

Reserved On : 25/03/2026
Pronounced On : 24/04/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 2520 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Approved for Reporting	Yes	No
	✓	

AMIN BHANJIBHAI SAMIDAS
 Versus
 PATEL DASHRATHBHAI MAFATLAL & ORS.

Appearance:

MR RAJESH K SAVJANI(2225) for the Appellant(s) No. 1
 ABATED for the Opponent(s)/Respondent(s) No. 2,4,9
 MR MRUNAL R DHOLARIA(11915) for the Opponent(s)/Respondent(s) No. 10,7,8,9
 MR TEJAS P SATTA(3149) for the Opponent(s)/Respondent(s) No. 1,3,5,6
 MR. BHAUMIK DHOLARIYA(7009) for the Opponent(s)/Respondent(s) No. 10,7,8
 MR. TIRTHRAJ PANDYA, APP for the Opponent(s)/Respondent(s) No. 11

CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER

CAV JUDGMENT

Table of Contents

INTRODUCTION.....	2
BRIEF FACTS.....	2
SUBMISSIONS OF THE APPELLANT.....	4
SUBMISSIONS OF THE RESPONDENT.....	8
Jurisdictional issue.....	12
Whether Patan Court had the territorial jurisdiction.....	14
Leave under Section 198(c) of the CRPC.....	18
Section 201 and 461 of the CRPC.....	20
Section 462 of the CRPC: Proceedings at a wrong place.....	22
Merits of the Appeal.....	27
CONCLUSION.....	30

INTRODUCTION

1. This Appeal poses a narrow yet significant question of whether a Criminal Court, upon finding absence of territorial jurisdiction, can nevertheless proceed to examine the matter on merits, and whether such adjudication vitiates the proceedings.
2. The background of this issue is that a Complaint alleging bigamy under Section 494 of the Indian Penal Code came to be filed, where both jurisdiction of the Court and proof of a second marriage are seriously contested.
3. Stated briefly, the present challenge is to a decision where the Ld. Court observes that it does not possess the relevant territorial jurisdiction to adjudicate the dispute, however proceeds to adjudicate the same on merits. Consequently, the tenability of such a judgment has been questioned before this Court.

BRIEF FACTS

4. The present Complaint had been filed by the father of the wife of Respondent No.1, alleging commission of offences punishable under Sections 494 and 114 of the Indian Penal

Code, 1860 (“**IPC**”), i.e., bigamy. During the pendency of the Appeal, Respondent Nos. 2, 4 and 9 expired, and accordingly, the Appeal stood abated qua the said Respondents.

5. The Complainant, being the father of the victim, instituted a Criminal Complaint dated 16th July 1998 before the Ld. 2nd Additional Senior Civil Judge and Judicial Magistrate First Class, Patan, alleging that his daughter was married to the Respondent No. 1, on 18th May 1989, at Village Malund, District Patan, in accordance with customary rites and ceremonies. The said victim, being the wife of Respondent No.1 and daughter of the Complainant. The said parties, i.e. the victim and Respondent No. 1 also have a female child, namely Vidhi, was born on 29th September 1991.
6. Thereafter, upon obtaining leave of the Court, the father of the victim filed a complaint before the Court of the Ld. 2nd Additional Senior Civil Judge and Judicial Magistrate First Class, Patan, which came to be registered as Warrant Trial Criminal Complaint No. 1847 of 1998 against the Accused for the aforesaid offences.
7. Upon appreciation of the oral and documentary evidence on record, the Ld. Trial Court, by its judgment and order dated

19.12.2006, was pleased to acquit the Accused of the offences punishable under Sections 494 and 114 of the Indian Penal Code, 1860, on merits, while holding that the said Court had no jurisdiction to adjudicate the present dispute.

SUBMISSIONS OF THE APPELLANT

8. Ld. Counsel for the Appellant has submitted that the victim was driven out of her matrimonial home on 28th April 1996 along with her minor daughter, Vidhi. It is the case of the complainant that thereafter the victim, along with her child, took shelter at her parental home situated at Malund. It is further contended that during the subsistence of the first marriage, on 26th June 1998, Respondent No.1, with the aid and assistance of the other Respondents, solemnised a second marriage with Respondent No.7 at Anand. It is, therefore, alleged that the Accused-Respondents have committed offences punishable under Sections 494 and 114 of the Indian Penal Code, 1860.
9. Ld. Counsel for the Appellant has further submitted that from the alleged second marriage between Respondent No.1 and Respondent No.7, a female child, namely Komal,

was born on 12th July 1999, and the Birth Certificate in that regard has been produced on record at Exhibit 88. It is further submitted that the charge against the Accused came to be framed on 24th November 2005, and thereafter, the statements of the Accused under Section 313 of the Code of Criminal Procedure were recorded on 14th June 2006 at Exhibits 56 to 65.

