

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Criminal Revision No. 157 of 2014**

Chundri Devi and another ..... Petitioners

Versus

The state of Jharkhand and another ... Opp. Parties

With

**Criminal Revision No. 1203 of 2013**

Mohan Mahto ..... Petitioners

Versus

The state of Jharkhand and another ... Opp. Parties

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**CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

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For the Petitioners : Mr. Vijay Kumar Roy, Advocate  
(In both cases)

For the State : Mrs. Vandana Bharti, A.P.P.  
(In both cases)

For the O.P. No. 2 : Mr. Sahadeo Choudhary, Advocate  
(In Cr. Rev. No. 1203 of 2013)

Through Video Conferencing

**12/14.09.2020**

1. Heard Mr. Vijay Kumar Roy, learned counsel appearing on behalf of the petitioners in both the cases.
2. Heard Mrs. Vandana Bharti, learned counsel appearing on behalf of the opposite party-State in both the cases.
3. Heard Mr. Sahadeo Choudhary, learned counsel appearing on behalf of the claimant in Cr. Revision No. 1203 of 2013.
4. Learned counsel for the petitioners submits that the impugned judgments are perverse and fit to be set aside in revisional jurisdiction. Learned counsel while advancing his argument has submitted that the Deoki Devi been convicted under Section 494 of IPC alleged to be second wife. On the one hand second marriage was not proved through cogent evidence and on the other hand she could not have been convicted under Section 494 of the Indian Penal Code as she was unmarried on the date of her alleged marriage. Learned counsel submit that

in the present case the priest who conducted the second marriage has not been examined and the Saptpadi was not proved and the second marriage itself has not been proved and therefore conviction of the petitioner Deoki Devi and Mohan Mahto under Section 494 IPC is not sustainable in the eyes of law. The learned counsel has further submitted that so far as offence under Section 498-A is concerned, the marriage was solemnized between the complainant and Mohan Mahto long back and the basic ingredients of Section 498-A of the Indian Penal Code has not been satisfied by the prosecution and therefore the conviction under Section 498-A is also not sustainable in the eyes of law. He submitted that on the one hand conviction under Section 494 of the Indian Penal Code is based on no evidence and on the other hand conviction under basic ingredients of offence Section 498-A of Indian Penal Code has not been satisfied.

5. Learned counsel has relied upon the following judgments in support of his submissions:

2002(1) Eastern Criminal Cases 374 (SC) Paul George versus State;

2002(1) Eastern Criminal Cases 300 (Pat) Rabindra Prasad Verma vs. State of Bihar;

(2007) 2 Eastern Criminal Cases 464 (Jhr.) Reshmi Kewtain vs. State of Bihar

(2008) 1 Eastern Criminal Cases 161 (Jhr.) Bhakti Bala Dasi vs. Baldeo Pandit

(2008) 1 Eastern Criminal Cases 162 (Jhr.) Dinesh Choudhary vs. State of Jharkhand

(2012) 2 Eastern Criminal Cases (Pat) Nagendra Mahto vs. State of Bihar

(2009) 3 Eastern Criminal Cases S.C. 321 para 23.

6. Without prejudice to the aforesaid submissions, learned counsel has also submitted that the petitioner Mohan Mahto

has remained in custody for the period of 10 month 19 days at the stage of trial and the petitioner Chundari Devi being the mother-in-law has remained in custody for the period of two months two days and the petitioner Deoki Devi has remained in custody for the period of 1 month seven days. The present age of Mohan Mahto, husband of the complainant is 54 years, Chundari Devi-mother-in-law is 77 years and Deoki Devi alleged second wife is aged about 47 years. He submits that considering the fact that the present case is of the year 2009, some sympathetic view may be taken. He also submits that no minimum sentence has been prescribed under Section 494, Section 498-A and Section 323 of the Indian Penal Code.

7. Learned counsel appearing on behalf of the opposite party has opposed the prayer and has submitted that the conviction of the petitioners have been done by a well reasoned order and there are consistent findings against the petitioners which do not call for any interference.
8. Learned counsel for the complainant has also referred to the finding of the learned trial court and the lower appellate court and submits that through Deoki Devi (2<sup>nd</sup> wife) there are three children to Mohan Mahto and one of the child of Mohan Mahto and Deoki Devi has also examined before the learned court below. He submits that not only Mohan Mahto solemnized marriage with Deoki Devi but also has three children from her. He also submits that Deoki Devi has been convicted under Section 494 of the Indian Penal Code with the aid of section of Section 109 of the Indian Penal Code because of the fact that she very well knew that Mohan Mahto was already married and in spite of that she chose to marry Mohan Mahto. Thus the conviction of the petitioner Deoki Devi with the aid of Section 109 of the Indian Penal Code is fully sustainable in the eyes of law. Learned counsel has also submitted that merely because the *Saptpadi* has not been

proved and the priest has not been examined the same is not sufficient for interference in this case in view of the fact that there was cogent evidence and to some extent there was admission on the part of the accused that Deoki Devi and Mohan Mahto had undergone marriage and the complainant was the 1st wife of Mohan Mahto. Learned counsel has also referred to para 5 and 6 of the present petition to submit that it is an admitted fact on record that Mohan Mahto had married Deoki Devi. He submits that in such circumstances, the contention of the petitioner that the allegation regarding second marriage is based on no evidence is not correct, rather the finding on this point has been returned by appreciating the materials on record. So far as the point of sentence is concerned, learned counsel appearing on behalf of the opposite party has opposed the prayer with regard to Mohan Mahto and Deoki Devi and has not opposed with regard to mother-in-law Chundri Devi who has been given sentence maximum of 6 months. However the period of custody and the age of the petitioners as submitted by the learned counsel for the petitioners has not been disputed by the opposite parties. Learned counsel for the opposite party has relied upon a judgment passed by Karnataka High Court in **Cr. P.P. No. 1098 of 2009 dated 13.03.2012** to submit that considering this judgment no interference is called for in the present case.

9. Arguments are concluded.

10. Post these cases on 17.09.2020.

**(Anubha Rawat Choudhary, J.)**