

PETITIONER:
SURENDRA GUPTA

Vs.

RESPONDENT:
BHAGWANDEVI

DATE OF JUDGMENT 05/04/1994

BENCH:
SAHAI, R.M. (J)
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SAHAI, R.M. (J)
HANSARIA B.L. (J)

CITATION:
1996 AIR 509 1994 SCC (4) 657
1994 SCALE (2) 625

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The short question of law that arises for consideration in this appeal is if the High Court was right in its finding that the appellants were liable to be proceeded with and were not liable to be discharged on the second complaint filed under Section 494 IPC, for which they had been convicted and sentenced earlier.

2. Appellant 1 is said to have married appellant 2. The wife of appellant 2 one Promila filed a complaint under Section 494 IPC, in which the appellants were convicted and sentenced to undergo simple imprisonment for two years and fine of Rs 2000 each and in default of the payment of fine I further period of six months' imprisonment. Subsequently, Respondent 1, who claims to be husband of appellant 1, filed the present complaint against appellants 1 and 2 and other relations, who too were parties in the first complaint. The appellants claimed that since they had been convicted for the offence, they were liable to be discharged. The trial court dismissed the application against which they filed revision. The High Court maintained the order and held that the benefit of Section 300 of the Criminal Procedure Code was not available as the facts were not the same.

3. Sub-section (1) of Section 300 CrPC bars a second trial for the same offence. The High Court itself found that the offence was the same yet it dismissed the application of the appellants for discharging them as facts were not same. Sub-section (1) of Section 300 CrPC reads as under:

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"300. (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."

It shall be seen that it bars a fresh trial if a person had been tried and convicted or acquitted by a court of competent Jurisdiction for the same offence. Offence is defined by clause (n) of Section 2 of the CrPC to mean 'an act or omission made punishable by the Act'. The offence for which the appellants were tried earlier was the offence of bigamy under Section 494 IPC. The second trial, therefore, may be at the instance of the husband of appellant 1 is clearly barred by Section 300 CrPC, as it is for the same offence. The High Court, in our opinion, misdirected itself in recording the finding that facts being different, except the alleged marriage the second complaint was liable to be proceeded with. We do not find any distinction on facts except that the first complaint was filed by the first wife of the husband and second complaint has been filed by the husband of the wife, appellant 1 who is said to have remarried appellant 2. The offence of bigamy is committed when a husband or wife in the lifetime of his spouse marries. When a person is tried and convicted for such an offence on the complaint of a person, authorised by law to do so, he or she cannot be prosecuted and tried a second time for the same offence on another complaint filed by another person. The bar under Section 300 is for trial and conviction of the same offence. Since offence remains the same the appellants cannot be tried and convicted for it once again.

4. In the result, this appeal succeeds and is allowed. The order passed by the High Court and the Magistrate are set aside. The appellants shall stand discharged.

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