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S. NAGALINGAM

v.

SIVAGAMI

AUGUST 31, 2001

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[ D.P. MOHAPATRA AND K.G. BALAKRISHNAN, JJ.]

*Penal Code, 1860 :*

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*S.494—Bigamy—Ingredients explained—Husband contracting a second marriage during the subsistence of the first marriage—Held, in the facts of the case, the husband committed offence of bigamy.*

*Hindu Marriage Act, 1956 :*

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*S.7 and S.7-A (as inserted by Tamil Nadu Amendment)—Marriage—'Saptapadi'—Special provision regarding suyamariyathai and seerthiruththa marriage in State of Tamil Nadu—During subsistence of first marriage second marriage performed by husband in the presence of relatives and friends—Complainant u/s. 494 IPC by the first wife—Magistrate acquitting the husband holding that second marriage was not a valid marriage as Saptapadi was not*

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*performed—Held, any of the ceremonies enumerated in s.7-A would be sufficient to complete a valid marriage—Since the parties were residents of Tamil Nadu and marriage performed in the said State in accordance with provisions of s.7-A, second marriage was a valid marriage and husband committed the offence of bigamy.*

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**Respondent No.1 filed a complaint under section 494 IPC against her husband (appellant-accused no.1) and 6 others alleging that during the subsistence of their marriage the appellant entered into a marriage with another woman, namely, accused no. 2, on 18.6.1984. The parties, namely the complainant-respondent no. 1, appellant-accused no. 1 and accused no.2, all were residents of State of Tamil Nadu. The Trial Court acquitted the accused holding that since "Saptapadi" had not been performed, the second marriage was not a valid marriage and no offence was committed by the accused. On appeal, the High Court convicted the husband accused. no. 1, under section 494 IPC but acquitted the other accused. Aggrieved, the husband filed the present appeal.**

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**Dismissing the appeal, the Court**

**HELD : 1.** There was a valid marriage on 18.6.1984 between the appellant (accused no. 1) and accused no. 2. Therefore, it was proved that the appellant had committed the offence of bigamy as it was done during the subsistence of his earlier marriage held on 6.9.1970. [462-C-D]

**2.1.** The essential ingredients of the offence under Section 494 IPC are: (i) the accused must have contracted the first marriage; (ii) whilst the first marriage was subsisting, the accused must have contracted a second marriage; and (iii) both the marriages must be valid in the sense that necessary ceremonies governing the parties must have been performed. [457-F]

**2.2.** In view of s.7 of the Hindu Marriage Act, 1956, "Saptapadi" would be an essential ceremony for a valid marriage only in cases where it was admitted by the parties that as per the form of marriage applicable to them that was an essential ceremony. By an amendment made by the State of Tamil Nadu, Section 7-A has been inserted in the Act and it applies to any marriage between two Hindus solemnized in the presence of relatives, friends or other persons. The main thrust of this provision is that the presence of a priest is not necessary for the performance of a valid marriage. Parties can enter into a marriage in the presence of relatives or friends or other persons and each party to the marriage should declare in the language understood by the parties that each takes other to be his wife or, as the case may be, her husband and the marriage would be completed by a simple ceremony requiring the parties to the marriage to garland each other or put a ring upon any finger of the other or tie a thali. Any of these ceremonies would be sufficient to complete a valid marriage. [462-B; 461-A-B-C]

*Kanwal Ram and Ors. v. H.P. Administration*, AIR (1966) SC 614, relied on.

*Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh*, [1971] 1 SCC 864; *Lingari Obulamma v. L. Venkata Reddy and Ors.*, [1979] 3 SCC 80; *Santi Deb Berma v. Kanchan Prava Devi*, [1991] Supp. 2 SCC 616 and *Laxmi Devi v. Satya Narayan and Ors.*, [1994] 5 SCC 545, referred to.

**2.3.** In the instant case, the parties to the second marriage, namely, the appellant and his alleged second wife, are residents of the State of Tamil Nadu and their marriage was performed at Thiruthani Temple within the State of Tamil Nadu. The evidence as given by PW-3, the priest who performed the marriage, clearly shows that there was a valid marriage in accordance with

**A** the provisions of Section 7-A of the Hindu Marriage Act. PW-3 also deposed that he performed the marriage in accordance with the customs applicable to the parties; and the bride and the bridegroom exchanged garlands.