- 10.** Ld. Counsel for the Appellant has mainly contended that the Ld. Trial Court has dismissed the Complaint on the ground that it lacked territorial jurisdiction to adjudicate the proceedings. It is submitted that once the Ld. Magistrate arrived at the conclusion that it did not possess jurisdiction, it ought not to have proceeded further in the matter. It is further contended that, in such circumstances, the Ld. Magistrate ought to have either returned the Complaint for presentation before the Court having proper territorial jurisdiction or rejected the same in accordance with law. However, in the present case, despite holding that it lacked territorial jurisdiction, the Ld. Magistrate proceeded to evaluate the evidence on record, which is impermissible in law.

- 11.** Ld. Counsel has further submitted that the Ld. Magistrate

has committed a serious error in the interpretation and application of the provisions contained in Chapter XIII of the Code of Criminal Procedure, 1973 ("**Code**") more particularly Sections 177, 178, 179, 182, 198, 201 and 461 thereof. It is contended that these provisions have not been considered in their true spirit and perspective.

12. It is, therefore, submitted that the finding of the Ld. Trial Court that the Court at Patan lacks territorial jurisdiction is erroneous in law, inasmuch as jurisdiction goes to the very root of the matter, and the Ld. Judicial Magistrate First Class, Patan, has failed to properly appreciate the statutory scheme governing territorial jurisdiction. Ld. Counsel for the Appellant has further submitted that the Ld. Judicial Magistrate First Class, Patan has completely lost sight of the settled position of law that the Courts at the place where the wife takes shelter, after being driven out of the matrimonial home on account of the illegal acts of the husband or his relatives, also have jurisdiction to entertain and try a complaint alleging offences against the wife and therefore, the Ld. Trial Court at Patan in fact had the jurisdiction to adjudicate the matter.

13. Ld. Counsel for the Appellant has further submitted that the

Ld. Judicial Magistrate First Class, Patan has committed a serious error of law in not considering the statutory provision in Section 182 (2) of the Code of Criminal Procedure, 1973, which provides that “*or the wife by the first marriage has taken up permanent residence after the commission of the offence*”. It is submitted that the said clause was introduced by way of the Amending Act of 1978 with the specific object of facilitating the first wife to initiate proceedings at the place where she has taken residence after the husband has contracted a second marriage during the subsistence of the first marriage.

14. It is further submitted that the Ld. Magistrate has failed to properly appreciate the evidentiary material on record, more particularly Exhibit 88, which evidences that a female child, namely Komal, was born from the alleged second wedlock during the subsistence of the first marriage. It is contended that the said document was not in dispute and, therefore, ought to have been given due weightage.
15. Ld. Counsel for the Appellant has placed reliance upon the judgment of the Hon'ble Supreme Court in *Kaushik Chatterjee v. State of Haryana*, (2020) 10 SCC 92 with respect to the applicability and interpretation of Sections

461 and 462 of the Code of Criminal Procedure, 1973. Reliance is also placed upon the judgment reported in *Indu Bhagya Natekar v. Bhagya Pandurang Natekar* (1992) 1 BomCR 390, wherein it has been held that merely because a Marriage Registration Certificate is not produced, the factum of second marriage cannot be discarded, particularly when the name of the priest who performed the marriage has been disclosed. It is, therefore, submitted that the Ld. Trial Court has erred in law in doubting the validity of the second marriage despite the existence of cogent material on record.

SUBMISSIONS OF THE RESPONDENT

- 16.** Per contra, Ld. Counsel appearing for Respondent Nos. 7, 8 and 10, Mr. Bhaumik Dholariya, has supported the impugned judgment and order passed by the Ld. Trial Court. It is submitted that the Complaint has been filed by the father of the victim and even the address mentioned therein is that of the father. It is further contended that, at the time of filing of the Complaint, the victim was not residing within the territorial jurisdiction of Malund, District Patan, but was in fact working at Kutch, which aspect has

been duly admitted by the complainant in his oral deposition at Exh. 33.

