APPELLATE CRIMINAL.

Before D. Falshaw and Gurdev Singh, JJ.

MST. PAYARI,—*Appellant.*

versus

FAQIR CHAND AND OTHERS,—*Respondents.*

Criminal Appeal No. 1043 of 1959.

1960

August, 25th

Indian Penal Code (XLV of 1860)—Section 494—Object and scope of—A Christian marrying a Hindu Harijan girl in the life-time of his first Christian wife—Whether commits the offence of bigamy.

Held, that the object of enacting section 494 of the Indian Penal Code clearly was to punish persons who in defiance of the law applicable to them in matters of marriage and divorce, etc., take a second wife during the existence of the first. Having gone through some form of marriage the second time, if such persons are allowed to repudiate that subsequent marriage by alleging some defect in form or invalidity on the ground of consanguinity, religion, etc., the result would be not only to defeat the purpose for which section 494 of the Indian Penal Code was intended, but also to encourage repudiation of subsequent marriages. A construction leading to such undesirable results must be avoided even if there is any ambiguity in the language employed in section 494. The language used in this section is neither ambiguous nor does it admit of any doubt. The expression "marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife" merely emphasises the fact that unless a person is prohibited by the law, to which he is subject in the matters of marriage and divorce, from marrying more than one wife he is not to be punished under section 494 of the Indian Penal Code, but the person on whom the law enjoins monogamy commits an offence of bigamy if he goes through a form of marriage with another person during the existence of the first spouse.

Appeal from the order of Shri Sukhdev Singh, Magistrate 1st Class, Bassi, dated the 10th day of August, 1959, acquitting the respondents.

Y. P. GANDHI, ADVOCATE, for the Appellants.

D. S. KANG, ADVOCATE, for the Respondents.

JUDGMENT

Gurdev Singh, J

GURDEV SINGH, J.— In this appeal we are called upon to interpret the scope of section 494 of the Indian Penal Code. The point has arisen in the following manner.

The appellant Shrimati Piari and Faqir Chand, respondent, both Indian Christians, were married in accordance with Christian rites about seven years back. In the month of Har, 2015 Bk. Faqir Chand, contracted another marriage according to Hindu rites with Shrimati Jito, respondent No. 4, a Harijan girl. Thereupon Shrimati Piari brought a complaint under section 494 of the Indian Penal Code not only against her husband Faqir Chand, but also against his father Alakha, the second wife Shrimati Jito and her father Sarwan. At the trial Shri Sukhdev Singh Sodhi, Magistrate 1st Class, Bassi, held it proved that Faqir Chand had contracted a second marriage according to Hindu rites with Shrimati Jito while his first Christian wife Shrimati Piari is still alive. He, however, dismissed the complaint and acquitted the respondents being of the view that the subsequent marriage of Faqir Chand with Shrimati Jito, being between a Christian and a Hindu, was not valid in law and thus could not form the basis of conviction under section 494 of the Indian Penal Code. The relevant portion of his order runs as follows :—

> "On reading section 494 I.P.C. it would appear that in order that a person may be

convicted of an offence of bigamy, the second marriage must be a form of marriage recognized by law, otherwise it would be simply an adulterous union and it would not be hit by the provisions of section 494 I.P.C. One of the essential ingredients of section 494 I.P.C. is that the second marriage must be void by reason of its taking place during the lifetime of the husband or the wife of the first marriage. In the present case the alleged subsequent marriage between Faqir Chand, accused, a Christian, and Mst. Jito, accused, a Hindu woman, was a void marriage not because of the existence of Mst. Piari, complainant, the Christian wife of Faqir Chand, accused but because of the fact that there cannot be a valid form of marriage between an Indian Christian and a Hindu woman celebrated according to Hindu rites."

For this view of law the learned Magistrate placed reliance on *Swapna Mukherjee* v. *Basanta Ranjan* (1). No other decision in support of this view has been cited and there is none on which we have been able to lay our hands. With utmost deference and giving my earnest consideration to this matter, I find it difficult to accept the view of their Lordships of the Calcutta High Court not only because it is against the weight of authority, but also because it is not warranted by the language of the section itself.

Leaving out the Exception, which is not applicable to the present case, section 494 reads as follows :—

"494. Whoever, having a husband or wife living, marries in any case in which

(1) A.I.R. 1955 Cal. 533.

