

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No 728 of 2020  
(Arising out of SLP (Crl) No 9688 of 2019)**

**Krishnaveni Rai**

**...Appellant(s)**

**Versus**

**Pankaj Rai and Anr**

**...Respondent(s)**

**WITH**

**Criminal Appeal No 729 of 2020  
(Arising out of SLP (Crl) No 9690 of 2019)**

**ORDER**

1 Leave granted.

2 There are two appeals before this Court forming the subject matter of the present proceedings. A Single Judge of the High Court for the State of Telangana, by a judgment dated 9 April 2019, allowed a petition, being Criminal Petition No 14188 of 2015, instituted by the first respondent under Section 482 of the Code of Criminal Procedure 1973<sup>1</sup> and quashed an application under Section 12 of the

1 "CrPC"

Protection of Women from Domestic Violence Act 2005<sup>2</sup>, being DVC No 170 of 2015 pending on the file of the IV Metropolitan Magistrate, Hyderabad at the behest of the appellant. By another order also dated 9 April 2019, in Criminal Revision Case No 149 of 2019, instituted by the appellant, the High Court upheld the order dated 23 January 2018 of the Metropolitan Sessions Judge, Hyderabad by which the first respondent was discharged in a criminal complaint arising out of the provisions of Section 498A of the Indian Penal Code 1860<sup>3</sup>. The High Court, while dismissing the criminal revision case instituted by the appellant, concluded that there was no illegality or impropriety in the order passed by the Metropolitan Sessions Judge, Hyderabad.

3 The factual background which gives rise to these appeals needs to be noticed briefly for the purpose of deciding these appeals.

4 The appellant was earlier married on 11 September 1989 to Mr AC (the identity of the earlier spouse not being a relevant factor for the disposal of these appeals). On 28 June 2005, the Family Court at Hyderabad passed a decree of divorce on the ground of cruelty, based on which the marriage was dissolved. On 30 August 2006, after the expiry of the period of limitation prescribed under Section 28 of the Hindu Marriage Act 1955<sup>4</sup>, the appellant filed an appeal against the decree of divorce. The appellant and the first respondent got married on 13 December 2014. On 15 May 2015, the appellant lodged a complaint at the Banjara Hills Police Station under Sections 406, 498A and 500 of the IPC. On his part, the first respondent instituted a proceeding<sup>5</sup> seeking a declaration that

2 "DV Act"

3 "IPC"

4 "HMA"

5 OP No 475 of 2015 before the I Additional Family Court, Hyderabad

his marriage with the appellant was a nullity. On 23 May 2015, a Domestic Incident Report bearing No DIR 267/15/DV/2015 was filed. On 22 March 2016, a charge sheet was filed in the Court of the XIII Additional Chief Metropolitan Magistrate, Hyderabad arising out of FIR No 470 of 2015 registered on 3 August 2015 at the Banjara Hills Police Station alleging the commission of offences under Sections 406, 498A and 500 of the IPC. The first respondent instituted proceedings seeking his discharge under Section 239 of the CrPC in the case arising out of FIR No 470 of 2015 under Sections 406, 498A and 500 of the IPC. The discharge petition was dismissed on 15 March 2017 by the XIII Additional Chief Metropolitan Magistrate, Hyderabad. The first respondent then filed Criminal Revision Petition No 192 of 2017 before the Metropolitan Sessions Judge, Hyderabad in order to challenge the decision of the XIII Additional Chief Metropolitan Magistrate, Hyderabad rejecting his discharge petition. By an order dated 23 January 2018, the Metropolitan Sessions Judge, Hyderabad allowed the first respondent's revision. In consequence, the first respondent was discharged in the case under Sections 406, 498A and 500 of the IPC. The order of the Metropolitan Sessions Judge was challenged by the appellant before the High Court for the State of Telangana. At the same time, the first respondent had instituted proceedings before the High Court for the State of Telangana under Section 482 of the CrPC seeking the quashing of DVC No 170 of 2015 pending on the file of the IV Metropolitan Magistrate, Hyderabad.

- 5 On 9 April 2019, the learned Single Judge of the High Court disposed of three proceedings. Two of the three proceedings have already been adverted to above, being:

- (i) The proceedings instituted by the appellant to challenge the discharge of the first respondent in the case under Sections 406, 498A and 500 of the IPC; and
- (ii) The proceedings instituted by the first respondent seeking to quash the application under the DV Act instituted by the appellant.

The third proceeding<sup>6</sup> before the High Court arose out of the application for the grant of maintenance under Section 125 of the CrPC instituted by the appellant.

