

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.BHAVADASAN**

**FRIDAY, THE 29TH DAY OF NOVEMBER 2013/8TH AGRAHAYANA, 1935**

**CRL.A.No. 978 of 2003 ( )**  
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**AGAINST THE JUDGMENT IN CRA 183/1994 OF ADDL. SESSIONS COURT,  
THALASSERY IN CC.NO. 280/1990 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,  
THALASSERY**  
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**PETITIONER / COMPLAINANT :**  
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**P.K. PADMINI, D/O. KUNHIKANNAN  
PATHIYAN HOUSE, MOOZHICKARA P.O.,  
THALASSERY.**

**BY SENIOR ADVOCATE SRI.M.K.DAMODARAN  
BY ADVS.SRI.SOJAN MICHEAL  
SRI.GILBERT GEORGE CORREYA**

**RESPONDENTS / ACCUSED NO. 1 & STATE :**  
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- 1. A.M. DAMODARAN,  
S/O. KUNHIRAMAN, ANIMANGALATH,  
KONORVAYAL, CHEETAMCOON  
THALASSERY.**
- 2. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA  
ERNAKULAM**

**R1 BY ADV. SRI.R.SURENDRAN  
R2 BY PUBLIC PROSECUTOR SMT. P. MAYA**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29-11-2013,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**Mn**

**P.BHAVADASAN, J.**

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**Crl. Appeal No.978 OF 2003**  
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**Dated this the 29<sup>th</sup> day of November, 2013.**

**J U D G M E N T**

In a prosecution of the offence under Section 494 of Indian Penal Code, the complainant-wife arrayed the entire family as accused. After trial, the trial court found only the 1<sup>st</sup> accused, who is the husband, guilty of the offence. He was therefore convicted and sentenced to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- with default clause of simple imprisonment for three months under Section 494 IPC. Aggrieved accused preferred appeal as Crl. Appeal No.183/1994. The lower appellate court, on re-appreciation of the evidence, found it difficult to concur with the finding of the trial court and reversed the finding and acquitted the 1<sup>st</sup> accused also. Challenging the said finding, the complainant has come up in appeal before this Court. The facts absolutely essential are as follows:

2. According to the complainant, her marriage with the 1<sup>st</sup> accused was solemnised on 22.02.1982 from her house and the rites were performed by PW3. According to the complainant, the marriage still subsists and during the subsistence of marriage, on 04.06.1989, the 1<sup>st</sup> accused is alleged to have married the 2<sup>nd</sup> accused. A private complaint was filed by the wife, cognizance of which was taken and proceedings were initiated by the Judicial First Class Magistrate Court concerned after complying with necessary formalities. Summons was issued to the accused and they entered appearance. After complying with the provisions of Section 244 Cr.P.C and finding that the accused could not be discharged thereof, charge was framed for the offence under Section 494 IPC. To the charge, the accused pleaded not guilty and claimed to be tried. Therefore, on the side of the complainant, PWs 1 to 8 were examined and Exts.P1 to P5 were marked.

3. After the close of the complainant's evidence, the accused were questioned under Section 313 Cr.P.C. They denied all the incriminating circumstances brought out in evidence

against them and maintained that they were innocent. The 1<sup>st</sup> accused had himself examined as DW1. Ext.D1 was marked on the side of the defence.

4. The trial court found the evidence of PWs 1, 2, 3, 5, 7 and 8 to be convincing enough and came to the conclusion that there was subsisting marriage between the complainant and the 1<sup>st</sup> accused when the 1<sup>st</sup> accused married the 2<sup>nd</sup> accused on 04.06.1989. Accordingly, he was found guilty. In appeal, the finding was in other way.

5. Learned counsel appearing for the appellant contended that the lower appellate court has erred both on facts and in law in coming to the conclusion that there is no material to show that there was a valid marriage between the complainant and the 1<sup>st</sup> accused. Referring to the evidence of PWs 1, 2, 3 and 5, it was contended that their evidence clearly show that the ceremonies were performed for the marriage between the complainant and the 1<sup>st</sup> accused which was solemnised in the house of the complainant. Referring to Section 7 of the Hindu Marriage Act, it was contended that when the parties belong to two different

communities of the Hindu religion, it is necessary only to follow the customary rites of any one of the communities for a valid marriage. If that be so, in the case on hand, the evidence clearly shows that the ceremonies that are necessary for a valid marriage had been followed. Further, it was contended that the lower appellate court has not given necessary significance and importance to Ext.P1 marriage certificate issued by the local authority which clearly shows that the marriage between the complainant and the 1<sup>st</sup> accused had taken place on 22.02.1982. None of the grounds relied on by the lower appellate court are sustainable in law to decline the relief to the complainant. Accordingly, it is contended that the conviction and sentence passed by the trial court have to be restored.

