A P. SATYANARAYANA AND ANR.

v.

P. MALLAIAH AND ORS.

AUGUST 30, 1996

B [MADAN MOHAN PUNCHHI AND K.T. THOMAS, JJ.]

Penal Code, 1860 :

Section 494—Bigamy—Factum of marriage on the basis of tests laid down by Supreme Court held not proved and acquitted by Magistrate—High Court upset the order on the ground that there was admission on the part of the husband, and ordered re-trial—On appeal held, admission not necessarily mean that he had taken the second wife after solemnizing a Hindu marriage after performing due ceremonies—It was a futile exercise to have ordered retrial when the evidence had been discussed and rejected threadbare—Hence the High Court's order is set aside—However maintenance enhanced from Rs. 400 to Rs. 800 w.e.f. 1.10.1996 as offered by the husband.

Bhaurao Shankar Lokhande & Anr. **v.** *State of Maharashtra & Anr.,* **[1965] 2 SCR 837;** *Kanwal Ram and Ors.* **v.** *The Himachal Pradesh Administration,* **[1966] 1 SCR 539 and** *Priya Bala Ghosh* **v.** *Suresh Chandra Ghosh,* **[1971] 1 SCC 864, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1635 of 1996.

From the Judgment and Order dated 11.7.94 of the Andhra Pradesh High Court in Crl. R. Case No. 554 of 1991.

D. Prakash Reddy and D. Bharathi Reddy for the Appellants.

Guntur Prabhakar and Anil Kr. Tandale for the Respondents.

The following Order of the Court was delivered :

Leave granted.

The wife-respondent filed a written complaint before the police under Section 494 of the Indian Penal Code which after investigation was put in Court for trial of the appellant as well as his alleged second wife,

the second appellant. Charge was laid against him. In entering upon plea against the charge, the husband-appellant stated :

> "True. I have not committed any crime. I have married after ten years of my wife deserted and went away."

His plea was sought to be read as if he had admitted having married a second time. The learned Trial Magistrate recorded the prosecution evidence and came to the conclusion that there was no legal evidence to prove the factum of marriage on the basis of the tests laid down by this Court in *Bhaurao Shankar Lokhande & Anr.* v. *State of Maharashtra & Anr.*, [1965] 2 SCR 837; *Kanwal Ram and Ors.* v. *The Himachal Pradesh Administration,* [1966] 1 SCR 539 and *Priya Bala Ghosh* v. *Suresh Chandra Ghosh,* [1971] 1 SCC 864. He thus acquitted the appellant. The High Court on a private revision by the wife-respondent, upset the order of acquittal mainly on the ground that there was an admission of the first appellant in response to the charge laid against him. The High Court therefore ordered a re-trial.

In our view, the High Court was in error in upsetting the well-considered order of the Trial Magistrate requiring due ceremonies of the alleged second marriage being proved so as to satisfy the tests laid down by this Court in the afore-referred cases. The plea of guilt afore-referred to could at best be understood to mean that the first appellant had taken a wife, but that admission did not necessarily mean that he had taken the second wife after solemnizing a Hindu marriage with her after performing due ceremonies for the marriage. Such plea, which he need not have even entered upon, and which was ignorable by the Court, did not absolve the prosecution to otherwise prove its case, that the marriage in question was performed in a regular way so as to visit him with penal consequences. We therefore are of the view that a futile exercise has been enjoined upon the Magistrate by the High Court in ordering a re-trial when the evidence, as it was, had been discussed and rejected threadbare. For these reasons, we think that the orders of the High Court would need upsetting, which we hereby do.

At the same time, we need record the statement of learned counsel for the first appellant to the effect that the said appellant is a class IV employee working in the State Board of Revenue, fetching about Rs. 1600 per mensem as salary our of which, under Court orders he pays, in an

A interim way, Rs. 400 per mensem as maintenance to the respondent-wife and his grown-up child. A genuine offer has now been made by learned counsel to increase the said allowance, should the respondent-wife not persist in her claim in branding the first appellant as a bigamist; for if he were to get convicted and imprisoned, she would lose the maintenance altogether. We see the force of the argument. She cannot afford to kill the B goose which lays the golden egg. Hard realities of the situation require that the first appellant is not deprived of his job so that he keeps providing the necessary wherewithal to the respondent wife and his child, besides maintaining himself. Taking that into account, we should think that the appellant shall pay to the respondent and his child a sum of Rs. 800 per mensem as C offered on these considerations as maintenance allowance operating with effect from 1st October, 1996. We order accordingly.

For the afore-reasons, we allow this appeal, set aside the impugned orders of the High Court, while enhancing the maintenance payable to the respondent-wife and her child. The maintenance proceedings pending in D the Subordinate Courts shall now be decided in line with our order made hereinbefore.

G.N. Appeal allowed.