

APHC010568362007



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3560]

THURSDAY, THE SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY SIX

**PRESENT
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**

CRIMINAL REVISION CASE NOS: 386 and 387 of 2007

CRIMINAL REVISION CASE NO: 386/2007

Between:

1.CHINTHERLA PADMAVATHI, W/O. SAIBABA, R/O. GURRAMKONDA
VILLAGE AND MANDAL.

...PETITIONER

AND

1.THE STATE OF A P REP BY PP AND 2 OTHERS, REP.BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD.

2.VARADA MOHAN A8 DIED, S/O. NOT KNOWN TO THE
APPELLANT, RESIDING AT D.NO. 1/352, SOCIETY COLONY,
MADANAPALLE, CHITTOOR DISTRICT.

(SINCE RESPONDENT NO.2/ACCUSED NO.8 IS DIED, CRIMINAL
REVISION CASE AGAINST RESPONDENT NO.2/ACCUSED NO.8 IS
HEREBY DROPPED, AS PER THE COURT ORDER DATED
12.02.2026 IN CRL.R.C.NO.386 OF 2007.)

3.VARADA SUBHADRA A9, W/O.MOHAN, RESIDING AT D.NO.1/352,
SOCIETY COLONY, MADANAPALLE, CHITTOOR DISTRICT.

...RESPONDENT(S):

Revision filed under Section 397/401 of CrPC praying that in the
circumstances stated in the affidavit filed in support of the Criminal Revision
Case, the High Court may be pleased to revise the orders dated 21.3.2001
passed in C.A.No. 214/99 on the file of Hon'ble II Addl. Sessions Judge,

Chittoor at Madanapalle by confirming the orders of the Judicial Magistrate of First Class, Vayalpad, in the interest of justice

IA NO: 1 OF 2006(CRLRCMP 3217 OF 2006)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 1996 days in resubmitting the Sr.8399 of 2001 which was returned on 29.6.2001 against the orders dated 21.3.2001 passed in C.A.No. 214/99 on the file of Hon'ble II Addl. Sessions Judge, Chittoor at Madanapalle in the interest of justice.

Counsel for the Petitioner:

- 1.NAMINENI PAVAN KUMAR

Counsel for the Respondent(S):

- 1.VENKAT CHALLA
- 2.PUBLIC PROSECUTOR

CRIMINAL REVISION CASE NO: 387/2007

Between:

- 1.CHINTERLA PADMAVATHI, W/O. SAIBABA, R/O. GURRAMKONDA VILLAGE AND MANDAL.

...PETITIONER

AND

- 1.THE STATE OF A P REP BY PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD.
- 2.CHINTHERLA SUBBARAYULU A3 DIED, S/O. LATE C.SREERAMULU, RESIDING AT GURRAMKONDA VILLAGE AND MANDAL, CHITTOOR DISTRICT.
- 3.CHINTHERLA MALLIKARJUNA A4, S/O. LATE C.SREERAMULU, RESIDING AT GURRAMKONDA VILLAGE AND MANDAL, NOW RESIDING AT SANGASAMUDRAM VILLAGE, GURRAMKONDA MANDAL,

4.CHINTHERLA SAMBA MURTHY, S/O. SREERAMULU, RESIDING AT GURRAMKONDA VILLAGE AND MANDAL, NOW RESIDING AT SANGASAMUDRAM VILLAGE, GURRAMKONDA MANDAL,

5.CHINTHERLA LAKSHMAMMA, DIED, W/O.LATE SREERAMULU, RESIDING AT GURRAMKONDA VILLAGE AND MANDAL, NOW RESIDING AT SANGASAMUDRAM VILLAGE, GURRAMKONDA MANDAL, CHITTOOR DISTRICT.

(SINCE RESPONDENT NOS.2 AND 5/ACCUSED NOS.3 AND 6 ARE DIED, CRIMINAL REVISION CASE AGAINST RESPONDENT NOS.2 AND 5/ACCUSED NOS.3 AND 6 IS HEREBY DROPPED, AS PER THE COURT ORDER DATED 12.02.2026 IN CRL.R.C.NO.387 OF 2007.)