Under such circumstances the provisions of Section 7-A are applicable and there was a valid marriage between the appellant and his second wife.

**B** Moreover, neither complainant nor the appellant had any case that for a valid marriage among the members of the community to which they belonged, this ceremony of "Saptapadi" was an essential one to make it a valid marriage.

[459-G; 461-F-H; 462-A]

**C** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 882 of 2001.

From the Judgment and Order dated 22.12.2000 of the Madras High Court in Crl. A. No. 486 of 1999.

**D** R. Sundravardan and Vipin Nair for M/s. Temple Law Firm for the Appellant.

In-person for the Respondent.

The Judgment of the Court was delivered by

**E** **K.G. BALAKRISHNAN, J.** Leave granted.

This appeal is directed against the judgment of the learned Single Judge of the High Court of Madras in Criminal Appeal No. 486 of 1999 reversing the order of acquittal passed by the Metropolitan Magistrate, Madras. The learned Single Judge found the appellant guilty of the offence under Section 494 IPC.

**F** The appellant, S. Nagalingam married respondent-complainant Sivagami on 6.9.1970. Three children were born from that wedlock. The respondent alleged that the appellant started ill-treating her and on many occasions she was physically tortured. As a result of ill-treatment and severe torture inflicted by the appellant as well as his mother, she left her marital home and started staying with her parents. While so, the respondent came to know that the appellant had entered into a marriage with another woman on 18.6.1984, by name Kasturi, and that the marriage was performed in a Marriage Hall at Thiruthani. The respondent then filed a criminal complaint before the Metropolitan Magistrate against the appellant and six others. All the accused

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**H** were acquitted by the trial court. Aggrieved thereby, the respondent filed

criminal appeal No. 67 of 1992 before the High Court of Madras. The learned Single Judge, by his judgment dated 1.11.1996 upheld the acquittal of accused 2-7, but as regards the acquittal of the appellant, the matter was remitted to the trial court permitting the complainant to adduce evidence regarding the manner in which the marriage was solemnized. Upon remand the Priest [PW-3], who is alleged to have performed the marriage of the appellant with the second accused, Kasturi, on 18.6.1984, was further examined and the appellant was allowed further cross-examination. The learned Metropolitan Magistrate by his judgment dated 4.3.1999 acquitted the accused. Aggrieved by the state judgment, the respondent preferred a criminal appeal before the High Court of Madras. By the impugned judgment, the learned Single Judge held that the appellant had committed the offence punishable under Section 494 IPC. This is challenged before us.

We heard Mr. R. Sundravardan, learned senior counsel for the appellant. The respondent Sivagami appeared in person and she filed some documents in court. Though she was offered the assistance of a counsel, she declined to avail herself of that opportunity.

The short question that arises for our consideration is whether the second marriage entered into by appellant with the second accused. Kasturi, on 18.6.1984 was a valid marriage under Hindu Law so as to constitute an offence under Section 494 IPC.

The essential ingredients of the offence under Section 494 IPC are (i) the accused must have contracted the first marriage; (ii) whilst the first marriage was subsisting, the accused must have contracted a second marriage; and (iii) both the marriages must be valid in the sense that necessary ceremonies governing the parties must have been performed.

Admittedly, the marriage of the appellant with the respondent, entered into by them on 6.9.1970, was subsisting at the time of the alleged second marriage. The Metropolitan Magistrate held that an important ceremony, namely, "Saptapadi" had not been performed and therefore, the second marriage was not a valid marriage and no offence was committed by the appellant. The learned Single Judge reversing this decision in appeal held that the parties are governed by Section 7-A of the Hindu Marriage Act as the parties are Hindus residing within the State of Tamil Nadu. It was held that there was a valid second marriage and the appellant was guilty of the offence of bigamy.

A In the complaint filed by the respondent, it was alleged that the appellant had contracted the second marriage and this marriage was solemnised in accordance with the Hindu rites on 18.6.1984 at RCC Mandapam, Tiruttani Devasthanam. To support this contention, PWs 2 & 3 were examined. PW-3 gave detailed evidence regarding the manner in which the marriage on 18.6.1984 was performed.

