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SLP(Cr1.)No. 3493 OF 2000

ITEM No.204

Court No. 5

SECTION II
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Cr1.) No. 3493/2000

(From the judgement and order dated 23/02/2000 in CMWP 3687/96
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

KRISHNA GOPAL DIVEDI

Petitioner (s)

VERSUS

PRABHA DIVEDI

Respondent (s)

(With Appln(s). for stay)
(For Final Disposal)

Date : 23/02/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE R.P. SETHI

For Petitioner (s) Mr. N. Sridhar, Adv.
Mr. S. Udaya Kumar Sagar, Adv.

For Respondent (s) Mr. Chander Shekhar Ashri, Adv.

UPON hearing counsel the Court made the following

O R D E R

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Leave granted.
The Criminal Appeal is allowed.

.SP1 Hemalatha (HK Bhatia)
Court Master

(signed order is placed on file)

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.....of 2001@@
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(Arising from SLP(CrI) No.3493 of 2000)

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KRISHNA GOPAL DIVEDI ... APPELLANT

VS.

PRABHA DIVEDI ...RESPONDENT

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Leave granted.

It appears that the appellant secured an ex parte decree divorcing his first wife on 6.7.1990, though the wife says that she never had notice of the said decree or the proceedings commenced by her husband. What the appellant did was to undergo a marriage with another lady on 25.5.1993 presumably on the strength of the ex parte decree secured by him. But his good days with the newly married wife did not last long as the first wife succeeded in getting the ex parte decree set aside on 31.3.1994. The fact remains that there is no decree of divorce as between the appellant and his first wife ever since 31.3.1994.

The first wife filed a complaint against the appellant on 28.3.1995 alleging that the appellant has committed the offence under Section 494 of the IPC. On receiving the process issued by the criminal court the appellant moved the High Court of Allahabad for quashing

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the criminal proceedings. The main plank adopted by the appellant is that on the date when he conducted the second marriage the first marriage was not subsisting in view of the ex parte decree which continued in force on the said date.

Learned counsel for the respondent (first wife) did not dispute the fact that she moved for setting aside the ex parte decree and succeeded in it when an order was passed on 31.3.1994. As per that order the ex parte decree of divorce dated 6.7.1990 was set aside. If that be so, appellant cannot possibly be convicted for the offence under Section 494 of IPC on the premise that he had undergone a ceremony of marriage with another lady on 25.5.93.

Learned counsel for the respondent contended that the appellant is guilty of adultery atleast from the date 31.3.1994. We are not considering that aspect since no complaint has been filed by the first wife against the appellant on that score.

As it is, we feel that the criminal proceeding now pending against the appellant for the offence under Section 494 of the IPC is only an exercise of futility. We do not want the criminal court to waste its time for that purpose.

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We, therefore, allow this appeal, set aside the impugned order and quash the proceeding taken pursuant to the criminal complaint filed by the first wife. It is needless to say that this order is without prejudice to the right, if any, of the first wife filing any complaint against the appellant for any other offence.

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.....J.
(K.T. Thomas)

New Delhi,
February 23, 2001

.....J.
(R.P. Sethi)