6 The High Court, by its judgments dated 9 April 2019:

- (i) upheld the decision of the trial Court, rejecting the application for maintenance under Section 125 of the CrPC;
- (ii) upheld the discharge of the first respondent in the criminal case arising out of Sections 406, 498A and 500 of the IPC; and
- (iii) quashed the application filed by the appellant under Section 12 of the DV Act.

7 All the judgments of the High Court have proceeded on a common foundation that the marriage between the appellant and the first respondent was a nullity since the appellant had entered into the wedlock during the pendency of the appeal which was filed by her against the decree for divorce from her earlier spouse on the ground of cruelty.

- 8 The judgment of the High Court dated 9 April 2019 arising out of the maintenance proceeding under Section 125 of the CrPC came up before this Court in a Special Leave Petition under Article 136 of the Constitution filed by the appellant. This resulted in the final judgment and order dated 19 February 2020 in Criminal Appeal No 321 of 2020 by a Bench of two-Judges of which one of us (Hon'ble Indira Banerjee, J) was a member. By its judgment dated 19 February 2020, this Court allowed the appeal. The order of the High Court under appeal as well as the order dated 7 August 2017 of the Additional Metropolitan Sessions Judge, Hyderabad dismissing MC No 152 of 2015 were set aside and the application for the grant of maintenance was remitted for being considered afresh. In the meantime, the first respondent was directed to pay the appellant maintenance quantified at Rs 20,000 per month pending further orders in the proceedings under Section 125 of the CrPC, together with a lump sum of Rs 1,00,000 towards the arrears of maintenance.
- 9 In order to appreciate the factual background in which the above decision of this Court was rendered, a reference to some of the relevant dates would be necessary.
- 10 A decree for divorce was passed against the appellant on 28 June 2005 on the ground of cruelty. On 30 August 2006, the appellant filed FCA No 109 of 2007 before the High Court to challenge the decree of divorce. On 13 December 2014, the marriage between the appellant and the first respondent was solemnized. Thereafter, on 2 September 2016, the appeal was withdrawn by the appellant.

11 The contention of the first respondent, which was accepted by the High Court, was that in view of the provisions of Section 15 of HMA, the marriage between the appellant and the first respondent was a nullity. Section 15 provides as follows:

“15. Divorced persons when may marry again.- When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.”

12 The view of the High Court that the marriage between the appellant and the first respondent was a nullity was specifically disapproved in the judgment of this Court dated 19 February 2020. In coming to this conclusion, the Court observed:

“31. Section 15 clarifies that when a marriage has been dissolved by a decree of divorce, and there is no right of appeal against the decree, or if there is such a right of appeal, the time for appealing has expired without an appeal having been preferred, or an appeal has been presented but the same has been dismissed, it shall be lawful for either party to the marriage to marry again. Had it been the legislative intent that a marriage during the pendency of an appeal should be declared void, Section 11 would expressly have provided so.”

13 In arriving at this view, the Court found support from the earlier decisions of this Court in **Lila Gupta v Laxmi Narain**<sup>7</sup> and **Anurag Mittal v Shaily Mishra Mittal**<sup>8</sup>, holding that the provisions of Section 15 of HMA had not been attracted. The Court held:

7 (1978) 3 SCC 258

8 (2018) 9 SCC 691

“34. In any case, the bar of Section 15 is not at all attracted in the facts and circumstances of this case, where the appeal from the decree of divorce had been filed almost a year after expiry of the period of limitation for filing an appeal. Section 15 permits a marriage after dissolution of a marriage if there is no right of appeal against the decree, or even if there is such a right to appeal, the time of appealing has expired without an appeal having been presented, or the appeal has been presented but has been dismissed. In this case no appeal had been presented within the period prescribed by limitation.

35. The bar, if any, under Section 15 of the Hindu Marriage Act applies only if there is an appeal filed within the period of limitation, and not afterwards upon condonation of delay in filing an appeal unless of course, the decree of divorce is stayed or there is an interim order of Court, restraining the parties or any of them from remarrying during the pendency of the appeal.

36. As observed above, the appeal was infructuous for all practical purposes, from the inception, since the Appellant's ex-husband had lawfully remarried after expiry of the period of limitation for filing an appeal, there being no appeal till then.

37. It could never have been the legislative intent that a marriage validly contracted after the divorce and after expiry of the period of limitation to file an appeal from the decree of divorce should be rendered void on the filing of a belated appeal. If the marriage of the Appellant's ex-husband in 2006 was a valid marriage in law recognizing that he had no living spouse, the subsequent re-marriage of the Appellant could also not be void. We are in full agreement with the view of this Court in *Leela Gupta (supra)* that the effect of the prohibition against one of the parties from contracting a second marriage for a certain period is not to nullify the divorce and continue the dissolved marriage, as if the same were subsisting.”

