

RAVINDER KAUR

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v.

ANIL KUMAR

(Criminal Appeal No. 457 of 2008)

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APRIL 09, 2015

**[JAGDISH SINGH KHEHAR AND S.A. BOBDE, JJ.]**

*Penal Code, 1860 – ss. 493 and 494 – Complaint by wife against her husband u/ss. 493, 494, 495, 496, 420, 506 r/w. s/ 120B IPC – Alleging that the husband deceitfully co-habited with her even after obtaining ex-parte decree of divorce against her – Complaint not entertained by courts below – Appeal limited to the allegation u/ss. 493 and 494 alone – Held: In view of the fact that the ex-parte decree was subsequently set aside, the matrimonial ties would be deemed to subsist during the alleged period – Hence, the charge u/s. 493 not made out and The offence u/s. 494 is compounded in terms of s. 320 Cr.P.C – The husband is directed to pay a sum of Rs. 5 lakhs as compensation to the wife – Code of Criminal Procedure, 1973 – s. 320.*

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*Code of Criminal Procedure, 1973 – s. 300 Explanation – Complaint u/s. 376 IPC – Accused discharged and the order attained finality – Subsequent complaint u/ss. 493, 494, 495, 496, 506 r/w. s. 120B IPC on the same set of facts – Maintainability of – Held: In view of Explanation to s. 300, second proceedings would not be barred because no trial was conducted in previous proceedings and discharge of the accused therein cannot be construed as acquittal.*

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**A Disposing of the appeal, the Court**

**B HELD: 1. It cannot be said that Section 300 Cr.P.C. will be an embargo to obstruct the right of the appellant to file a second complaint against the respondent. The respondent had not been tried, in furtherance of the previous complaint made by the appellant, u/s. 376 of IPC. The respondent had been discharged in furtherance of the complaint made by the appellant, without any trial. The explanation u/s. 300 Cr.P.C. clearly mandates that the dismissal of a complaint, or the discharge of an accused, would not be construed as an acquittal, for the purposes of this Section. Therefore, the proceedings in the second complaint would not be barred, because no trial had been conducted against the respondent, in furtherance of the first complaint. Thus, it is open to the appellant, to press the accusations levelled by her, through her second complaint. [Para 8] [558-E-H; 559-A-C]**

**E 2. To satisfy the ingredients of s. 493 IPC the man concerned should have deceived the woman, to believe the existence of matrimonial ties with her. And based on the aforesaid belief, the man should have cohabited with her. In the present case, consequent upon the passing of the order dated 19.02.1996 (whereby the ex-parte decree dated 08.01.1994 was set aside), the matrimonial ties between the appellant and the respondent, will be deemed to have subsisted during the entire period under reference (08.01.1994 to 23.06.1994). In fact, the accusation of the appellant, on the aforesaid premise, in the first complaint filed by the appellant against the respondent (under Section 376 IPC) was not entertained, and the respondent was discharged, just because of the**

above inference. Therefore, the charge against the respondent is not made out, u/s. 493 IPC, because the respondent could not have deceived the appellant of the existence of a “lawful marriage”, when a lawful marriage indeed existed between the parties, during the period under reference. [Para 9] [559-G-H; 560-A,F-H; 561-A-B]

3. Section 494 IPC is compoundable. In view of the facts and circumstances of this case, specially the factual position as has emerged after the ex-parte decree of divorce was set aside, the best course for the parties is to settle their dispute amicably. Section 320 Cr.P.C. is an avenue available to the parties, for such resolution. In view of the consent expressed by the appellant to this Court that she would have no objection to the compounding of the offence under Section 494 IPC, the compounding of complaint made by the appellant with reference to s. 494 IPC is directed. The respondent is further directed to pay a sum of Rs. 5 lakhs, as compensation to the appellant. [Paras 10 and 12] [561-B,H; 562-A-C]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 457 of 2008.

From the Judgment and Order dated 10.01.2007 of the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. No. 50496-M of 2003.

