

Before Harbans Lal and C. S. Tiwana, JJ.

BALBIR SINGH—*Petitioner*

versus

DARSHANA KUMARI—*Respondent.*

Criminal Misc. No. 1686-M of 1978.

November 3, 1978.

Code of Criminal Procedure (2 of 1947)—Section 198—Indian Penal Code (XLV of 1860)—Sections 494 and 495—Words “person aggrieved” in section 198—Meaning of—Bigamous marriage contracted by husband—Second wife kept ignorant of first marriage—Such wife—Whether ‘a person aggrieved’.

Held, that a perusal of section 198 of the Code of Criminal Procedure, 1973, makes it abundantly evident that the legislature has conferred the right of filing the complaint with regard to offences relating to marriage as contained in Chapter XX of the Indian Penal Code, on all aggrieved persons. The purpose in protecting the offenders who were alleged to be guilty of marriage offences was only to save them from being proceeded against by absolute strangers to the marriage in question and not to save them from even those who had been adversely affected or prejudiced by the guilty and unlawful conduct of the accused. Under section 494 of the Indian Penal Code any person whether a man or a woman who takes resort to second marriage during the lifetime of the other spouse is held guilty of the offence of bigamy and is liable to be punished. Under section 495 such offence is aggravated if any person contracts the second marriage in such a clandestine manner that the factum of the first marriage is kept concealed from the other party. It is clear that the second category of offence could be alleged and proved only by such a person to the second marriage who was persuaded to give consent to the subsequent marriage in ignorance of the first marriage of his or her spouse. In these circumstances, if a restricted meaning is given to the words “aggrieved person” in section 198 of the Code so as to exclude the second wife or the husband from the category of aggrieved persons, the offence under section 495 for all practical purposes will be rendered non-existent. Moreover, in a case of bigamy, the first wife is injured in spite of the fact that the second marriage is legally held void. She suffers injury mentally, emotionally and also in domestic solidarity and perhaps in reputation also. Undoubtedly, she is an aggrieved

person. In a case where the second marriage is brought about by the husband or the wife of the first marriage keeping the other spouse in absolute darkness of the first marriage, the second wife or the husband is no less aggrieved so far as the emotional and mental torture and disruption of family life is concerned. If he or she were in the know of the first marriage it is quite probable that such a person would not have agreed to the marriage. Where the second wife or husband consents to the marriage with eyes open even while fully aware of the first marriage, the conduct of such a person may even amount to abetment of the offence of bigamy. Being a co-accused in the commission of the offence, such a person cannot claim to be aggrieved in any manner but it is quite difficult to conclude from this that such a second wife or husband cannot claim to be an aggrieved person under any circumstances. This will be restricting the scope of section 198 of the Code beyond permissible limits. (Paras 6 and 7)

Jarnail Singh vs. Swaran Kaur 1977, Chandigarh Law Reporter 71
OVERRULED.

Case referred by a Single Bench consisting of Hon'ble Mr. Justice Ajit Singh Bains on 21st August, 1978 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Harbans Lal and Hon'ble Mr. Justice C. S. Tiwana after considering the question returned the case to the Single Bench on 3rd November, 1978 for deciding the case according to law. The Single Bench consisting of Hon'ble Mr. Justice Ajit Singh Bains finally decided the case on 23th November, 1978.

Petitioner under section 482 of Cr.P.C. praying that the complaint Annexure 'A' and order Annexure 'B' may kindly be quashed.

R. S. Ghai, Advocate, for the Petitioner.

Ashwani Kumar Chopra, for the Respondent.

JUDGMENT

Harbans Lal, J.

(1) The question of law arising in this reference relates to the interpretation of the expression "some person aggrieved by the offence" in section 198 (1), Code of Criminal Procedure (hereinafter to be called the Code), for the purpose of filing a complaint in respect of offences punishable under Chapter XX of the Indian Penal Code.

