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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.409 OF 2006

MITHLESH Appellant(s)

Versus

STATE OF U.P. AND OTHERS Respondent(s)

O R D E R

1. This appeal by special leave is directed against the judgment and order dated 6.9.2005 passed by the High Court of Judicature at Allahabad in Leave to Appeal No. 66 of 2002 in Criminal Appeal against the Acquittal No. Nil of 2002, whereby the High Court has dismissed the application preferred by the appellant seeking leave to appeal.

2. The main controversy in this appeal is that the appellant filed a case under Section 494 read with Section 109 of the Indian Penal Code, alleging that

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during the subsistence of her marriage with Sanjay Giri â Respondent No.2 herein, he has married another woman namely Kamla â Respondent NO. 4 herein. The trial Court after appreciating the evidence led before it, acquitted all the accused including respondent No.2 herein on the ground that the appellant has failed to prove that any second marriage of Respondent No. 2 has taken place.

3. The High Court rejected the leave to appeal on the ground that the trial Court has considered the entire material on record and there is no perversity and arbitrariness in its order. Hence, this appeal.

4. Learned counsel for the appellant, relying upon the evidence of PW-3 â Mangu Giri contended that there is a second marriage of Sanjay Giri - Respondent No.2 with Kamla and out of the said wedlock, they are having three children. Learned counsel contended that in spite of clear evidence, the trial Court as well as the High Court ignored the evidence and acquitted Respondent No.2 â Sanjay Giri.

5. On the other hand, learned counsel for the

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respondents while denying the allegation leveled by the appellant, submitted that Pramod Giri, who is the brother of Respondent No. 2 â Sanjay Giri, is the husband of Kamla. In support thereof, he has relied upon Exhibit P-3 at page 31 of the paper book to demonstrate that Kamla was married to Pramod Giri on 21-01-1996 and not Respondent No. 2 â Sanjay Giri. Also rebutting the argument of learned counsel for the appellant that Pramod Giri has married another lady as per Exhibit P-4, learned counsel for the respondent contended that while acquitting all the accused, the Courts below have appreciated the entire evidence available on record and the Exhibit P-4 was not even produced before the trial Court or High Court, hence it cannot be looked into.

6. Having heard learned counsel for the rival parties and after considering the entire evidence available on record of the case, we see no reason to interfere with the orders passed by the Courts below. There is no valid and legal evidence adduced on record to establish the alleged marriage of Respondent No. 2 â Sanjay Giri with Respondent No. 4 â Kamla. As already observed by the High Court, the evidence of prosecution witnesses

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cannot be relied on for the reasons that the appellant

herself was not a witness to the alleged marriage, the evidence of PW 2 is only hearsay and there was no reason for the presence of PWs 3 and 4 at the marriage. Thus, in the absence of authenticated proof of alleged second marriage of Respondent No. 2, we cannot find fault with the impugned order.

7. In view of the above, we do not find any merit in this appeal. The same is, accordingly, dismissed.

.....J.

[N.V. RAMANA]

.....J.

[PRAFULLA C. PANT]

New Delhi,  
February 21, 2017

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ITEM NO.101

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Criminal Appeal No(s). 409/2006

MITHLESH

Appellant(s)

VERSUS

THE STATE OF U.P. & ORS.

Respondent(s)

(with office report)

Date : 21/02/2017 This appeal was called on for hearing today.

CORAM :

HON&#39;BLE MR. JUSTICE N.V. RAMANA

HON&#39;BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s)

Dr. Vinod K. Tewari, Adv.

Mr. Satyam Pandey, Adv.

Mr. Vivek Tiwari, Adv.

Mr. K.C. Vishwakarma, Adv.

For Mr. K. L. Janjani, Adv.

For Respondent(s)

Mr. Amit Kumar, Adv.

Mr. Shaurya Sahay, Adv.

Mr. Kumar Abhishek, Adv.

UPON hearing the counsel the Court made the following

O R D E R

This appeal is dismissed in terms of the signed order.

[SUKHBIR PAUL KAUR] [S.S.R. KRISHNA]

A.R.-CUM-P.S.

ASSISTANT REGISTRAR

(Signed order is placed on the file)