Ajay K. Singh, S. K. Pabbi, Shikha Roy, S. K. Sabharwal for the Appellant.

K. G. Bhagat, Rahul Dagar, Vineet Bhagat, Debasis Misra for the Respondent.

The Judgment of the Court was delivered by

A       **J.S.KHEHAR, J.** 1. The appellant (Ravinder Kaur) and  
the respondent (Anil Kumar) got married on 14.08.1991.  
Soon thereafter, the respondent preferred a petition  
seeking divorce from the appellant before the Additional  
District Judge, Ropar. Having received summons in the  
B above-mentioned case, the appellant entered appearance  
before the Additional District Judge, Ropar, on  
08.10.1992. On the following day, i.e., on 09.10.1992,  
the respondent withdrew the petition filed by him under  
Section 13 of the Hindu Marriage Act, 1955.

C       2. The respondent filed a second divorce petition  
on 30.04.1993, under Section 13 of the Hindu Marriage Act,  
1955, on the same factual premise and grounds (as  
the earlier petition), before the Additional District Judge,  
D Chandigarh. Proceedings were conducted in the second  
divorce petition, in the absence of the appellant, and an  
ex-parte decree of divorce was granted to the respondent,  
on 08.01.1994. It was the case of the appellant before this  
Court, that the respondent did not inform her, that the  
E matrimonial ties between the parties had come to an end,  
by the decree of divorce dated 08.01.1994. And under the  
impression, that the marriage was subsisting, he continued  
his conjugal relationship with the appellant, as her  
F husband, by deception.

3. It was also the case of the appellant, that on  
23.06.1994 the respondent married Sunita Rani. It was,  
thereupon, that the appellant became aware (on 23.06.1994  
i.e., on the occasion of his marriage with Sunita Rani)  
G about the fact, that the respondent had been granted an  
ex- parte decree of divorce on 08.01.1994 (by the  
Additional District Judge, Chandigarh). Within six days,  
of her coming to know, about the above ex- parte decree  
of divorce, the appellant preferred an application, for  
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setting aside the said ex-parte decree, on 29.06.1994. A  
The same was allowed by the Additional District Judge,  
Chandigarh, on 19.02.1996. In sum and substance,  
therefore, the matrimonial ties between the appellant and  
the respondent came to be restored, as if the marital  
relationship had never ceased. B

4. Based on the fact, that the respondent had  
continued the sexual relationship with the appellant, for the  
period from 08.01.1994 (when the ex-parte decree of  
divorce was passed) till he married Sunita Rani on C  
23.06.1994, the appellant preferred a complaint before the  
Judicial Magistrate 1st Class, Kharar, under Section 376 of  
the Indian Penal Code. It is not a matter of dispute, that  
the respondent was discharged from the above D  
proceedings. In fact, no trial came to be conducted in  
furtherance of the above complaint made by the appellant.  
The above order of discharge, was assailed by the  
appellant, before the High Court of Punjab and Haryana, at  
Chandigarh (hereinafter referred to as 'the High Court'). E  
The High Court affirmed the order of discharge, on  
10.07.1997. Dissatisfied with the order of discharge, as  
also, the order passed by the High Court, the appellant  
approached this Court. This Court declined to interfere with  
the above orders. F

5. On the same factual premise, as has been noticed  
in the foregoing paragraphs (wherein the appellant had  
filed a complaint for initiation of proceedings under Section  
376 of the Indian Penal Code), the appellant filed a second G  
complaint, this time accusing the respondent of offences  
under Sections 493, 494, 495, 496, 420, 506 read with  
Section 120- B of the Indian Penal Code. The Judicial  
Magistrate 1st Class, Kharar, did not entertain the  
aforementioned complaint filed by the appellant, and H

- A dismissed the same vide an order dated 27.11.2002. Dissatisfied with the aforesaid order, the appellant preferred a revision petition, assailing the above order dated 27.11.2002, before the Sessions Judge, Roopnagar. The aforesaid revision petition was dismissed on 04.09.2003.
- B The order dated 04.09.2003 was assailed by the appellant before the High Court, through Criminal Misc.No.50496-M of 2003. The aforesaid Criminal Miscellaneous Petition, was dismissed by the High Court on 10.01.2007.
- C The order passed by the High Court on 10.01.2007 is a subject matter of challenge through the instant appeal.