6. Learned counsel appearing for the 1<sup>st</sup> respondent, on the other hand, pointed out that this Court is sitting in appeal against acquittal and the scope of interference is considerably limited. If two views are possible, then the view of the lower appellate court will have to be upheld. Unless it is shown that the findings of the lower appellate court are either perverse or are contrary to the

evidence on record, it may not be justifiable for this Court to interfere. Learned counsel went on to point out that except for a bald statement in the complaint as well as in the evidence that the marriage between the complainant and the 1<sup>st</sup> accused has been performed in accordance with the customary rites, there is no specific mention of any particular customary rites having been followed. To be more precise, there is no mention as to whether the rites of the community to which the complainant belongs or the 1<sup>st</sup> accused belongs were followed. Of course, PWs 1, 2, 3 and 5 narrate several things which have been done during the marriage. But, those things which are alleged to have been done are not stated to be as per the customary rites that are followed by either of the community for a valid marriage.

7. Drawing attention to the evidence of PW1, who is the complainant herself, it is pointed out by the learned counsel for the 1<sup>st</sup> respondent that she has no consistent version regarding the marriage or her stay with the 1<sup>st</sup> accused. In the sworn statement taken by the learned Magistrate on taking cognizance, her definite case was that the marriage was held in panchayath

office. At the time of evidence, her case is that it was conducted in her house. She was confronted with her earlier statement and had conceded that she had stated so. Then the learned counsel pointed out that a reading of the evidence of PW1 clearly shows that she had never gone to the panchayath office at all and the registration of marriage itself is suspicious. Finally, learned counsel pointed out that it is rather strange to note that even going by the complainant's case, it is an arranged marriage and the complainant has no case that any of the close relatives of the 1<sup>st</sup> accused had taken part in the marriage. If, as a matter of fact, the marriage was an arranged one and it took place as alleged, it is inconceivable that none of the relatives at least the parents of the accused would not have been taken part in the marriage. These aspects have been given considerable weight by the lower appellate court. According to the learned counsel, they are valid aspects which needed consideration and which have been omitted to be noticed by the trial court. Learned counsel went on to point out that there are no grounds to interfere with the findings of the lower appellate court.

8. As rightly noticed by the learned counsel for the appellant, going by Section 7 of the Hindu Marriage Act, when the parties belong to two different communities of Hindu religion, marriage needs to be solemnised in accordance with the customary rites and ceremonies of the religion to which either of the party belongs. In the case on hand, the claim of the complainant is that customary rites of marriage of the Thiyya community had been followed. The lower appellate court has noticed that except for saying that the Hindu religious rites and ceremonies have been followed, there is no specific statement in the complaint that the customary rites of valid marriage in the Thiyya community have been performed for solemnisation of the marriage between the complainant and the 1<sup>st</sup> accused. Even assuming that, that may be a very strict approach, one would have expected the complainant at least at the time of evidence to say that the procedures followed which is spoken to by PWs 1, 2, 3 and 5 are in tune with the customary rites applicable to Thiyya community. There is no such mention there also. As rightly pointed out by the learned counsel for the 1<sup>st</sup> respondent, they



spoke about the various steps taken for the marriage. But, none of the witnesses say that, that is in accordance with the customary rites followed in that community.

