

A

MOHINDER SINGH
v.
GULWANT SINGH AND ORS. ETC.

DECEMBER 17, 1991

B

[S. RATNAVEL PANDIAN, M. FATHIMA BEEVI AND
YOGESHWAR DAYAL, JJ.]

Code of Criminal Procedure, 1973:

C

Section 202—Scope and Nature of enquiry—Magistrate only to be satisfied if a prima facie case exists—Offence of bigamy—Court going into sufficiency of evidence for conviction—Held the court exceeded its scope of enquiry.

D

Section 482—High Court—Inherent powers—Power to quash criminal proceedings—Scope of.

E

The appellant filed a complaint before the Chief Judicial Magistrate, Jullundhar against the respondents alleging that while the matrimonial tie between his sister and his brother-in-law were subsisting, his brother-in-law performed a second marriage and committed the offence of bigamy while the other respondents abetted and assisted the second marriage. The Chief Judicial Magistrate recorded the statements of the complainant and other witnesses under Section 202 of the Code of Criminal Procedure and on being *prima facie* satisfied that the offence punishable under sections 494 and 109 of the IPC was made out, issued process to the respondents.

F

The respondents-accused filed petitions in the High Court under Section 482 of the Criminal Procedure Code for quashing the proceedings against them. The High Court allowed the petitions and quashed the appellant's complaint by holding that the complaint does not show an offence under Section 494 IPC.

G

In the appeal to this court, counsel for the respondents admitted the second marriage of appellant's brother-in-law but denied the alleged first marriage between appellant's sister and appellant's brother-in-law.

H

Setting aside the order of the High Court and allowing the appeals (Criminal Appeal No. 794/91 in part), this Court,

HELD: 1. The scope of enquiry under Section 202 of the Code of Criminal Procedure is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. [482 G-H, 483-A]

Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. During the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether *prima facie* case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. [483 A-B]

Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors., [1976] 3 SCC 736; *Vadilal Panchal v. Dattatraya Dulaji Ghadi-ganoker and Anr.*, [1961] 1 SCR 1; *Pramatha Nath Talukdar v. Saroj Ranjan*, AIR 1962 SC 876-[1962] 2 SCC 297, referred to.

2. In the instant case, the Court exceeded the scope of the enquiry contemplated under Section 202 of the Code by going into the question of sufficiency of evidence for conviction of the offence of bigamy. Further, in view of the admission made by the counsel for the respondents admitting the second marriage the conclusion arrived at by the court in the impugned order that the complaint does not contain any allegation of the performance of the marriage cannot be sustained and is accordingly set aside. [483 C-D]

3. There is no sufficient material for proceedings against respondents-accused Nos. 4 and 5 in the complaint as having abetted the offence of bigamy, though there is sufficient ground as against the rest of the respondents. Accordingly the impugned order of the High Court quashing the complaint against respondents, other than respondents 4 and 5, is set aside. [483 F-H]

- A *State of Karnataka v. L. Muniswamy and Ors.*, AIR 1977 SC 1489, held inapplicable.

Shanti Deb Berma v. Smt. Kanchan Prava Devi, AIR 1991 SC 816, cited.

- B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 794 of 1991.

From the Judgment and Order dated 17.5.1991 of the Punjab and Haryana High Court in Criminal Misc. No. 3434-M of 1991 (O & M).

- C S.S. Chadda and R.S. Sodhi for the Appellant.

Pawan Kr. Bansal and K.V. Mohan for the Respondents.

The following Order of the Court was delivered :

- D ORDER

Leave granted in both cases.

- E These two appeals arise out of a common order passed by the High Court of Punjab and Haryana in Crl. M.P. Nos. 3434-M/91 and 3436-M/91 dated 17.5.91 whereby the High Court allowed these two petitions filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and quashed the complaint filed by the appellant herein and all the subsequent proceedings arising thereon.

- F The appellant who is the brother of Jagjit Kaur filed a complaint before the Court of the Chief Judicial Magistrate of Jullunder alleging that while the matrimonial tie between Darshan Singh and his sister Jagjit Kaur is still subsisting, Darshan Singh performed a second marriage with Mohinder Pal and the respondents in both the appeals abetted and assisted the second marriage.

- G The Chief Judicial Magistrate took the statements of the complainant and three other witnesses including Jagjit Kaur under Section 202 of the Code. Of the witnesses examined, apart from the complainant and Jagjit Kaur, one was to prove the first marriage and the other was to prove the second marriage of Darshan Singh with Mohinder Pal. The learned Chief Judicial Magistrate on being *prima facie* satisfied that the offence of bigamy punishable under H Sections 494 and 494 read with 109 IPC is made out, issued process by his

order dated 14.2.91 to all the eight accused arrayed in the complaint of whom seven are the respondents herein barring Darshan Singh (A-1) who was not a party in the proceedings initiated under Section 482 CrI. P.C., and directed all the accused to appear before him on 20.3.91.

