

**HIGH COURT OF JUDICATURE MADHYA PRADESH,**  
**JABAPLUR**

S.B.: HON. SHRI S.C.SINHO, J.

**Criminal Revision No.1398/1998**

Harcharan and others

**VERSES**

The State of Madhya Pradesh

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Shri S.K. Tiwari, Advocate for the applicants.

Shri Ajay Tamrakar, P.L. for the respondent/State.

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**O R D E R**

23/02/2011

1. The applicants have filed this criminal revision under Section 397/401 of Cr.P.C. being aggrieved by the judgment dated 18.11.1998 passed by II Additional Sessions Judge, Tikamgarh in Criminal Appeal No.4/1995 arising out of judgment dated 01.02.1995 passed by C.J.M., Tikamgarh in Criminal Case No.756/1994, whereby the applicant No.1 has been convicted under Section 494 of I.P.C. and applicants No.2 to 4 have been convicted under Section 409/109 of I.P.C. and all have been sentenced to R.I. for 1 year with fine of Rs.2000/-, in default S.I. for 6 months, each respectively.
2. The facts giving rise to the instant revision are that respondent No.1 filed a complaint against the applicants under Section 494, 120 and 109 of I.P.C. before C.J.M. Tikamgarh on 08.06.1991 alleging that her marriage was solemnized with applicant No.1 Harcharan in the year 1981 according to Hindu rites and customs. After marriage her husband applicant No.1, father in-law applicant No.2 and deceased mother-in-law Jamuna were used to harass her and ousted her from their house after three years of the marriage. On 27.05.1991 when respondent No.1

received information that her husband applicant No.1 is going to contact second marriage her brother Bhagwandas along with Panjua Chowkidar, Param Mate, Achhelal reached in the house of Pushpa Bai where they found that applicant No.1 was going to marry with Pushpa Bai applicant No.3 according to Hindu rites and customs. Despite their raising objection the applicant No.1 married with applicant No.3. Therefore, applicants have committed the offence punishable under Section 494 read with section 109 of I.P.C. The statements of the witnesses were recorded and learned Magistrate took cognizance against the applicants. The charges were framed against the applicant No.1 under Section 494 and 494/109 of I.P.C. The applicants stated that a false case is filed against them. After appreciation of evidence learned trial Court held applicants guilty and further in Criminal Appeal No.4/1995 learned II Additional Sessions Judge, Tikamgarh vide judgment dated 18.11.1998 also dismissed the appeal.

3. Shri S.K. Tiwari, learned counsel for the applicants has submitted that both the courts below have not properly and effectively appreciated the evidence adduced by respondent No.1 and it is not proved that applicant No.1 has solemnized his marriage with applicant No.3 as per Hindu rites and customs.
4. Shri Ajay Tamrakar, learned counsel for the State has submitted that the second marriage is solemnized secretly and it is very difficult to get direct evidence.
5. At the trial CW-1 Guddi has stated that she was married with the applicant No.1 and she was ousted by the applicants. CW-2 Bhagwandas brother of Guddi Bai along with CW-3 Panchu, CW-4 Parmu, CW-5 Achchhelal have specifically stated that when applicant No.1 was solemnizing second marriage with applicant No.3 Pushpa

they went there and raised objection but despite of their raising objection applicant No.2 father of the applicant No.1 and applicant No.4 Karanjua did not listen their objections and solemnized second marriage with applicant No.3.

6. Apart from this, complainant has produced Nirwachan Namawali of Wajitpura where applicant No.1 Harcharan and applicant No.3 Pushpa are shown as resident of House No.106 and further applicant No.1's father name is shown as Tuda and applicant No.1 is shown as husband of applicant No.3. The voter list is an authentic document and rightly believed by both the courts below.
7. It is well settled that revisional jurisdiction cannot embark upon re-appreciation of evidence unless the finding of fact is, on the face of it, illegal or perverse. In absence of any circumstance suggesting any motive of false implication, the courts below have not committed any illegality while placing reliance on the aforesaid witnesses.
8. Learned counsel for the applicant has submitted that incident is about 20 years old and no fruitful purpose would be served by sending the applicants in jail after such a long lapse of time. As per original complaint the applicant No.3 Pushpa was of 19 years of age when this incident took place and she is a lady. In these circumstances it would not be proper to sent her behind the bar.
9. At the time of alleged offence applicant No.3 was aged about 19 years. She has remained in jail from 18.11.1998 to 17.12.1998. Status and voile of a village girl aged about 19 years is well known to us. It will not be justified to send her jail for the act committed by her parents, who are even not impleaded as accused but fine amount requires no

modification. Therefore, in view of section 6 of Probation of Offenders' Act she can not be sent in jail and it is a fit case where advantage of section 3 of the Probation of Offenders' Act should be given to her.

10. Accordingly, conviction of applicant No.3 is maintained. However, I consider it to a fit case where the applicant No.3 Pushpa may be granted benefit under section 3 of the Probation of Offenders Act, 1958 and accordingly I suspend the sentence imposed on the applicant No.3 after admonishing her and revision is partly allowed.
11. Bigamy is a serious offence and the maximum punishment under Section 494 is seven years. Therefore, where the offence of bigamy is proved the court cannot take a very lenient view as held in AIR 1979 Sc 713, Gopal Lal vs. State of Rajasthan. Accordingly, the revision in respect of applicants No.1, 2 and 4 is hereby dismissed. The conviction and sentence of the applicant No.1 under Section 494 of I.P.C. and applicants No.2 and 4 under Section 494/109 of I.P.C. is hereby maintained. The applicants No.1, 2 and 4 are on bail. Their bail bonds are cancelled. They are immediately directed to surrender before the trial court for serving out the remaining part of their jail sentence.
12. With this modification, this criminal revision is finally disposed of. Copy of the order be sent to the trial Court for information and compliance.

(S.C. Sinho)  
Judge