- 17.** It is further submitted that the Ld. Magistrate has rightly appreciated the factual position that the alleged offence had taken place at Anand and that the victim and Accused No.1 had last resided together at Anand. In view thereof, it is contended that the Court at Patan did not have territorial jurisdiction to entertain, try and decide the Complaint, and the finding recorded by the Ld. Trial Court on the issue of jurisdiction is legal and proper.
- 18.** It is further contended, without prejudice to the aforesaid submissions, that the Complainant has failed to establish the factum of marriage between Accused No.1 and Respondent No.7. It is submitted that in absence of cogent and reliable evidence proving a valid second marriage, no offence under Section 494 of the Indian Penal Code, 1860 can be said to have been made out. It is, therefore, urged that the Ld. Trial Court has rightly dismissed the Complaint and the impugned judgment does not call for any interference.
- 19.** Ld. Counsel for the Appellant has further submitted that once the Ld. Magistrate came to the conclusion that it was

not competent to take cognizance of the case, the procedure contemplated under Section 201 of the Code of Criminal Procedure, 1973 ought to have been followed. It is contended that since the Complaint was in writing, the Ld. Magistrate was required to return the same to the complainant for presentation before the proper Court with an appropriate endorsement to that effect. It is submitted that the Ld. Magistrate could not have dismissed the Complaint, and further, having held that it lacked territorial jurisdiction, it was impermissible for the Ld. Magistrate to enter into the merits of the case.

20. Per contra, Ld. Counsel for Respondent Nos. 7, 8 and 10 has contended that once the Ld. Magistrate had already issued process under Section 204 of the Code of Criminal Procedure, 1973, it was no longer permissible to return the Complaint under Section 201 on the ground of lack of jurisdiction, in absence of any express provision enabling such course. It is, therefore, submitted that the procedure adopted by the Ld. Trial Court does not suffer from any illegality.

21. In support of the aforesaid submissions, Ld. Counsel for the Appellant has placed reliance upon the judgment of the

Hon'ble Supreme Court in *Devendra Kishanlal Nagalia v. Dwarkesh Diamonds Pvt. Ltd.*

- 22.** Ld. Counsel for the Respondents has further submitted that the Birth Certificate produced at Exh. 88, at the highest, establishes that a child was born to Respondent Nos. 1 and 7; however, the same cannot be construed as proof of a valid marriage in the eyes of law. It is contended that mere proof of cohabitation or birth of a child would not, by itself, establish the essential ingredients required to prove an offence under Section 494 of the Indian Penal Code, 1860. In support of the said contention, reliance has been placed upon the decisions in *Krishnaveni v. Rajendran* and *Smt. Dhara Dei v. Prafulla Swain*.
- 23.** It is further submitted that the complainant has failed to place on record any cogent evidence to establish the solemnization of the alleged second marriage in accordance with the requisite ceremonies and rituals. It is, therefore, contended that in absence of proof of essential ceremonies constituting a valid marriage, the offence alleged cannot be said to have been made out, and the Ld. Magistrate has rightly appreciated this aspect while dismissing the Complaint.

- 24.** Ld. Counsel appearing for Respondent Nos. 1, 3, 5 and 6 has adopted and supported the submissions advanced by Ld. Counsel Mr. Bhaumik Dholariya. It is further contended that the impugned judgment and order passed by the Ld. Trial Court is in consonance with the provisions of law, does not suffer from any illegality or perversity, and therefore does not warrant any interference. It is, accordingly, prayed that the present Appeal be dismissed.

ANALYSIS AND FINDINGS

- 25.** Therefore, two questions arise for consideration of this Court. First, does the Court at Patan have the requisite jurisdiction to adjudicate and try the Complaint in question. Second, assuming if such a jurisdiction was not there with the Ld. Trial Court, are the proceedings vitiated.

Jurisdictional issue

- 26.** Having heard Ld. Counsel for the respective parties and having considered the provisions of law applicable to the facts of the present case, it emerges that the Complaint has been filed by the father of the victim after obtaining leave of the Court, in accordance with the provisions of Section 198(1)(c) of the Code of Criminal Procedure, 1973.