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(2) A brief resume of the facts in this case is also relevant for the purpose of proper appreciation of the controversy involved. Balbir Singh, petitioner, was married to one Veena Rani, resident of Ferozpur and three children were born out of this wedlock. He subsequently contracted second marriage with Darshana Kumari, respondent, without her having any knowledge of the first marriage. When the factum of the second marriage came to light, one Gulshan Rai, related to the respondent, got a case registered in police station City Fazilka, under sections 420, 494, 495 and 120-B, Indian Penal Code, against the present petitioner, his father, mother and the sister. The accused, including the petitioner, after their arrest and necessary investigation were challaned in the Court of the Judicial Magistrate, Fazilka. The charge, however, was framed under sections 420 and 120-B, Indian Penal Code, and no charge was framed under sections 494 and 495 of the Indian Penal Code, on the ground that cognizance of the said offence could not be taken under section 198 of the Code. After trial, all the accused were acquitted by the trial Court by order dated February 7, 1977, holding that the prosecution had failed to prove its case against the accused who were entitled to the benefit of doubt. Thereafter, a complaint was filed by Darshana Kumari, respondent, under section 394/109, Indian Penal Code, against the present petitioner and his co-accused in the Court of the Judicial Magistrate, First Class, Fazilka, on August 3, 1977, alleging *inter alia* that the petitioner contracted the second marriage with the respondent on June 20, 1973, according to the Hindu rites with the active connivance of the other co-accused without informing her of the existence of his first marriage with Veena Rani and that it was after the lapse of a few months of the second marriage that she came to know of the petitioner's first marriage and also the birth of children from the first wedlock. Therein, after the preliminary evidence had been adduced, the Magistrate came to the conclusion that a *prima facie* case had been made out and as such, all the accused including the petitioner, were summoned,—*vide* his order dated March 18, 1978. This order along with the complaint, were challenged in a petition under section 482 of the Code by the present petitioner on April 11, 1978. Challenge therein was made on two grounds. Firstly, that the accused having been acquitted on February 7, 1977, in a challan case, subsequently complaint could not be instituted on the same facts and allegations. Secondly, that under section 198 of the Code, Darshana Kumari, respondent, according to the allegations in the complaint, had the status of second wife and

as such, had no *locus standi* to file the complaint and the criminal Court had no jurisdiction to take cognizance of the said complaint for the offence under section 494, Indian Penal Code. Bains, J., as is clear from his order dated August 21, 1973, was of the view that the first contention was not tenable because the accused had not been charged under sections 494 and 495, Indian Penal Code, in the first criminal case initiated against the petitioner and his co-accused on the basis of the first information report registered in the police station and that they had been acquitted only under sections 420 and 120-B, Indian Penal Code. According to the learned single Judge, the respondent, though the second wife of Balbir Singh, petitioner, was an aggrieved person as contemplated under section 198 of the Code, and, therefore, complaint by her was quite competent. K. S. Tiwana, J., however, in another case, reported as *Jarnail Singh v. Swaran Kaur* (1) took the view that second wife did not come under the category of aggrieved persons as contemplated under section 198 of the Code. The learned Judge in the present case did not agree with the said view and hence the present reference.

(3) According to section 198 of the Code, for any of the offences as contained in Chapter XX of the Indian Penal Code, which has a reference to sections 493 to 498, complaint can be filed only by "some person aggrieved by the offence". The said provision so far as it is relevant, is reproduced below :

"(1) No court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence :

Provided that—

(a) * * * *

(b) * * * *

(c) where the person aggrieved by an offence punishable under section 494 of the Indian Penal Code is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister."

(4) The contention of the learned counsel for the petitioner is that the complainant respondent being second wife did not come in

(1) 1977 Chandigarh Law Reporter 71 Pb. & Har.

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the category of aggrieved person as envisaged under section 198 of the Code. Reliance in support of this proposition has been placed on *Jarnail Singh's case* (supra), and in *re. P. Kondiah and another* (2).

(5) In *Jarnail Singh's case* (supra), second wife was held to be not an aggrieved person relying on the decision in *Banamali Tripathy and another v. Emperor* (3). Its perusal shows that the scope and interpretation of the expression "aggrieved person" in section 198 of the Code was not discussed therein. In *Banamali Tripathy's case* (supra), on which the judgment of the learned single Judge was based, a number of accused persons were convicted under section 365, Indian Penal Code, for the abduction of a married girl, and under section 420 as well as section 494 read with section 109, Indian Penal Code, for abetting the offence of bigamy said to have been committed by a girl aged 14 years whose marriage had been already solemnised. The proceedings had been initiated on the basis of a complaint by the second husband. Conviction under section 494 read with section 109, Indian Penal Code, was sought to be set aside in revision before the High Court on the ground that the complaint by the second husband under section 198 of the Code was not competent because he was not the aggrieved person. In reply, on behalf of the complainant, the only objection taken was that the bar under section 198 of the Code regarding filing of a complaint was operative with regard to the main offence under section 494, Indian Penal Code, and not in cases of abetment and attempt to commit such offence. No argument was raised as to whether the second husband, in the circumstances of the said case, was an aggrieved person. It was held by the High Court that the reference to the offence in section 198 of the Code included abetments and attempts to commit the same also. No argument whatsoever was addressed on the interpretation of the expression "aggrieved person".

In *re. P. Kondiah's case* (supra), it was held,—

"When there is no evidence that the marriage of first wife with the accused is dissolved, the marriage of the second wife is *ab initio* void under section 4(1) of the Madras Act

(2) AIR 1954 Madras 947.

(3) AIR 1943 Patna 212.

6 of 1949 and if there is no legal and valid marriage, she cannot be said to be the wife of the accused. Hence she cannot have any grievance and she cannot be a person within the scope of section 198, Criminal Procedure Code, for the purpose of filing a complaint under section 494, Indian Penal Code and section 4(3) of the Madras Act 6 of 1949 against her husband on his marriage with the third wife."

