

(1995) 08 CAL CK 0001

Calcutta High Court

Case No: None

Srimati Krishna
Sengupta and Another

APPELLANT

Vs

Srimati Monjula
Mukherjee and Another

RESPONDENT

Date of Decision: Aug. 31, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 300
- Penal Code, 1860 (IPC) - Section 34, 494

Citation: (1995) 08 CAL CK 0001

Hon'ble Judges: Nripendra Kumar Bhattacharyya, J

Bench: Single Bench

Advocate: Minoti Gomes and Mr. Sariful Islam Mallick, for the Appellant;

Final Decision: Dismissed

Judgement

N.K. Bhattacharyya, J.

Heard the submission of the learned Advocate for the petitioners, Miss Minoti Gomes appearing with the learned Advocate Mr. Sariful Islam Mallick. Considered the materials on record.

2. It appears that this revisional application can be disposed of without directing the petitioners to serve copies of this application along with notice upon the opposite parties.

3. The fact leading to this revisional application is that originally the elder brother of the wife made an application u/s 200 of the Code of Criminal Procedure alleging that the husband of his sister contracted a second marriage during the subsistence of the marriage of the accused with his sister. Cognizance was taken by the learned magistrate. Summons were issued against the accused husband but ultimately when it was brought to the notice of the learned Magistrate that a petition of complaint by the elder brother of

the wife is not maintainable and competent and such application is competent only by the husband or the wife, the learned Magistrate discharged the accused from the case and also discharged the accused person from his bail bond. It will be apposite to mention that in that proceeding being C. R. Case No. 230 of 1985 which is pending before the learned Judicial Magistrate, 5th Court, Burdwan, the wife deposed as P. W. 1 and some other witnesses were also examined. After discharge of the accused from that case the wife then made an application u/s 200 of the Code of Criminal Procedure alleging an offence against her husband u/s 494 of the Indian Penal Code. In this background Miss Gomes submits that in view of section 300 of the Code of Criminal Procedure once an accused is acquitted or convicted of an offence on a given fact no further case is envisaged for the same offence on the same given fact and as such the complaint made by the wife in this case on the given fact which was the subject-matter of the earlier complaint at the instance of the elder brother of the wife is not maintainable.

4. Section 494 of the Indian Penal Code is available only to the offending wife or husband as the case may be in case of a second marriage during the subsistence of the first marriage with the complainant. An application for the offence u/s 494 is not available to any other person other than the offending husband or the wife as the case may be. Unfortunately, the elder brother of the offending wife has made an application alleging an offence against the husband of the offending wife for an offence u/s 494 of the Indian Penal Code. The learned Magistrate in the earlier case on the same view correctly discharged the accused person from the case and also from the bail bond. Thereafter, the wife made that application against her husband for an offence u/s 494 I. P. C. before the court of the learned Chief Judicial Magistrate, Burdwan, where upon that application Case No. C. R. 211 of 1995 has been registered. The learned Chief Judicial Magistrate took cognizance of that petition and transferred the case to the court of the learned Judicial magistrate, 5th Court, Burdwan, for holding enquiry and disposal. On transfer the learned Judicial Magistrate, 5th Court, Burdwan, directed issuance of summons against the accused husband u/s 494 and u/s 494/34 I. P. C. against the other accused persons. This proceeding has been challenged on the ground that in view of section 300 of the Code of Criminal Procedure this proceeding is not maintainable. I am unable to accept the contention of Miss Gomes. In view of the fact that the earlier application made by the elder brother of the offending wife is a misconceived one because u/s 494 none else other than the offending husband or the wife is competent to make that application alleging an offence u/s 494. As that allegation has been made by the elder brother of the offending wife that application and so also the proceeding on that application is not maintainable and the learned Magistrate has rightly discharged the erring husband and other accused persons from that case and also discharged them from their bail bond. In my view, this case will not come within the purview of section 300 of the Code of Criminal Procedure. The Code of Criminal Procedure contemplates acquittal or conviction on trial. But in this case there was no trial. The misconceived application u/s 300 of the Code of Criminal Procedure was tiled by the elder brother of the wife for an offence u/s 494 of the Indian Penal Code. So no trial can commence on that application and as such there

cannot be any question of acquittal or conviction on that application.

In such view of the matter, I do not find any merit in this revisional application. The revisional application is, accordingly, dismissed.

Application dismissed.