27. Complainant was examined at Exhibit 33, whilst a friend of the Complainant was examined at Exhibit 50.

28. The respondents examined are as under;

Res. no	Name of the Respondent	Exh	Relation
1.	Patel Dashrathbhai Mafatlal	56	Husband of Urvashi
2.	Patel Mafatlal Revabhai (passed away, Appeal abated)	57	Father-in-law of Urvashi
3.	Patel Narmadaben Mafatlal	58	Mother-in-law of Urvashi
4.	Patel Bharatkumar Mafatlal, (passed away, Appeal abated)	59	Brother of Resp.No.1
5.	Patel Yogitaben Bharatkumar	60	Wife of Resp. No. 4
6.	Patel Bakulaben Bipinkumar d/o. Mafatlal Revabhai	61	Sister of Resp. No. 1
7.	Patel Kailashben Dashrathbhai	62	Alleged second wife of Resp. No. 1
8.	Patel Ishvarbhai Harjibhai	63	Father of Resp. No. 7
9.	Patel Raiben Ishwarbhai (passed away, Appeal abated)	64	Mother of Resp. No. 7
10.	Patel Jagdishbhai Ishwarbhai	65	Brother of Resp. No. 7

29. It is the case of the Complainant that during the subsistence

of the first marriage between the victim and Respondent No.1, which was solemnised on 18th February 1989, Respondent No.1, with the aid and assistance of the other Respondents, contracted a second marriage with Respondent No.7 on 26th June 1998.

- 30.** However, upon appreciation of the material on record, it prima facie appears that the factum of the alleged second marriage has not been strictly proved by the complainant. The complainant has primarily relied upon Exh. 88, i.e., the Birth Certificate of a female child, Komal, stated to have been born out of the alleged wedlock between Respondent No.1 and Respondent No.7.

Whether Patan Court had the territorial jurisdiction

- 31.** Before advertng to the question as to whether the Court at Malund, District Patan, had the territorial jurisdiction to entertain and decide the present Complaint, it would be apposite to consider the relevant provisions of law governing jurisdiction, namely Sections 177, 178 and 182(2) of the Code of Criminal Procedure, 1973, which read as under:

“Section 177- Ordinary place of inquiry

and trial- Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Section 178- Place of inquiry or trial-

- (a) when it is uncertain in which of several local areas an offence was committed, or
- (b) where an offence is committed partly in one local area and partly in another, or
- (c) where an offence is a continuing one, and continues to be committed in more local areas than one, or
- (d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Section 182(2)- Offences committed by letters, etc.

- (2)- Any offence punishable under section [494](#) or section [495](#) of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage, [or the wife by first marriage has

taken up permanent residence after the commission of offence].”

- 32.** The aforesaid provision assumes significance in the present case, inasmuch as the Complaint pertains to an offence punishable under Section 494 of the Indian Penal Code, 1860. In terms of Section 182(2) of the Code of Criminal Procedure, 1973, such an offence may be inquired into and tried by a Court within whose local jurisdiction the offence was committed, or where the offender last resided with his or her spouse by the first marriage, or where the wife by the first marriage has taken up permanent residence after the commission of the offence.
- 33.** Thus, a plain reading of Section 182(2) makes it clear that the local jurisdiction to inquire into and try an offence under Section 494 of the Indian Penal Code, 1860 is not confined to a single place, but is spread across **three alternative jurisdictions**, namely: (i) the place where the offence was committed; (ii) the place where the husband last resided with the first wife; and (iii) the place where the first wife has taken up permanent residence after the commission of the alleged offence.
- 34.** In the aforesaid background, if the **first limb of jurisdiction**

is taken into consideration, namely the place where the offence is alleged to have been committed, it is the specific case of the complainant that the alleged second marriage was solemnised at District Anand. The Complaint itself records that the said second marriage had taken place at Anand, and therefore, in terms of Section 182(2) of the Code of Criminal Procedure, 1973, the Courts at Anand would have jurisdiction under this limb.

35. Insofar as the second limb of jurisdiction is concerned, namely the place where the offender last resided with the spouse from the first marriage, the material on record indicates that the victim and Respondent No.1 had last resided together at District Anand. Thus, even under this limb, the Courts at Anand would have jurisdiction.

36. For the third limb, namely the place where the wife from the first marriage has taken up permanent residence after the commission of the offence, the deposition of the complainant at Exhibit 33 assumes significance. The Complainant has categorically stated that even prior to the alleged incident, the victim was employed as a teacher at District Kutch, Taluka Anjar, and continued to be so employed even at the time of filing of the Complaint. It is

further admitted that the victim was not residing at Patan, and that as she was unable to travel from Kutch, the Complaint came to be filed by the father on her behalf.