9. Again, much emphasis was laid on Ext.P1, certificate of registration of marriage. Of course, normally, that is entitled to considerable weight. But, as rightly pointed out by the lower appellate court, on an analysis of the evidence adduced by the complainant, it is extremely doubtful whether the parties had gone to Registrar's office to have the marriage registered. It is here that the sworn statement of the complainant assumes importance. She has stated in the sworn statement that the marriage took place in the panchayath office which has given a go by at the time of evidence. At the time of evidence, she says that the marriage took place in her own house. She says that after the marriage, on the next day, they went from her house to the Registrar's office and immediately thereafter she says that after the marriage, they went to the house of the bridegroom and from there they went to the Panchayath office. The 1<sup>st</sup> accused has a case that he was forced to sign on certain papers and he

had no option but to do so because of the force exerted by a group. True, he was aware of the consequences of signing such papers and also know that his marriage has been registered. But he has not taken any steps as are necessary to see that the legal impact created by the document is got avoided. But, at the same time, as rightly noticed by the lower appellate court, in the light of the sequence of events and also the narration of the incident in the evidence of PW1, the stand taken by the 1<sup>st</sup> accused appears to be probable. Of course, the officer of the Panchayath concerned who has been examined would say that if an application is filed for registration of marriage, it is not necessary that the parties should sign in the register. Here, one may notice that the complainant had approached the Magistrate Court concerned for maintenance. There also the same issue had brought up. Therein she named two other persons as witnesses to the registration of marriage in the Panchayath. When she was confronted with that statement in the present proceedings, she had to concede that what she had stated earlier is wrong. Thus it could be seen that even regarding the registration of marriage,

she has no consistent case. Finally comes the staying together of complainant and the 1<sup>st</sup> accused.

10. Going by the complaint, it would appear that the stand of the complainant is that from the date of marriage till 03.06.1989, they lived together. At the time of evidence, she gives a slight modification and says that after the marriage, she went to bridegroom's house and after staying there for two months, she returned to her house. She then says that for three or four years, her husband was in Kasaragod at Malabar area. Unfortunately for the complainant, the 1<sup>st</sup> accused produced his passport which showed that from 1983 till 1989, he was not in India at all. When that was pointed out to PW1, she denied the same but had to accept it. Ext.D1 passport clearly showed that he was not available in India from 1983 till 1989. It is surprising to note that PW3 has stated that he had personal knowledge that from 1982 till 1989, they were residing together which cannot obviously be true at all.

11. It was the above facts which had persuaded the lower appellate court to come to the conclusion that the evidence is not

sufficient to show that there was a valid marriage. It will not be inappropriate to refer to the decision relied on by the learned counsel for the 1<sup>st</sup> respondent in **Savithri vs. Sankaran** (1988 (1) KLT 423). In paragraphs 5 and 6 of the said decision, it was held as follows:

“5. Admission of the accused that there was a first marriage or that the second marriage was also conducted will not exonerate the complainant from the burden of proving those marriages. In a prosecution under S.494 I.P.C and some other cases it is incumbent upon the complainant to establish that both marriages pleaded by him or her were solemnised in accordance with the customary rites and ceremonies prescribed either under law governing them or recognized by custom prevailing in their community. Decision cannot be on the basis of admission. If the first marriage is not legal there is no question of legal marital status arising and hence there is no question of the second marriage becoming void for that reason and the observance of such second marriage becoming an offence. Both the marriages must strictly be proved by legal evidence independent of any admission on the part of the husband or wife as the case may be. Even the presumption arising on the basis of opinion

expressed by conduct under the first part of S.50 of the Evidence Act as to relationship is excluded by the proviso in proving a marriage in cases in which the relationship of husband and wife is in issue and marriage is an ingredient of an offence as in bigamy, adultery and enticing away of a married woman.

6. That is because both the marriages must be complete in so far as the essential ceremonies have been performed. But while legality and the consequent marital status on the basis of the first marriage has to be established it is not necessary to prove that the second marriage is legal even though observance of all the formalities will have to be proved. That is because the essence of the offence itself is the void nature of the second marriage which ought to have been legal and valid but for the relationship under the first marriage which alone is the reason for invalidating the second marriage. The conscious act of entering into a second marriage which would otherwise have been legal is necessary to constitute and complete the offence. Proof of observance of the ceremonies for the second marriage is also thus an integral part of the burden”.

If that be the standard to be applied, surely, the complainant has to fail. Her claim of staying together is also belied.

If, under the above circumstances, the lower appellate court was of the view that the marriage between the complainant and the 1<sup>st</sup> accused cannot be taken as proved, the court cannot be found fault with. It is a possible view as rightly pointed out by the learned counsel for the respondent. If that be so, interference in appeal is uncalled for.

This appeal is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN  
JUDGE**

smp

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P.A. to Judge.