B Learned counsel for the appellant contended that as per the evidence of PW-3, it is clear that "Saptapadi", an important ritual which forms part of the marriage ceremony, was not performed and therefore, there was no valid marriage in accordance with Hindu rites.

C It is undoubtedly true that the second marriage should be proved to be a valid marriage according to the personal law of the parties, though such second marriage is void under Section 17 of the Hindu Marriage Act having been performed when the earlier marriage is subsisting. The validity of the second marriage is to be proved by the prosecution by satisfactory evidence.

D In *Kanwal Ram and Ors. v. H.P. Administration* AIR, (1966) SC 614; this Court held that in a bigamy case, the second marriage is to be proved and the essential ceremony required for a valid marriage should have been performed. It was held that mere admission on the part of the accused may not be sufficient.

E The question as to whether "Saptapadi", is an essential ritual to be performed, came up for consideration of this Court in some cases. One of the earliest decisions of this Court is [1971] 1 SCC 864 *Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh* wherein it was held that the second marriage should be a valid one according to the law applicable to the parties. In that

F case, there was no evidence regarding the performance of the essential ceremonies, namely, "Datta Homa" and "Saptapadi". In paragraph 25 of the judgment, it was held that the learned Sessions Judge and the High Court have categorically found that "Homa" and "Saptapadi" are the essential rites for a marriage according to the law governing the parties and there is no

G evidence that these two essential ceremonies have been performed when the respondent is stated to have married Sandhya Rani. It is pertinent to note that in paragraph 9 of the judgment it is stated that both sides agreed that according to the law prevalent amongst the parties, "Homa" and "Saptapadi" were essential rites to be performed to constitute a valid marriage. Before this Court also, the parties on either side agreed that according to the law prevalent

H among them, "Homa" and "Saptapadi" were essential rites to be performed

for solemnization of the marriage and there was no specific evidence regarding the performance of these two essential ceremonies. A

[1979] 3 SCC 80 *Lingari Obulamma v. L. Venkata Reddy and Ors.*, was a case where the High Court held that two essential ceremonies of a valid marriage, namely "datta homa" and "sapathapadi" [taking seven steps around the sacred fire] were not performed and, therefore, the marriage was void in the eye of law. This finding was upheld by this Court. The appellant therein contended that among the "Reddy community in Andhra Pradesh, there was no such custom of performing "datta homa" and "saptapadi", but the High Court held that under the Hindu Law these two ceremonies were essential to constitute a valid marriage and rejected the plea of the appellant on the ground that there was no evidence to prove that any of these two ceremonies had been performed. The finding of the High Court was upheld by this Court that there was no evidence to prove a second valid marriage. B C

In [1991] Supp 2 SCC 616; *Santi Deb Berma v. Kanchan Prava Devi* also, the appellant was acquitted by this Court as there was no proof of a valid marriage as the ceremonial "Saptapadi" was not performed. This Court noticed in this case also that the High Court proceeded on the footing that according to the parties, performance of "Saptapadi" is one of the essential ceremonies to constitute a valid marriage. D

Another decision on this point is [1994] 5 SCC 545; *Laxmi Devi v. Satya Narayan and Ors.*, wherein, this Court, relying on an earlier decision in [1971] 1 SCC 864 (supra), held that there was no proof that "Saptapadi" was performed and therefore, there was no valid second marriage and that no offence of bigamy was committed. E

In the aforesaid decisions rendered by this Court, it has been held that if the parties to the second marriage perform traditional Hindu form of marriage. "Saptapadi" and "Datta Homa" are essential ceremonies and without there being these two ceremonies, there would not be a valid marriage. F

In the instant case, the parties to the second marriage, namely the appellant. Nagalingam, and his alleged second wife, Kasturi, are residents of the State of Tamil Nadu and their marriage was performed at Thiruthani Temple within the State of Tamil Nadu. In the Hindu Marriage Act, 1955, there is a State Amendment by the State of Tamil Nadu, which has been inserted as Section 7-A. The relevant portion thereof is as follows: G H