- 37.** A further reading of the Complaint also does not disclose any assertion that the victim had taken up permanent residence within the territorial jurisdiction of Malund, District Patan, after the commission of the alleged offence.
- 38.** On the contrary, the Complaint is premised on the allegation that Respondent No. 1 contracted a second marriage with Respondent No. 7 on 26th June 1998 during the subsistence of the first marriage. The basis for invoking jurisdiction of the Court at Patan is stated to be that the *Complainant* resides within such jurisdiction and that the marriage between the victim and Respondent No.1 was earlier solemnised at Malund.
- 39.** However, Section 182(2) of the Code of Criminal Procedure, 1973 does not confer jurisdiction upon the Court where the first marriage was solemnised, nor does it recognize the residence of the complainant (Father) as a determinative factor for jurisdiction.

Leave under Section 198(c) of the CRPC

40. The leave sought by the complainant is under Section 198(1)(c) of the Code of Criminal Procedure, 1973, which pertains to locus to file the Complaint, and cannot be conflated with the issue of territorial jurisdiction. Section 198 of the Code of Criminal Procedure. More particularly, **198(c)** which reads as;

c. “where the person aggrieved by an offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860) 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, [or with the leave of the Court, by any other person related to her by blood, marriage or adoption].”

41. Therefore, while granting leave under Section 198(1)(c) of the Code of Criminal Procedure, 1973, the Court was only required to consider whether the Complaint had been validly instituted on behalf of the wife by her father. The said provision pertains to the locus of the complainant and **does not, in any manner, enlarge or confer territorial jurisdiction upon the Court.** Merely because the father of the victim resides within the jurisdiction of the Court at

Malund, District Patan, the same cannot be a ground to vest jurisdiction in such Court, when the statutory requirements governing territorial jurisdiction are otherwise not satisfied.

Section 201 and 461 of the CRPC

- 42.** Ld. Counsel for the Complainant has further contended that in view of Section 201 of the Code of Criminal Procedure, 1973, the Ld. Magistrate ought to have returned the Complaint for presentation before the competent Court, instead of proceeding to decide the same.
- 43.** It is further submitted that in light of Section 461 of the Code, more particularly clauses (l) and (m), any proceedings conducted by a Magistrate not empowered in that behalf would stand vitiated, inasmuch as if a Magistrate not so empowered tries an offender or tries an offender summarily, such proceedings would be rendered void.
- 44.** In support of the aforesaid contention, reliance has been placed upon the decision of the Hon'ble Supreme Court in ***Kaushik Chatterjee v. State of Haryana***.
- 45.** Insofar as the contention that the Ld. Magistrate ought to have returned the Complaint for presentation before the competent Court in view of Section 201 of the Code of

Criminal Procedure, 1973 is concerned, Ld. Counsel for Respondent Nos. 7, 8 and 10 has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Devendra Kishanlal Nagalia v. Dwarkesh Diamonds Pvt. Ltd., (2014) 2 SCC 246***. While considering a similar issue, the Hon'ble Court, in paragraph 12 of the said judgment, has observed as under:

“Section 201 CrPC, as noticed earlier, can be applied immediately on receipt of a complaint, if the Magistrate is not competent to take cognizance of the offence. Once the Magistrate taking cognizance of an offence forms his opinion that there is sufficient ground for proceeding and issues summons under Section 204 CrPC, there is no question of going back following the procedure under Section 201 CrPC. In absence of any power of review or recall the order of issuance of summons, the Magistrate cannot recall the summons in exercise of power under Section 201 CrPC. The first question is thus answered in the negative and in favour of the appellant.”

46. Therefore, as the Ld. Magistrate Court at Malund had taken

cognizance of an offence that there is sufficient ground for proceeding, and issued summons under Section 204, there was no question of going back following the procedure under Section 201 Criminal Procedure Code. Even as per the judgment reported in ***Kaushik Chatterjee v. State of Haryana and Ors, (2020)***, which has been relied on by the learned advocate for the Appellant, the Apex Court has held that in the circumstances on hand the Court cannot order transfer on the ground of lack of territorial jurisdiction even before evidence is marshalled, and therefore the argument of the appellant that if the Trial Court came to the conclusion that the Magistrate did not have jurisdiction, the Magistrate could not have gone to decide the case on merits of no substance.