6. During the course of hearing, learned counsel for the appellant very fairly asserted, that the claim raised by the appellant in the complaint, which is a subject matter of the present consideration, can be pressed against the respondent, only with reference to the accusations levelled by the appellant, under Sections 493 and 494 of the Indian Penal Code. It was, therefore, that the instant controversy will be examined by us, limited to the allegations made by the appellant, under Sections 493 and 494 of the Indian Penal Code only.

7. Learned counsel for the respondent, while opposing the prayer made on behalf of the appellant vehemently contended, that the present proceedings were not maintainable against the respondent, in the light of Section 300 of the Criminal Procedure Code. In this behalf, it was the submission of the learned counsel for the respondent, that it was not open to the appellant to raise a claim against the respondent, so as to subject the respondent to a trial again, on the same facts as in the earlier complaint, even for an offence, other than the one, with reference to which the earlier complaint was filed (under Section 376 of the Indian Penal Code). To examine the

veracity of the contention raised by the learned counsel for the respondent, Section 300 of the Code of Criminal Procedure is being extracted hereunder: A

“300. Person once convicted or acquitted not to be tried for same offence. B

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof. C D

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220. E

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted. F G

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the H

A same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

B (5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.

C (6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, (10 of 1897 ) or of section 188 of this Code.

D Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section."

E 8. Having perused Section 300, we are satisfied, that the submission advanced at the hands of the learned counsel for the respondent, namely, that Section 300 of the Criminal Procedure Code, will be an embargo to obstruct the right of the appellant to file a second complaint against the respondent, is not justified. Our above determination is based on the fact, that the respondent had not been tried, in furtherance of the previous complaint made by the appellant, under Section 376 of the Indian Penal Code. The contention of the learned counsel for the appellant, that the respondent had been discharged in furtherance of the complaint made by the appellant, without any trial having been conducted against him (the respondent), was not disputed. Based on the above factual contention, learned counsel for the appellant had placed emphatic reliance, on the explanation under Section 300 of the Criminal Procedure Code. The explanation relied upon, H clearly mandates that the dismissal of a complaint, or

the discharge of an accused, would not be construed as A  
an acquittal, for the purposes of this Section. In this view of  
the matter, we are in agreement with the contention  
advanced at the hands of the learned counsel for the  
appellant. We are of the considered view, that proceedings B  
in the second complaint would not be barred, because no  
trial had been conducted against the respondent, in  
furtherance of the first complaint. Having so concluded, it  
emerges that it is open to the appellant, to press the  
accusations levelled by her, through her second complaint, C  
referred to above.

9. It is, therefore, that we shall now examine the  
present controversy, with reference to Sections 493 and 494  
of the Indian Penal Code, which admittedly survive. The  
contention of the learned counsel for the respondent, with D  
reference to Section 493 of the Indian Penal Code was, that  
the ingredients of the offence under Section 493 were not  
made out, even if the factual position, as has been  
asserted by the appellant, is accepted. Section 493  
of the Indian Penal Code is being extracted hereunder: E

“493. Cohabitation caused by a man deceitfully  
inducing a belief of lawful marriage.-Every man who  
by deceit causes any woman who is not lawfully  
married to him to believe that she is lawfully married F  
to him and to cohabit or have sexual intercourse  
with him in that belief, shall be punished with  
imprisonment of either description for a term which  
may extend to ten years, and shall also be liable to  
fine.” G

A perusal of the above-extracted provision reveals, that to  
satisfy the ingredients thereof, the man concerned should  
have deceived the woman, to believe the existence of  
matrimonial ties with her. And based on the aforesaid H