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such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The expression "marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife" has been interpreted in the Calcutta case cited above as implying a second marriage which is valid according to law applicable to the parties and not a marriage which would be void or invalid because of any defect in form, difference in religion, consanguinity or other matters affecting the capacity of the parties to a marriage. In other words according to their Lordships of the Calcutta High Court unless the second marriage with the person concerned is valid according to law, he would not be guilty of the offence of bigamy even though he had gone through a formal ceremony recognized by law. This conclusion is not warranted by the language of the section itself. In my opinion the expression "marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife" merely means that the person who marries a second time during the life of his or her first spouse would be punished under section 494 of the Indian Penal Code only if such second marriage is not recognised by the personal law by which he or she is governed. This expression was intended to exclude from the provisions of section 494 of the Indian Penal Code persons on whom the law, by which they are governed in the matter of marriage, does not enjoin monogamy. In other words if under the personal law a man is permitted to have more than one wife living at the same time he would not be

guilty of an offence under section 494, Indian Penal Code. For example under the Mohammadan Law a Muslim is permitted to have four wives at a time. If a Muslim after marrying one woman marries three more during the lifetime of the first, he would obviously be not guilty under section 494 of the Indian Penal Code. But in the case of persons on whom monogamy is enjoined by heir personal law, such as Christians and now Hindus and Sikhs as well, they would not be at liberty to go through a second marriage during the life of the first wife or husband without committing the offence under section 494 of the Indian Penal Code. Putting the same thing in another form, the expression referred to above merely means that if the second marriage during the lifetime of the first spouse is not prohibited by the personal law of the party concerned the person remarrying would not be guilty of bigamy. It is only where the personal law of the party concerned prohibits taking a wife during the lifetime of the first one that the person would be guilty of the offence under section 494 of the Indian Penal Code.

This has been the view which has invariably been accepted not only by the Courts in India but in England as well, except for the Calcutta decision referred to above. If I may say so with respect, the law was correctly laid down as far back as the year 1876 by Lindsay and Plowden, JJ., in *Gurbaksh Singh* v. *Sham Singh* (1), where dealing with the matter now in issue their Lordships held that if the first marriage is valid, it would be bigamy to marry again, notwithstanding any special circumstances which independently of the bigamous character of the marriage may constitute a legal disability in the parties or make the form of marriage resorted to inapplicable to their

(1) 19 P.R. 1876.

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case. The same view has been taken in a subsequent decision of the Lahore High Court in *Mt. Allah Di* v. *Emperor* (1), where Zafar Ali, J., held that the word "void" occurring in section 494 of the Indian Penal Code was not used in the technical sense in which it is used in the Mohammadan Law and the Penal Code makes no distinction between a void and an invalid marriage. In *Sant Ram* v. *Emperor* (2), decided by Tek Chand and Agha Haidar, JJ., the argument raised was that the conviction of Sant Ram, a *Jat,* under section 366 of the Indian Penal Code on the finding that he had abducted a Brahman woman with intent to marry was bad since there could be no valid marriage between a *Jat* and a Brahman woman. This argument was repelled by their Lordships in these words :—

> "This contention is, however, devoid of force, for it is settled law that in section 366 the word 'marry' implies, as in section 494, going through a form of marriage, whether the same is in fact valid or not."

Reliance in this connection was placed upon *Tahar Khan* v. *Emperor* (3). That was a decision by Chitty and Richardson, JJ., who had observed that the word "marry" in section 366 of the Indian Penal Code as in section 494 means the "going through a form of marriage, whether the marriage should prove in fact legal and valid or illegal and invalid". This decision of the Calcutta High Court was not even noticed by their Lordships who decided *Swappa Mukherjee* v. *Basanta Ranjan* (4), and is in conflict with that decision. The decisions

(1) A.I.R. 1928 Lahore 844(1).
(2) A.I.R. 1929 Lahore 713.
(3) I.L.R. 45 Cal. 641.
(4) A.I.R. 1955 Cal. 533.

in *Sant Ram* v. *Emperor* (1), and *Tahar Khan* v. *Emperor* (2), were followed in *Emperor* v. *Mt. Soni* (3), and it was held that the word 'marry' in section 494 means going through a form of marriage whether the marriage should prove in fact legal and valid or illegal and invalid. In *The Government of Bombay* v. *Ganga* (4), a Division Bench of that Court was dealing with the case of a Hindu wife who after getting herself converted to Mohammadanism married a Mohammadan. Their Lordships, while holding that the conversion of a Hindu woman did not *ipso facto* dissolve her marriage with her first husband and consequently she could not during the lifetime of her first husband enter into any other valid marriage, convicted her under section 494 of the Indian Penal Code accepting the State appeal. Reliance in this connection was placed on *In re Millard, etc.* (5). A later decision of the Madras High Court reported as *Emperor* v. *Lazar* (6), is also to the same effect. There it was laid down that a Native Christian, who having a Christian wife living, marries a Hindu woman according to Hindu rites without renouncing his religion, was guilty of an offence under section 494 of the Indian Penal Code. The learned Judge further observed that it would make no difference even if he had renounced the Christian religion before contracting the second marriage.