- 47.** Moreover, Respondent No. 7 has already taken contention before the Ld. Magistrate, that the said Court did not have territorial jurisdiction to decide the dispute, and even if a trial had taken place in the wrong place where the Court has no territorial jurisdiction to try the case, still unless failure of justice is pleaded and proved, the trial cannot be quashed and set aside.

Section 462 of the CRPC: Proceedings at a wrong place

48. However, upon consideration of the said judgment, it would also be necessary to advert to the provisions of Section 462 of the Code of Criminal Procedure, 1973, which provides:

“Proceedings in wrong place.— No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong Sessions Division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.”

49. Thus, a conjoint reading of the aforesaid provisions indicates that while lack of territorial jurisdiction is a relevant consideration, the same would not *ipso facto* render the proceedings void, unless it is shown that such defect has resulted in a failure of justice.

50. Hon’ble Supreme Court in ***State of Karnataka v. Kuppuswamy Gownder***, (1987) 2 SCC 74 held as follows:

15. It is therefore clear that even if the trial before the III Additional City Civil and

*Sessions Judge would have in a Division other than the Bangalore Metropolitan Area for which III Additional City Civil and Sessions Judge is also notified to be a Sessions Judge still the trial could not have been quashed in view of Section 462. **This goes a long way to show that even if a trial takes place in a wrong place where the court has no territorial jurisdiction to try the case still unless failure of justice is pleaded and proved, the trial cannot be quashed.** In this view of the matter therefore reading Section 462 alongwith Section 465 clearly goes to show **that the scheme of the Code of Criminal Procedure is that where there is no inherent lack of jurisdiction merely either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure an order or sentence awarded by a competent court could not be set aside unless a prejudice is pleaded and proved which will mean failure of justice. But in absence of such a plea merely on such technical ground the order or sentence passed by a competent court could not be quashed.***

51. Even the Bombay High Court in ***Rafiuddin v. Saleha Khatoon***, 2007 SCC OnLine Bom 850 held as follows:

11. The wording of section 462 of Criminal Procedure Code is very clear that the order shall not be set aside on the ground that the trial, enquiry or proceedings took place in a wrong district or place. The contention of Mr. Vyawahare, therefore, has to be upheld. This Court, therefore, in revision cannot set aside the order of the Family Court on the ground of want of territorial jurisdiction. Lack of territorial jurisdiction may at the most be irregularity and not an illegality. The order, therefore, cannot be set aside on that count.

52. This principle has been by and large followed by many Courts of the Country even after the stage of evidence was over.
53. The reliance placed on Section 461, therefore, has to be appreciated in the context of the statutory scheme, particularly in light of Section 462, which curtails interference on mere technical grounds of territorial jurisdiction.

- 54.** Therefore, in the facts of the present case, it is evident that while the Ld. Magistrate was otherwise competent to try an offence of the nature alleged, the issue that arises is limited to the aspect of territorial jurisdiction. The material on record indicates that (i) the alleged offence had taken place at District Anand, (ii) that the victim and Respondent No.1 had last resided together at District Anand, and (iii) further that at the relevant point of time the victim had taken up residence at District Kutch. In such circumstances, none of the ingredients contemplated under Section 182(2) of the Code of Criminal Procedure, 1973 are satisfied so as to confer jurisdiction upon the Court at Malund, District Patan.
- 55.** In view of the aforesaid, though the Ld. Magistrate possessed the jurisdiction to try the class of offence in question, it cannot be said that the Court at Malund, District Patan had territorial jurisdiction to entertain the present Complaint.
- 56.** However, having regard to the saving provision contained in Section 462 of the Code of Criminal Procedure, 1973, the proceedings cannot be set aside merely on the ground of such defect, unless it is demonstrated that the same has occasioned a failure of justice. In the present case, no such

failure of justice is either pleaded or made out, and therefore, no interference is warranted on this ground.

- 57.** Therefore, on the plain reading of Section 462, which shows the scheme of Criminal Procedure Code, that where there is no inherent lack of jurisdiction, and merely either on the ground of lack of territorial jurisdiction, the order of the competent Court could not be set aside, unless a prejudice is pleaded and proved, which will mean failure of justice, and in absence of a plea merely on such technical ground, the order of the Court could not be quashed.

