



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO(S). _____ OF 2024
(Arising out of SLP (Criminal) No(s). 8529 of 2019)**

S. NITHEEN & ORS.APPELLANT(S)

VERSUS

STATE OF KERALA & ANR.RESPONDENT(S)

WITH

**CRIMINAL APPEAL NO(S). _____ OF 2024
(Arising out of SLP (Criminal) No(s). 11679 of 2019)**

**CRIMINAL APPEAL NO(S). _____ OF 2024
(Arising out of SLP (Criminal) No(s). 11681 of 2019)**

J U D G M E N T

Mehta, J.

1. Leave granted.
2. These appeals arise out of a common order, and hence the same have been heard analogously and are being decided together by this judgment.

3. These appeals by special leave are preferred on behalf of the appellants herein for assailing the final judgment and order dated 3rd July, 2019 passed by the High Court of Kerala at Ernakulam in CrI. MC. No. 8108 of 2018, whereby, the petition preferred by the appellants herein seeking quashing of the proceedings of Criminal Case No. 791 of 2013 on the file of learned Judicial Magistrate First Class, Court-II, Attingal(hereinafter being referred to as 'JMFC') for the offences punishable under Section 494 read with Section 34 of the Indian Penal Code, 1860(hereinafter being referred to as 'IPC') was rejected.

4. Learned JMFC after evaluating evidence led on behalf of the complainant under Section 244 of Code of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC'), proceeded to direct framing of charges against the appellants under Section 494 IPC vide order dated 28th May, 2018. This order was challenged by the appellants by filing a Criminal Revision Petition No. 25 of 2018 before the Court of learned Sessions Judge, Thiruvananthapuram which was dismissed vide order dated 26th October, 2018. The appellants assailed the aforesaid order passed by learned Sessions Judge, Thiruvananthapuram by filing CrI. MC. No. 8108 of 2018

in the High Court which was rejected by the impugned order. Hence these appeals by special leave.

5. The status of the accused arrayed in the complaint vis-a-vis the complainant can be enumerated as below: -

| | |
|----------------------------------|--|
| Accused No. 1-Lumina B (A-1) | Legally wedded wife of complainant(Respondent No.2 herein) |
| Accused No. 2-Saneesh (A-2) | Person who entered into marriage with accused No.1 |
| Accused No.3-Flory Lopez (A-3) | Mother of accused No.1 [Appellant in SLP(CrI.) No. 11681 of 2019] |
| Accused No.4-Vimal Jacob (A-4) | Brother of accused No.1 [Appellant in SLP (CrI.) No. 11679 of 2019] |
| Accused No.5-S. Nitheen (A-5) | Friends of accused Nos. 1 and 2 and are witnesses to the second marriage [Appellant in SLP (CrI.) No.8529 of 2019] |
| Accused No.6- P.R. Sreejith(A-6) | |
| Accused No.7- H. Gireesh (A-7) | |

Brief facts: -

6. The complainant- Mr. Reynar Lopez(respondent No.2 herein) married Ms. Lumina(A-1) as per the Christian ceremonies in St. Theresa's Lisieux Church at Vellayambalam, Thiruvananthapuram, Kerala on 16th April, 2007. It is alleged that on 13th August, 2010, Ms. Lumina(A-1) contracted marriage with Saneesh(A-2) under the Special Marriage Act, 1954 before the Marriage Officer, Nemom. It is alleged that the appellants herein(A-3, A-4, A-5, A-6 and A-7) are relatives and friends of Saneesh(A-2) and Ms. Lumina(A-1) and thus they too are responsible for the

offence of bigamy committed by Ms. Lumina(A-1) as they had the common intention to commit such offence.

Submission on behalf of the appellants: -

7. Shri Kuriakose Varghese, learned counsel for the appellants urged that the essential ingredients of the offence punishable under Section 494 read with Section 34 IPC are totally lacking in the case setup by the complainant.

8. He pointed out from the record that four witnesses were examined on behalf of the complainant by way of pre-charge evidence namely, Reynar Lopez(himself)(CW-1), Father Laberin Yusu(CW-2) of St. May Magdelene Church, Senior Clerk Shefeek(CW-3) posted at Sub Registrar Office, Nemom, and Treasurer and Record Keeper(CW-4) of St. Therese of Lisieux Church where the marriage of Ms. Lumina(A-1) and Saneesh(A-2) took place. Learned counsel urged that none of these witnesses have spoken about the presence of appellants Vimal Jacob(A-4) and Flory Lopez(A-3) at the time of marriage of Ms. Lumina(A-1) and Saneesh(A-2).

9. Learned counsel further submitted that, insofar as S. Nitheen(A-5), P.R. Sreejith(A-6) and H. Gireesh(A-7) are concerned,

they are the friends of Saneesh(A-2) and Ms. Lumina(A-2) and are simply stated to be the witnesses to the marriage solemnized between them at the church. There is no material on record to show that any of these three accused knew about the previous marriage of Ms. Lumina(A-1) with the complainant.

10. Learned counsel contended that in absence of any evidence except for the bald allegation to the effect that A-5, A-6 and A-7 were having knowledge regarding the previous marriage of Ms.Lumina(A-1) with the complainant, they cannot be charged for the offences punishable under Section 494 read with Section 34 IPC.

He thus implored the Court to accept the appeals and quash the impugned orders as well as all the proceedings sought to be undertaken against the appellants in the above mentioned criminal case.