A belief, the man should have cohabited with her. The question to be determined on the basis of the factual position, as has been noticed hereinabove, is whether in the facts and circumstances of this case, it is possible to accept such deceit, at the hands of the respondent, even if it is accepted for the sake of arguments, that cohabitation continued between the parties between 08.01.1994 till 23.06.1994, i.e., from the date when the respondent was granted an ex-parte decree of divorce (by the Additional District Judge, Chandigarh), till the date when the respondent married Sunita Rani. We are of the considered view, that with the setting aside of the ex-parte decree of divorce dated 08.01.1994 (on 19.02.1996), it cannot be accepted, that there was any break in the matrimonial relationship between the parties. Even the complaint filed by the appellant under Section 376 of the Indian Penal Code was not entertained (and the respondent was discharged), because it came to be concluded, that the matrimonial ties between the appellant and the respondent were restored, with the setting aside of the ex-parte decree of divorce, as if the matrimonial relationship had never ceased. In sum and substance therefore, consequent upon the passing of the order dated 19.02.1996 (whereby the Additional District Judge, Chandigarh, set aside the ex-parte decree dated 08.01.1994), the matrimonial ties between the appellant and the respondent, will be deemed to have subsisted during the entire period under reference (08.01.1994 to 23.06.1994). In fact, the accusation of the appellant, on the aforesaid premise, in the first complaint filed by the appellant against the respondent (under Section 376 of the Indian Penal Code) was not entertained, and the respondent was discharged, just because of the above inference. For exactly the same reason, we are satisfied that the charge against the respondent is not made out,

under Section 493 of the Indian Penal, because the respondent could not have deceived the appellant of the existence of a "lawful marriage", when a lawful marriage indeed existed between the parties, during the period under reference. A

10. So far as the surviving provision, namely, Section 494 of the Indian Penal Code is concerned, the same is compoundable. During the course of hearing, on 08.04.2015, we enquired from the learned counsel for the appellant, whether the appellant was interested in compounding the cause, since we were made aware of the fact, that the respondent in the meantime had fathered two children, from Sunita Rani. This proposal was made by the Court on an oral assertion made at the behest of the learned counsel representing the respondent, that the appellant had also re-married in the meantime, and that, she had also begotten one son out of her second marriage. B C D

11. Having obtained instructions, learned counsel for the appellant very fairly acknowledged, the second marriage of the appellant. He also acknowledged, the factum of the appellant having begotten a son, from her second marriage. In the changed scenario, learned counsel for the appellant informed this Court, that the appellant had instructed him, that a request may be made to the Court, that the appellant would have no objection to the compounding of the offence under Section 494 of the Indian Penal Code, in terms of Section 320 of the Code of Criminal Procedure, with the consent of this Court. The contention of the learned counsel for the appellant however was, that the appellant should be awarded reasonable cost, while compounding the offence under Section 494 of the Indian Penal Code. E F G

12. Having given our thoughtful consideration to the facts and circumstances of this case, specially the factual position H

- A as has emerged after the ex-parte decree of divorce dated 08.01.1994 (passed by the Additional District Judge, Chandigarh) was set aside on 19.02.1996, we are of the view, that the best course for the parties is to settle their dispute amicably. Section 320 of the Criminal
- B Procedure Code is an avenue available to the parties, for such resolution. In view of the consent expressed by the appellant to this Court through her counsel, we hereby direct the compounding of complaint made by the appellant with reference to Section 494 of the Indian Penal Code.
- C We direct the respondent to pay a sum of Rs.5 lakhs, as compensation to the appellant. The respondent shall deposit the aforesaid amount in this Court within two months from today. It shall be open to the appellant to move an application to the Registry of this Court, to
- D withdraw the aforesaid amount.

13. The appeal is disposed of in the above terms.

Kalpana K. Tripathy

Appeal disposed of.