Merits of the Appeal

- 58.** Insofar as the issue regarding proof of the alleged second marriage between Respondent Nos. 1 and 7 is concerned, it is required to be noted that the victim herself has not entered the witness box to depose on the said aspect.
- 59.** The complainant (father) has examined himself at Exh. 33; however, even from his oral testimony, the factum of second marriage is not established. In his deposition, he has stated that the alleged second marriage took place at Anand and that certain persons, namely Vinodbhai Keshabhai and Praveen Mohan, had attended the same. He

has further stated that the marriage had taken place inside a room. However, he has candidly admitted that he was not present at the time of the alleged ceremony, that he is not aware of the exact place where such ceremony was performed, and that even the victim was not aware of the alleged second marriage and came to know about it only after the Complaint was filed.

- 60.** The Complainant has thereafter examined one Vinodbhai Keshabhai at Exh. 50, who is stated to be an eyewitness to the alleged marriage. The said witness has deposed that the marriage took place at his quarters at D.M. School. However, upon appreciation of his evidence, it emerges that the same is vague and does not disclose the performance of essential ceremonies required for a valid marriage in law.
- 61.** There is no clear or cogent evidence indicating that the mandatory rituals constituting a valid Hindu marriage were performed. The complainant has also relied upon Exh. 88, being the Birth Certificate of the child Komal, alleged to have been born from the relationship between Respondent Nos. 1 and 7.
- 62.** At this stage, it would be apposite to note that for establishing an offence under Section 494 of the Indian

Penal Code, 1860, it is incumbent upon the complainant to prove that a valid second marriage was solemnised during the subsistence of the first marriage.

- 63.** The entire case of the complainant rests upon the testimony of PW-2 (Vinodbhai) at Exh. 50 and the documentary evidence at Exh. 88. However, the Ld. Trial Court has, upon appreciation of the evidence, declined to place reliance on the testimony of PW-2 on the ground that it does not establish the essential ceremonies of marriage. The said finding cannot be said to be perverse or contrary to the evidence on record so as to warrant interference in an appeal against acquittal.
- 64.** Insofar as the Birth Certificate at Exh. 88 is concerned, the same may indicate that a child was born to Respondent Nos. 1 and 7; however, it cannot, by itself, be treated as proof of a valid marriage. The law is well settled that marriage cannot be presumed merely from cohabitation or from the birth of a child, particularly in criminal proceedings where strict proof beyond reasonable doubt is required. The reliance placed on the decision in *Krishnaveni v. Rajendran* also supports the proposition that a Birth Certificate, in absence of proof of essential ceremonies, is insufficient to

establish a valid marriage.

- 65.** Thus, the complainant has failed to establish, by cogent and reliable evidence, that the alleged second marriage between Respondent Nos. 1 and 7 was solemnised in accordance with law. The standard of proof required in criminal proceedings is that of proof beyond reasonable doubt, and not mere preponderance of probabilities. In absence of proof of the essential ingredients constituting a valid marriage, no offence under Section 494 of the Indian Penal Code, 1860 can be said to have been made out.

CONCLUSION

- 66.** Insofar as the **issue of territorial jurisdiction** is concerned, this Court is of the considered view that the Court at Malund, District Patan did not possess territorial jurisdiction to entertain and decide the present Complaint, inasmuch as none of the contingencies contemplated under Section 182(2) of the Code of Criminal Procedure, 1973 are satisfied.
- 67.** However, having regard to the provisions of Section 462 of the Code, and in absence of any demonstrated failure of justice, the proceedings cannot be vitiated on this ground

alone and hence, are not quashed on this count.

- 68.** Insofar as the **merits** of the case are concerned, this Court finds that the complainant has failed to establish, by cogent and reliable evidence, the factum of a valid second marriage between Respondent Nos. 1 and 7 so as to attract the offence under Section 494 of the Indian Penal Code, 1860.
- 69.** The findings recorded by the Ld. Trial Court, therefore, do not suffer from any legal infirmity warranting interference.
- 70.** In view of the aforesaid discussion and upon re-appreciation of the entire evidence on record, this Court does not find any illegality, perversity or infirmity in the impugned judgment and order passed by the Ld. Trial Court. The findings recorded are in consonance with the evidence on record as well as the settled principles of law, and no case is made out for interference in an appeal against acquittal.
- 71.** The present Appeal, being devoid of merits, is hereby dismissed. The impugned judgment and order passed by the Ld. Judicial Magistrate First Class, Patan in Criminal Case No. 1847 of 1998 is hereby confirmed.

(SANJEEV J.THAKER,J)

ADITYA SINGH