15. For the aforesaid reasons, I pass the following:

ORDER

- i. The Criminal Petition is allowed in part.
- ii. Criminal Petition insofar as it concerns petitioner Nos.1 and 2 stands dismissed.
- iii. Criminal petition insofar as petitioner Nos.3, 4, 5 and 6 is concerned is allowed. Proceedings against them stand quashed.
- iv. It is made clear that the observations made in the course of this order are only for the purpose of consideration of the case of the petitioners either to sustain or to obliterate the proceedings. The same would not influence or bind further proceedings against petitioner Nos.1 and 2 or any other accused or any other proceedings pending before the authorities.

Disclaimer: Legitquest has made all efforts to avoid any omission and/or mistake in publishing this document and adding editorial and other enhancements. Legitquest would not be liable in any manner whatsoever by reason of any omission or mistake in the published document or any action or advice rendered or accepted on the basis of the document or any editorial or other enhancements like idraf/infographics/Note/Notebook/Acts/Rules/Regulations/Bills/Notifications/Circulars/News/Interviews/Columns/Treaties/LawCommission Reports/Constituent Debates and/or any material or feature added by us. All disputes will be exclusively dealt with the Courts/Tribunals at Delhi only. It is advised to check the authenticity of all published document from the original source.