Submission on behalf of the respondent/complainant: -

11. *Per contra*, Mr. Alim Anvar learned counsel representing the complainant vehemently and fervently opposed the submissions advanced by learned counsel for the appellants. He urged that the appellants namely, S. Nitheen(A-5), P.R. Sreejith(A-6) and H.

Gireesh(A-7) being the friends of Ms. Lumina(A-1) and Saneesh(A-2) participated in their bigamous marriage and stood as witnesses to the ceremony and thus, they are liable to be prosecuted for the offence of bigamy.

12. It was further submitted that the appellants Flory Lopez(A-3) and Vimal Jacob(A-4) being blood relatives of Ms. Lumina(A-1) were aware of her subsisting marriage with the complainant, but they took no steps whatsoever to prevent Ms. Lumina(A-1) from contracting bigamous marriage with Saneesh(A-2) and thus, they too are liable to be prosecuted for the offences punishable under Section 494 read with Section 34 IPC. He thus, implored the Court to dismiss the appeals.

13. We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties and have gone through the impugned orders, the complaint as well as the statements recorded in support thereof at the stage of pre-charge evidence.

Discussion and Conclusion: -

14. At the outset, we may note that the complaint was filed alleging commission of the offence punishable under Section 494

read with Section 34 IPC. However, post recording pre-charge evidence, the learned JMFC passed an order dated 28th May, 2018 directing framing of charge against all the accused persons for the offence punishable under Section 494 IPC.

15. The essential ingredients of offence under Section 494 IPC, as explained by this Court in the case of **Gopal Lal v. State of Rajasthan**¹, are as follows:

“3. The essential ingredients of this offence are:

- (1) that the accused spouse must have contracted the first marriage
- (2) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and
- (3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed.”

16. A bare perusal of the penal provision would indicate that the order framing charge is erroneous on the face of the record because no person other than the spouse to the second marriage could have been charged for the offence punishable under Section 494 IPC simplicitor. However, this is a curable defect, and the charge can be altered at any stage as per the provisions of Section 216 CrPC.

17. It is a peculiar case wherein, the complainant has not sought prosecution of the appellants for the charge of abetting the second

¹ (1979) 2 SCC 170

marriage by Ms. Lumina(A-1) under Section 109 IPC. The appellants herein are being roped in by virtue of Section 34 IPC with the allegation that they had the common intention to commit the offence under Section 494 IPC. In order to bring home the said charge, the complainant would be required to *prima facie* prove not only the presence of the accused persons, but the overt act or omission of the accused persons in the second marriage ceremony and also establish that such accused were aware about the subsisting marriage of Ms. Lumina(A-1) with the complainant.

18. A perusal of the pre-charge evidence led in support of the complaint would reveal that Flory Lopez(A-3) and Vimal Jacob(A-4) were not even alleged to be present at the time of such marriage. Hence, the involvement of these accused for the charge of having a common intention to commit the offence under Section 494 IPC is not established by an *iota* of evidence.

19. So far as S. Nitheen(A-5), P.R. Sreejith(A-6) and H. Gireesh(A-7) are concerned, they are alleged to be the friends of Ms. Lumina(A-1) and Saneesh(A-2) and that they witnessed the alleged bigamous marriage. On perusal of the evidence of the complainant who testified as CW-1, it becomes clear that all he has alleged in his deposition is that accused S. Nitheen(A-5), P.R. Sreejith(A-6)

and H. Gireesh(A-7) were the witnesses to the second marriage. However, there is not even a shred of allegation by the complainant that these accused, acted as witnesses to the second marriage having knowledge that Ms. Lumina(A-1) was already married to the complainant. In absence of such allegation, the prosecution of the S. Nitheen(A-5), P.R. Sreejith(A-6) and H. Gireesh(A-7), for the charge of having a common intention to commit the offence under Section 494 IPC is totally unwarranted in the eyes of law.

20. This Court in the case of ***Chand Dhawan(Smt) v. Jawahar Lal and Others***² while upholding the order passed by the High Court quashing the criminal proceedings under Section 494 IPC against the accused therein, observed as follows: -

9. “.....So far as other respondents are concerned, it may be said that they had been unnecessarily and vexatiously roped in. **The allegations in the complaint so far as these respondents are concerned are vague. It cannot be assumed that they had by their presence or otherwise facilitated the solemnisation of a second marriage with the knowledge that the earlier marriage was subsisting.** The explanation of the first respondent that the second respondent has been functioning as a governess to look after his children in the absence of the mother who had left them implies that respondents 1 and 2 are living together. In this background, the allegations made against respondents 3 to 7 imputing them with guilty knowledge unsupported by other material would not justify the continuance of the proceedings against those respondents.”

(emphasis supplied)

² (1992) 3 SCC 317

21. As a consequence of the above discussion, we are of the view that allowing the proceedings of the criminal case to be continued against the appellants would tantamount to gross illegality and abuse of the process of Court. The order framing charge as well as the order rejecting the revision petition and criminal miscellaneous petition preferred by the accused appellants do not stand to scrutiny.

22. Resultantly, the order dated 3rd July, 2019 passed by the High Court and all subsequent proceedings sought to be taken against the appellants herein in Criminal Case No. 791 of 2013 are hereby quashed and set aside. However, the trial of Ms. Lumina(A-1) and Saneesh(A-2) shall continue.

23. The appeals are allowed in these terms.

24. No order as to costs.

25. Pending application(s), if any, shall stand disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(SANDEEP MEHTA)

New Delhi;
May 15, 2024