All the respondents/accused herein, without appearing before the CJM approached the High Court by filing a petition under Section 482 of the Code praying to quash the proceedings as against them. It may be noted here that in Criminal Appeal No. 794 of 1991 (arising out of SLP (CrI.) No. 2810/91), the respondents before the High Court were accused Nos. 2 to 5. In Criminal Appeal No. 795 of 1991 (arising out of SLP (CrI.) No. 2784/91), the respondents were accused Nos. 6 to 8, namely Mohinder Pal and her parents. The High Court for the reasons given in its impugned order finally concluded as follows:

“Since there is no allegation of performance of lavans in the presence of Sri Guru Grant Sahib, amidst the chanting of hymns composed by Sri Guru Ram Dass Ji, the impugned complaint does not contain any allegation of the performance of the first marriage of Jagjit Kaur with Darshan Singh and of the second marriage of Mohinder Pal with Darshan Singh. The impugned complaint, thus, does not show the commission of the offence under Section 494 IPC.”

The learned counsel appearing on behalf of the appellant strenuously contended that the marriage of Darshan Singh with Jagjit Kaur is a legally valid one and that Darshan Singh, while his marital tie with Jagjit Kaur is united and still validly subsisting, has performed the second marriage with Mohinder Pal and thereby Darshan Singh has committed the offence of bigamy. In proof of the second marriage of Darshan Singh with Mohinder Pal, he heavily relied upon the document Exh. PW-2/1.

Learned counsel appearing on behalf of the re-spondents while fairly admitting the marriage between Darshan Singh and Mohinder Pal has denied only the marriage of Darshan Singh with Jagjit Kaur and added that he is not challenging the validity of the marriage of Darshan Singh with Mohinder Pal. Further, he has stated that it is true that an engagement did take place on 31.1.82 as regards the marriage proposal of Darshan Singh with Jagjit Kaur but no marriage was solemnised as per the Sikh rites in pursuance of the said engagement since Jagjit Kaur had left India to England. According to him, Jagjit Kaur has not mentioned the alleged fact of her marriage in her passport and that this very fact indicates that no marriage of Jagjit Kaur with Darshan Singh was solemnised.

A Both the learned counsel have cited certain decisions of this Court in support of their respective cases. Mr. S.S.Chadda, learned counsel for the appellant in support of his submission that the enquiry under Section 202 of the Code is extremely restricted, drew our attention to the decision of this Court in *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others*, [1976] 3 SCC 736 wherein the following dictum has been laid down:

B “It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited—limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint—(i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a *prima facie* case for issue of process has been made out; (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have.”

D Learned counsel for the respondents strongly relied upon the decision of this Court in *State of Karnataka v. L. Muniswamy and Others*, [1977] 3 SCC 113 wherein Chandrachud, J (as he then was) has pointed out that in the exercise of the wholesome power under Section 482 of the Code corresponding to Section 561 (A) of the Code of 1898 “the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed”.

F The decision in *Muniswamy's* case, in our view, cannot be availed of by the respondents because that decision was rendered by this Court while examining the powers of the Sessions Court to frame appropriate charges as warranted by the facts and circumstances of the case.

This Court as well as various High Courts in a catena of decisions have examined the gamut and significance of Section 202 of the Code and settled the principle of law, the substance of which is as follows:

G The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But

H the enquiry at that stage does not partake the character of a full dress trial

which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether *prima facie* case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. Vide *Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and Another*, [1961] 1 SCR 1 and *Pramatha Naih Talukdar v. Saroj Ranjan*, [1962] 2 SCC 297.

In the present case, the High Court appears to have exceeded the scope of the enquiry contemplated under Section 202 of the Code and has gone into the question of sufficiency of evidence for conviction of the offence of bigamy. Further, in view of the admission made by the learned counsel for the respondents admitting before us the marriage of Darshan Singh with Mohinder Pal the conclusion arrived at by the Court in the impugned order that the complaint does not contain any allegation of the performance of the marriage of Mohinder Pal with Darshan cannot be sustained and is liable to be set aside.

Lastly relying on a decision of this Court in *Shanti Deb Berma v. Smt. Kanchan Prava Devi*, AIR 1991 SC 816 to which one of us (S. Ratnavel Pandian, J) was a party, it was submitted by the learned counsel for the respondents that in the absence of an allegation that the marriage of Darshan Singh with Jagjit Kaur was celebrated in accordance with the customs dispensing with the requisite ceremonies and usage applicable to the parties, the alleged first marriage should be held to have been not proved in the eye of law. This submission is not available to him at this stage because that can be determined only at the stage of the trial of the case.

However, on a thorough examination of the materials placed before us, we are of the view that there is no sufficient material for proceedings as against Lal Singh and Charanjit Kaur who are arrayed as accused Nos. 4 and 5 in the complaint as having abetted the offence of bigamy, though there is sufficient ground as against the rest of the respondents.

In the result, we set aside the impugned order of the High Court so far as the respondents other than respondents 3 and 4 in SLP No. 2810/91 are concerned and direct the trial court to proceed with the case and expeditiously dispose of the same on the merits of the case without being influenced by any of the observations made by us in justification of this order.

A Criminal Appeal No. 795 of 1991 (arising out of SLP (Crl.) No. 2784/91 is allowed in its entirety and Criminal Appeal No. 794/91 (arising out of SLP (Crl.) No. 2810/91) is allowed only in respect of Gulwant Singh and Balbir Kaur respondents 1 and 2 and dismissed in respect of Lal Singh and Charanjit Kaur.

T.N.A.

Appeal allowed.