...RESPONDENT(S):

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to revise the orders dated 21.3.2001 passed in C.A.No. 212/99 on the file of Hon'ble II Addl. Sessions Judge, Chittoor at Madanapalle by confirming the orders of the Judicial Magistrate of First Class, Vayalpad, in the interest of justice

IA NO: 1 OF 2006(CRLRCMP 3218 OF 2006

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 1996 days in resubmitting the Sr.8398 of 2001 which was returned on 29.6.2001 against the orders dated 21.3.2001 passed in C.A.No.212/99 on the file of Hon'ble II Addl. Sessions Judge, Chittoor at Madanapalle in the interest of justice.

Counsel for the Petitioner:

1.NAMINENI PAVAN KUMAR

Counsel for the Respondent(S):

1.B V APARNA LAKSHMI

2.PUBLIC PROSECUTOR

The Court made the following Common Order:

Petitioner in CrI.Rc.No.386 of 2007 and 387 of 2007 is one and the same and she is *de facto* complainant in Cr. No.141 of 1996 in C.C.No.124 of 1997 registered against A1 to A13 under Sections 498-A and 494, 496 read with 34 IPC and 109 IPC.

2. Learned trial Court, after taking evidences from the prosecution witnesses, convicted A1 for the offences punishable under Sections 498-A and 494 IPC, A2 to A6, A8, A9 and A11 for the offence punishable under Section 494 read with 34 IPC and acquitted A7, A10, A12 and 13.

3. Against the order of conviction, separate criminal appeals were preferred before learned appellate Court, wherein learned appellate Court found A1 guilty for offence punishable under Sections 498-A along with 494 IPC and found A2 guilty for offence punishable under Section 494 IPC, in respect of A3 to A6, A8, A9 and A11, they were acquitted. The order of conviction against A1 and A2 was confirmed up to the Hon'ble Apex Court.

4. Three criminal revision cases were filed by *de facto* complainant before this Court. CrI.R.C.No.386 of 2007 is filed against A8 and A9, among them A8 has expired. CrI.R.C.No.387 of 2007 is filed against A3 to A6, among them A3 and A6 are expired. CrI.R.C.No.391 of 2007 is filed against A11, who has also expired. Now CrI.R.C.Nos.386 of 2007 and 387 of 2007 are pending for determination before this Court, as to whether order of acquittal of A4, A5 and A9 is justified.

5. Peculiar fact of this case is that A1 is husband of *de facto* complainant, A2 is lady with whom A1 have commenced second marriage. A3 to A5 are elder brothers of A1, A6 is the mother of A1, A8 and A9 are the parents of A2, A11 is the sister of A1.

6. Prosecution case is that *de facto* complainant/petitioner was given marriage to A1 on 26.06.1975, after marriage she was residing with A1 at matrimonial house, during their wedlock, one female child was born, who was aged about 20 years at the time of registering FIR. Later, A1 developed illicit intimacy with A2. A8 is the father of A2, who became ill and was not in a position to maintain his family, as such, A8 and A9 instigated illicit intimacy of A2 with A1 and also instigated A1 to marry A2. All the other accused persons were well known about illegal relationship and they all instigated A1 to marry A2 for second time. It has been alleged that due to their continuous instigation, A1 insisted *de facto* complainant to give consent his marriage with A2 for second time. *De facto* complainant denied such proposal on that A1 mercilessly beat her and also mentally harassed her. It has been alleged that on one occasion A1 attacked her with dragger and chappal and threatened her to sign on blank white paper, so as to, it may be converted to an agreement by which he can marry A2. It has been further alleged that all the relatives including accused persons are colluded with A8 and A9 thereby instigated A1 to marry A2 for second time.

7. The marriage between A1 and A2 was held on 26.01.1996, after the marriage of the accused persons came to matrimonial house of *de facto*

complainant and forced her to allow A2 to stay with her, when she refused, A1 went elsewhere and put separate family. Since then, A1 stopped to look after *de facto* complainant and her daughter, for which, *de facto* complainant also filed civil suit being O.S.No.43 of 1996. Since A1 subjected *de facto* complainant with cruelty and married A2 second time in subsistence of his first marriage, she lodged a report to the police under Sections 498-A and 494 read with 34 IPC. Being elder brothers of A1, A4 and A5, and A9 being the mother of A2, are before this Court, against whom, learned appellate Court has passed favourable order by acquitting them from the charge. *De facto* complainant being petitioner has challenged the order of acquittal passed by the learned appellate Court.