- 14 The issue as to whether the marriage between the appellant and the first respondent was contrary to the provisions of Section 15 of HMA has, thus, been the subject matter of the decision which was rendered on 19 February 2020. The first respondent, who appeared in person, has informed the Court that a review petition is pending.

- 15 The High Court, by its impugned judgments, both rendered on 9 April 2019, has basically arrived at the conclusion that the marriage between the appellant and the first respondent is a nullity in view of the contravention of the provisions of Section 15 of HMA. This issue is, however, not *res integra* as between the parties. There is a decision *inter partes* of this Court dated 19 February 2020. Since the basis on which the judgments were rendered by the High Court on 9 April 2019, forming the subject matter of the two appeals, is negated by the judgment of this Court dated 19 February 2020, we are of the view that the appropriate course would be to set aside the impugned judgments and remit the proceedings back to the High Court.
- 16 We may note at this stage that Mr Chaturvedula Srinivas, learned counsel appearing on behalf of the appellant, submitted that it would be appropriate for this Court to restore the proceedings to the trial Court since the basis of the judgments of the High Court on an interpretation of Section 15 of HMA is negated by the judgment of this Court dated 19 February 2020. In this context, however, we are of the view that it would be appropriate to restore the proceedings back to the High Court at the present stage. We have already noted that there were two proceedings before the High Court which have resulted in the present appeals. The first was a proceeding instituted by the first respondent for quashing the application filed by the appellant under Section 12 of the DV Act. The second was a proceeding instituted by the appellant seeking to quash the discharge granted to the first respondent in the complaint arising out of the provisions of Sections 406, 498A and 500 of the IPC.

17 The first respondent, who has appeared in person, has made an earnest effort to support the judgments of the High Court even independently by raising other grounds. Since they have not been addressed before the High Court, we are of the view that the first respondent should be permitted an opportunity to do so before the High Court. Consequently, and for the above reasons, we allow the appeals in the following terms:

- (i) The judgment and order of the learned Single Judge of the High Court dated 9 April 2019 in Criminal Petition No 14188 of 2015 (instituted by the first respondent) and Criminal Revision Case No 149 of 2019 (instituted by the appellant) are set aside;
- (ii) Criminal Petition No 14188 of 2015 and Criminal Revision Case No 149 of 2019 are restored to the file of the High Court for the State of Telangana for disposal afresh;
- (iii) The rights and contentions of the parties are kept open to be urged before and decided by the High Court, other than the issues which have been settled by the judgment of this Court dated 19 February 2020 arising out of Criminal Appeal No 321 of 2020;
- (iv) Since the review petition arising out of the judgment of this Court is stated to be pending, we keep open the remedies of the first respondent in the pending review petition to be pursued in accordance with law; and
- (v) The High Court is requested to expedite the disposal of the above proceedings and to do so preferably within a period of three months from

the date of receipt of a certified copy of this order on the record of the respective proceedings.

18 Pending applications, if any, stand disposed of.

.....J.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[Indu Malhotra]

.....J.  
[Indira Banerjee]

New Delhi;  
November 03, 2020

ITEM NO.16                      Court 4 (Video Conferencing)                      SECTION II

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

Petition(s) for Special Leave to Appeal (CrI.) No(s).9688/2019

(Arising out of impugned final judgment and order dated 09-04-2019 in CRLP No. 14188/2015 passed by the High Court for the State of Telangana at Hyderabad)

KRISHNAVENI RAI

Petitioner(s)

VERSUS

PANKAJ RAI & ANR.

Respondent(s)

(WITH IA No. 63709/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 46180/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 24510/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 5762/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 161765/2019 - PERMISSION TO APPEAR AND ARGUE IN PERSON, IA No. 69775/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 20979/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(CrI) No. 9690/2019 (II)

(WITH IA No. 63697/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 46166/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 161770/2019 - PERMISSION TO APPEAR AND ARGUE IN PERSON, IA No. 69502/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 21064/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 03-11-2020 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MS. JUSTICE INDU MALHOTRA  
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s)      Mr. Chaturvedula Srinivas, Adv.  
   Mr. Vadlamani Seshagiri, Adv.  
   Mrs. Bela Maheshwari, AOR

For Respondent(s)      Respondent-in-person

**UPON hearing the counsel the Court made the following  
O R D E R**

- 1 Leave granted.
- 2 The appeals are allowed in terms of the signed order.
- 3 Pending applications stand disposed of.

**(SANJAY KUMAR-I)  
AR-CUM-PS**

**(SAROJ KUMARI GAUR)  
COURT MASTER**

**(Signed order is placed on the file)**