The question whether the invalidity of the marriage affects the offence of bigamy had also arisen before the English Courts in *R.* v. *Robinson* (7). Their Lordships of the Court of Criminal Appeal held that the validity of the second marriage was immaterial, and the accused was rightly

(1) 1929 Lahore 713.
(2) I.L.R. 45 Cal. 641.
(3) A.I.R. 1936 Nagpur 13.
(4) I.L.R. 4 Bom. 330.
(5) I.L.R. 10 Madras 218.
(6) I.L.R. 30 Madras 550.
(7) (1938) 1 All. E.L.R. 301.

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convicted. In that case the accused, who was then a married man, in September, 1937, accompanied a woman to Scotland and there in presence of witnesses both of them declared themselves to be man and wife. Such a marriage by declaration is only valid in Scotland if one of the parties had been resident there for a period of 21 days. That condition was not fulfilled in the case which was before the Court of Criminal Appeal. It was contended that the second marriage ceremony being invalid the offence of bigamy had not been committed. This contention was repelled with the following observations :—

> "In the course of the argument in the Court below, reference was made to the case *R.* v. *Allen* (1), where the law was very clearly explained after the case had been argued before a Court consisting of no fewer than fifteen Judges. The recorder, after his attention had been directed to the case used these words :
>
> I think the judgment of the Court in Crown Cases Reserved delivered by Cockburn, C.J., is very clear in expressing the guide which I ought to adopt in deciding this point. He says at page 375 of the case, the words 'shall marry another person' may well be taken to mean 'shall go through the form and ceremony of marriage with another person."

Their Lordships then relied upon the following observations of Lord Denman, C.J., in *R.* v. *Brawn* (2) :—

> "I am of opinion that the validity of the second marriage does not affect the

(1) (1872) L.R. I. C.C.R. 367.
(2) (1843) 1 Car. & Kir. 144.

question. It is the appearing to contract a second marriage, and the going through the ceremony which constitutes the crime of bigamy, otherwise it could never exist in the ordinary cases; as a previous marriage always renders null and void a marriage that is celebrated afterwards by either of the parties during the lifetime of the other. Whether, therefore, the marriage of the two prisoners was or was not in itself prohibited, and therefore, null and void, does not signify. . . . ."

As stated by the Recorded in *R.* v. *Allen* (*supra*) in interpreting such a provision of law one has got to look to the purpose of enactment and also to the mischief to be prevented and the remedy which the Legislature intended to apply. The object of enacting section 494 of the Indian Penal Code, to my mind, clearly was to punish persons who in defiance of the law applicable to them in matters of marriage and divorce, etc., take a second wife during the existence of the first. Having gone through some form of marriage the second time, if such persons are allowed to repudiate that subsequent marriage by alleging some defect in form or invalidity on the ground of consanguinity, religion, etc., the result would be not only to defeat the purpose for which section 494 of the Indian Penal Code was intended, but also to encourage repudiation of subsequent marriages. A construction leading to such undersirable results must be avoided even if there is any ambiguity in the language employed in section 494. I am, however, of the opinion that the language used in this section is neither ambiguous nor does it admit of any doubt. The expression "marries in any case

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in which such marriage is void by reason of its taking place during the life of such husband or wife" merely emphasises the fact that unless a person is prohibited by the law, to which he is subject in the matters of marriage and divorce, from marrying more than one wife he is not to be punished under section 494 of the Indian Penal Code, but the person on whom the law enjoins monogamy commits an offence of bigamy if he goes through a form of marriage with another person during the existence of the first spouse. In this view of the matter I find that the acquittal of the respondents is wrong in law and the same must be set aside. As the learned trial Magistrate had disposed of the complaint only on a legal point without going into merits, the case must go back to him. I would accordingly remand the case to the trial Court for decision in accordance with law and in the light of the correct position of law as explained above. Records be returned to the trial Magistrate. The parties are directed to appear before him on the 19th of September, 1960.

Falshaw, J.

FALSHAW, J.— I agree.

B.R.T.

APPELLATE CIVIL

Before Inder Dev Dua, J.

DEV NATH SURI,—*Appellant.*

versus

RAM CHAND SURI,—*Respondent.*

E. S. A. No. 57-D of 1957

1960

August 26.

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 2(6)(c)—Debt—Definition of—Pecuniary liability incurred by a displaced person after he came to reside in India—Whether covered—Interpretation of statutes—Rules as to, stated.