8. Learned counsel for the petitioner submits that A4, A5 and A9 are found guilty by learned trial Court under Section 494 read with 34 IPC. The evidences of prosecution are sufficient to hold that A4 and A5, being elder brothers of A1 and A9 being mother of A2 has not only had entire knowledge of second marriage but also they instigated A1 to marry A2. A4, A5 and A9 are relatives and also very close blood relatives of PW.1 and PW.2. They have their unrebutted influence over second marriage of A1 and A2. He further submitted that it would be revealed from the evidence of prosecution that PW.1, PW.2 and PW.7 approached A3 to A6, A8 and A9 not to perform the bigamous marriage between A1 and A2 but they did not paid any heed to the request of PWs.1 and 2. The presence of A4, A5 and A9 at the time of second marriage of A1 and A2 was well proved by the evidence of

prosecution. PWs.3, 4 and 5 have stated that elder brothers i.e., A3, A4 and A5 as well as parents of A2 i.e., A8 and A9 were present at the time of marriage.

9. It is further submitted by the learned counsel for the petitioner that PW.2, who is the daughter of complainant and A1 has deposed that prior to bigamous marriage, her mother (*de facto* complainant) approached her senior paternal uncles i.e., A3, A4, A5 and A6 to stop the second marriage but they themselves stated that after marriage of PW.2, property would go outside of the family and to begot a male child, they want to perform marriage to secure their property. Learned counsel for the petitioner further averred that it is in the deposition of PW.1 that A3, A4 and A5 after marriage bring A2, to the house in which PWs.1 and 2 are living and coercing PWs.1 and 2 to accept A2 to live along with them. It is also in the evidence of PW.1 that all elders of the family i.e., A3, A4 and A5 threatened PWs.1 and 2 to allow A2 for stay in the house otherwise they will throw out PWs.1 and 2 from house. He further submits that wedding invitation card for alleged bigamous marriage of A1 and A2 was seized by the police during the course of investigation, which was marked as Ex.P6 by learned trial Court. Seized wedding card depicted names of PWs.3, 4 and 5 along with A1 to be invitee of the said marriage. He submits that on the basis of such evidences, both oral and documentary, learned trial Court has successfully averted involvement of A4, A5 and A9 for commission of bigamous marriage between A1 and A2. He further submits that observation of learned trial Court on the basis of evidences of record is very much justified

but learned appellate Court without properly scanning the evidences acquitted A4, A5 and A9 from the charge under Section 494 IPC. Appellate Court had no materials to disbelieve logical findings of learned trial Court.

10. Learned counsel for the petitioner submits that when A4, A5 as well as A9 had an opportunity to await or avoid and preparation of commission of offence of bigamy, who are the family members of A1 and complainant. It is very difficult for the prosecution to lead and direct the evidences of third party to establish the guilt of the accused, who abet or encourage A1 and A2 to perform such bigamous marriage. Learned counsel for the petitioner submits that in such situation Section 106 of the Indian Evidence Act has emphasized the situation and how it can be dealt with by the Court. He referred a decision of the learned Apex Court in ***Anees vs. State Government of NCT***, reported in **2024 SCC online SC 757**, wherein it is set out that

46. Section 106 of the Evidence Act obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge, which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But, if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams:

“All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the

silence of the accused or the absence of satisfactory explanation appearing from his evidence.”

(Emphasis supplied)

47. *To recapitulate the foregoing : What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one’s case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is, therefore, for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams—Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion—para 527 negative averments and para 528 — “require affirmative counter-evidence” at page 438 and foil, of Kenny’s outlines of Criminal Law, 17th Edn. 1958.*

11. Learned counsel for the petitioner further argued that presence of A4, A5 and A9 at the time of bigamous marriage was well proved from the evidence of PWs.3, 4 and 5. Mere presence of elders itself proved the guilty of A4, A5 and A9 to show that they had intention and consent for bigamous marriage between A1 and A2. Hence, offence punishable under Section 494 read with 34 IPC is very much proved and applicable against A4, A5 and A9.