- A “7-A. Special provision regarding suyamariyāthai and seerthiruththa marriages—(1) This section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage or seerthiruththa marriage or by any other name, solemnized in the presence of relatives friends or other persons—
- B (a) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife or, as the case may be, her husband; or
- (b) by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or
- C (c) by the tying of the thali.
- (2) (a) Notwithstanding anything contained in Section 7, but subject to the other provisions of this Act, all marriages to which this section applies solemnized after the commencement of the Hindu Marriage (Madras Amendment) Act, 1967, shall be good and valid in law.
- D (b) Notwithstanding anything contained in Section 7 or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Marriage (Madras Amendment) Act, 1967, or in any other law in
- E force immediately before such commencement in any judgment, decree or order of any court, but subject to sub-section (3), all marriages to which this section applies solemnized at any time before such commencement, shall be deemed to have been with effect on and from the date of the solemnization of each such marriage, respectively, good and valid in law.
- F (3) .....
- (a) .....
- (i) .....
- G (ii) .....
- (b) .....
- (c) .....
- (4) .....”
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Section 7-A applies to any marriage between two Hindus solemnized in the presence of relatives, friends or other persons. The main thrust of this provision is that the presence of a priest is not necessary for the performance of a valid marriage. Parties can enter into a marriage in the presence of relatives or friends or other persons and each party to the marriage should declare in the language understood by the parties that each takes other to be his wife or, as the case may be, her husband, and the marriage would be completed by a simple ceremony requiring the parties to the marriage to garland each other or put a ring upon any finger of the other or tie a thali. Any of these ceremonies, namely garlanding each other or putting a ring upon any finger of the other or tying a thali would be sufficient to complete a valid marriage. Sub-section 2(a) of Section 7-A specifically says that notwithstanding anything contained in Section 7, all marriages to which this provision applies and solemnized after the commencement of the Hindu Marriage (Madras Amendment) Act, 1987 shall be good and valid in law. Sub-section 2(b) further says that notwithstanding anything contained in Section 7 or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Marriage (Madras Amendment) Act 1967, or in any other law in force immediately before such commencement or in any judgment, decree or order of any court, all marriages to which this section applies solemnized at any time before such commencement, shall be deemed to have been valid. The only inhibition provided is that this marriage shall be subject to Sub-Section (3) of Section 7-A. We need not elaborately consider the scope of Section 7-A(3) as that is not relevant for our purpose.

The evidence in this case as given by PW-3 clearly shows that there was a valid marriage in accordance with the provisions of Section 7-A of the Hindu Marriage Act. PW-3 deposed that the bridegroom brought the "Thirumangalam" and tied it around the neck of the bride and thereafter the bride and the bridegroom exchanged garlands three times and the father of the bride stated that he was giving his daughter to "Kanniyathan" on behalf of and in the witness of "Agnidevi" and the father of the bridegroom received and accepted the "Kanniyathan". PW-3 also deposed that he performed the marriage in accordance with the customs applicable to the parties.

Under such circumstances, the provisions of Section 7-A, namely, the State Amendment inserted in the Statute are applicable and there was a valid marriage between the appellant and Kasturi. Moreover, neither complainant nor the appellant had any case that for a valid marriage among the members



- A of the community to which they belong, this ceremony of "Saptapadi" was an essential one to make it a valid marriage. Section 7 of the Hindu Marriage Act says that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto and where such rites and ceremonies include the Saptapadi, *i.e.* the taking of seven steps by the bridegroom and the bride jointly before the sacred fire the marriage becomes complete and binding when the seventh step is taken.
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- "Saptapadi" was held to be an essential ceremony for a valid marriage only in cases it was admitted by the parties that as per the form of marriage applicable to them that was an essential ceremony. The appellant in the instant case, however, had no such case that "Saptapadi" was an essential ceremony for a valid marriage as per the personal law applicable whereas the provisions contained in Section 7-A are applicable to the parties. In any view of the matter, there was a valid marriage on 18.6.1984 between the appellant and the second accused, Kasturi. Therefore, it was proved that the appellant had committed the offence of bigamy as it was done during the subsistence of his earlier marriage held on 6.9.1970.
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- The learned Single Judge was right in holding that the appellant committed the offence of bigamy and the matter was correctly remanded to the trial court for awarding appropriate sentence. We see no merit in this appeal and the same is dismissed accordingly.
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R.P.

Appeal dismissed.