According to the *ratio* of this decision, the second wife cannot be held to be an aggrieved person under section 198 of the Code because her marriage is void *ab initio* and as such, she cannot have any grievance.

(6) A close perusal of section 198 of the Code makes it abundantly evident that the legislature has conferred the right of filing the complaint with regard to the offences relating to marriage as contained in Chapter XX of the Indian Penal Code, on all aggrieved persons. The purpose in protecting the offenders who were alleged to be guilty of marriage offences was only to save them from being proceeded against by absolute strangers to the marriage, in question, and not to save them from even those who had been adversely affected or prejudiced by the guilty and unlawful conduct of the accused. Under the Hindu Marriage Act, neither a man nor a woman is entitled to contract a second marriage during the lifetime of the other spouse and the second marriage has been held to be void. Under section 494, Indian Penal Code, any person whether a man or a woman who takes resort to such a void and illegal marriage is held guilty of the offence of bigamy and is liable to be punished with imprisonment which may extend to seven years and also to fine. Under section 495, Indian Penal Code, such offence is aggravated if any person contracts the second marriage in such a clandestine manner that the factum of first marriage is kept concealed from the other party. The said provision is to the following effect :

"Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

From this, it is clear that the second category of offence can be alleged and proved only by such a person to the second marriage

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who was persuaded to give consent to the subsequent marriage in ignorance of the first marriage of his or her spouse. In these circumstances, if a restricted meaning is given to the words "aggrieved person" in section 198 of the Code, so as to exclude the second wife or the husband from the category of aggrieved persons, the offence under section 495, Indian Penal Code, for all practical purposes, will be rendered non-existent.

(7) Besides, it is not possible to subscribe to the view that the legislature in its anxiety to protect the offenders from being harassed and bothered from absolute strangers intended to deprive even the second wife or the husband, as the case may be, of the right to file the complaint if they could prove and establish that they were equally aggrieved by the unlawful act of the accused as the first wife or the husband. In a case of bigamy, the first wife is injured in spite of the fact that the second marriage is legally held void. She suffers injury mentally, emotionally and also in domestic solidarity and perhaps in reputation also. Undoubtedly, she is an aggrieved person. In a case where the second marriage is brought about by the husband or the wife of the first marriage keeping the other spouse in absolute darkness of the first marriage, the second wife or the husband, to my mind, is no less aggrieved so far as the emotional and mental torture and disruption of family life is concerned. If he or she were in the know of the first marriage, it is quite probable that such a person would not have agreed to the marriage. Where, the second wife or husband consents to the marriage with eyes open even while fully aware of the first marriage, the conduct of such a person may even amount to abetment of the offence of bigamy. Being a co-accused in the commission of the offence, such a person cannot claim to be aggrieved in any manner, but it is quite difficult to conclude from this that such a second wife or husband cannot claim to be an aggrieved person under any circumstances. This will be restricting the scope of section 198 of the Code beyond permissible limits.

(8) The term "aggrieved" according to *Corpus Juris Secundum*, Volume III, page 350, has been interpreted as follows :

"Adversely or injuriously affected; damnified, having a grievance, having suffered loss or injury, or injured, prejudiced, also having cause for complaint. More specially the word may be employed meaning adversely affected

in respect of legal rights, or suffering from an infringement or denial of legal rights.”

(9) According to this definition also, the second wife or the husband not having prior knowledge of the first marriage will be positively aggrieved. It will be just and proper that such a person should not be deprived of filing a complaint against the guilty spouse under section 198 of the Code.

(10) In view of the above discussion, we do not agree with the ratio of the decision in *Jarnail Singh's case* (supra). The reference is answered accordingly. The case will now be fixed before the learned Single Judge for disposal.

H. S. B.

Before S. S. Sandhawalia, C.J. and S. C. Mital, J.

CHOWDHRY TUBEWELL CENTRE,—*Petitioner*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ No. 3366 of 1978

November 3, 1978.

Punjab General Sales Tax Act (XLVI of 1948) as amended by Punjab Act XI of 1976—Section 5(1) first proviso and Schedule 'A'—Deletion of the word 'luxury' from the proviso and the Schedule—Whether vests arbitrary power in the Government to levy enhanced tax—First proviso to section 5(1) as amended—Whether constitutional.

Held, that section 5(1) of the Punjab General Sales Tax Act, 1948, with regard to the rate of tax provides that the same shall be levied on the taxable turnover of a dealer at such rates not exceeding seven paise in a rupee which the State Government may by notification direct. The amended proviso to the aforesaid sub-section has obviously and inevitably to be read with the main provision which it controls. So construed, the proviso, therefore, vests power of levying an enhanced rate of tax with the maxima limit of ten per cent