

Criminal Revision**PRESENT : The Hon'ble Justice Ashim Kumar Roy****Judgment On: 15-02-2010.****C.R.R. No. 3269 of 2009****With****CRAN No. 2984 of 2009****Sunil Kumar Murmu @ Subid Ali Murmu****versus****The State of West Bengal****Point:**

Marriage: A Hindu marriage solemnized under Hindu Marriage Act can only be dissolved on any of the ground specified under the said Act - Indian Penal Code –S. 494.

Fact: In the instant application under Section 482 of the Code the petitioner has moved for quashing of a charge-sheet under Section 498A of the Indian Penal Code on the ground that nobody can be charged under Section 498A of the Indian Penal Code unless there was a valid marriage between the parties.

Held: A Hindu marriage solemnized under Hindu Marriage Act can only be dissolved on any of the ground specified under the said Act. Till the time a Hindu marriage is dissolved under the Act none of the spouse can contract second marriage. Conversion to Islam and marrying again would not by itself, dissolve a marriage under the Hindu Marriage Act. Second marriage of a Hindu husband after his conversion to Islam would therefore be in violation of the Act and as such void in terms of Section 494 IPC. Any act which is in violation of mandatory provisions in law is per se void. (Paragraph – 4)

Cases cited: Smt. Sarla Mudgal, President, Kalyani & Ors. Vs. Union of India & Ors., reported in AIR 1995 SC 1531
Lily Thomas & Ors. Vs. Union of India & Ors., reported in (2000) 6 SCC 244,
Reema Aggarwal Vs. Anupam & Ors., reported in 2004 SCC (Cri) 699

For Petitioner : Mr. Sudip Banerjee

For State : Mr. Kasem Ali Ahmed

The Court:

1. In this application under Section 482 of the Code the petitioner has moved for quashing of a charge-sheet under Section 498A of the Indian Penal Code.

2. It was contended before this Court that nobody can be charged under Section 498A of the Indian Penal Code unless there was a valid marriage between the parties. It appears from the perusal of the Case Diary containing the charge-sheeted materials that the petitioner by birth was a Hindu and according to Hindu Rites and Customs he married one Sitali Murmu and the said marriage is still subsisting. In the said wedlock Sitali Murmu gave birth to two child, who are also still alive. However, during the subsistence of the said marriage the petitioner having converted himself to Islam and taking a new name Subid Ali Murmu, married the defacto-complainant Taslima Begum according to Mohammedan Rites and Customs. The police during investigation seized the Ration Card and Election Photo Identity Card of the petitioner's first wife Sitali Murmu. In both the said documents petitioner's name has been recorded as her husband. The police also seized the marriage registration certificate of the petitioner with the defacto-complainant Taslima Begum, which was registered according to Mohammedan Law.

3. Therefore, it is an admitted position that the petitioner during the subsistence of his marriage with Sitali Murmu which was solemnized according to Hindu Rites and Customs and during her lifetime changed his religion and converted to Islam and then married the defacto-complainant Taslima Begum under Mohammedan Rites and Customs.

4. In the case of Smt. Sarla Mudgal, President, Kalyani & Ors. Vs. Union of India & Ors., reported in AIR 1995 SC 1531 as well as in the case of Lily

Thomas & Ors. Vs. Union of India & Ors., reported in (2000) 6 SCC 244, it has been categorically held by the Apex Court, conversion does not automatically dissolved first marriage and apostate-husband and the first wife continue to be husband and wife. It has further been held a marriage which is in violation of any provisions of law would be void in terms of expression used under Section 494. A Hindu marriage solemnized under Hindu Marriage Act can only be dissolved on any of the ground specified under the said Act. Till the time a Hindu marriage is dissolved under the Act none of the spouse can contract second marriage. Conversion to Islam and marrying again would not by itself, dissolve a marriage under the Hindu Marriage Act. Second marriage of a Hindu husband after his conversion to Islam would therefore be in violation of the Act and as such void in terms of Section 494 IPC. Any act which is in violation of mandatory provisions in law is per se void. However, subsequently in the case of Reema Aggarwal Vs. Anupam & Ors., reported in 2004 SCC (Cri) 699 in paragraph 18 it was held by the Apex Court;

“...It would be appropriate to construe the expression “husband” to cover a person who enters into marital

relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions – Sections 304-B/498-A, whatever be the legitimacy of the marriage itself of the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of “husband” to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as “husband” is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions.”

5. Now, in the light of the observation of the Hon’ble Supreme Court in the case of Reema Aggarwal Vs. Anupam & Ors. (supra) this Court is of the opinion that the impugned charge-sheet is definitely sustainable. Hence, this criminal revision stands dismissed.

In view of dismissal of the main criminal revisional application, the application for extension of interim order being CRAN No. 2984 of 2009 become infructuous and accordingly stands disposed of.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(*Ashim Kumar Roy, J.*)