Learned counsel for the petitioner further argued that allegations under Section 34 IPC against A4, A5 and A9 are well proved they had intention to commit offence under Section 494 IPC but he pleaded this Court can apply Section 109 IPC instead to connect A4, A5 and A9 in this particular case. Finally, learned counsel for the petitioner submits that A4, A5 and A9 are liable for the offence punishable under Section 494 read with 34 IPC, order of appellate Court setting aside their punishment is illegal and improper and the same is hereby liable to be set aside.

12. Learned Assistant Public Prosecutor submits that there are evidences before the learned trial Court regarding the presence of A4, A5 and A9 at the time bigamous marriage. Learned trial Court has opined that A4, A5 and A9 being the elders, instigated A1 to marry A2 for second time. He further submits that after scanning the evidences, learned appellate Court is of the view that mere presence of A4, A5 and A9 being elders in the marriage of A1 and A2, does not prove that they made abetment in such marriage. He further submits that the evidences are not sufficient before the learned trial Court to hold that A4, A5 and A9 had any common intention and thereby they have abetted to second marriage of A1 and A2. He submits that learned appellate Court has assigned his reason that A4, A5 and A9 are not found guilty. From the entire circumstances, observation of learned appellate Court appears to be justified.

13. **Observation of this Court:**

In this particular case, the offences punishable under Sections 498-A and 494 IPC against A1 and A2 were well proved upto the Hon'ble Supreme Court. The only question left whether A4, A5 and A9 being close relatives and elders of A1 and A2 had instigated bigamous marriage. Offence of bigamy which was proved between the marriage of A1 and A2, whether there is abetment by A4, A5 and A9 is the sole question. The accused persons are being roped by virtue of Section 34 IPC with the allegations that they had intention to commit offence under Section 494 IPC. Hon'ble Supreme Court in ***S.Nitheen and others vs. State of Kerala and another*** reported in **2024 (8) SCC 706** has emphasized that

“16. It is a peculiar case wherein, the complainant has not sought prosecution of the appellants for the charge of abetting the second marriage by Ms Lumina (A-1) under Section 109 IPC. The appellants herein are being roped in by virtue of Section 34 IPC with the allegation that they had the common intention to commit the offence under Section 494 IPC. In order to bring home the said charge, the complainant would be required to prima facie prove not only the presence of accused persons, but the overact of omission of the accused persons in the second marriage ceremony and also establish that such accused were aware about the subsisting marriage of Ms Lumina (A-1) with the complainant.”

14. On thorough reading and observation of learned appellate Court, it appears that learned appellate Court in paragraph 26 of its judgment commented regarding allegation of abetment against A4, A5 and A9 but why such allegations were not believed by learned appellate Court for commission

of offence punishable under Section 494 IPC. Learned appellate Court is also of the view that mere presence of elders and also mere failure of elders to prevent A1 and A2 to commit such offence is not abetment.

15. In the present facts and circumstances, if we properly clarify the entire issue, it appears that A1 and A2 both are majors. It has been proved that they had previous intimacy and relationship prior to their bigamous marriage. They have consented their marriage on their own volition. It has not been proved by prosecution that their relationship was instigated by A4, A5 and A9 so that they may lead to bigamous marriage. Moreover, to bring home the charge against elders of A1 to connect them with an offence punishable under Section 494 read with 34 IPC, prosecution has to prove that unless and until elders of the family of A1 and A2 instigated the bigamous marriage between A1 and A2 could not have been happened; furthermore it was not proved that A4, A5 and A9 had such influence over A1 and A2 that this could dominant the will of A1 and A2, merely consenting and appearing at marriage ceremony is not itself proved that they instigated bigamous marriage to A1 and A2, on the opposite way, if we consider the entire fact that PWs.1 and 2 had requested elders of the family to prevent bigamous marriage but they denied to do so and could not paid heed the request of PWs.1 and 2, if the fact is taken to be true, then also inability of A4, A5 and A9 to prevent the marriage of A1 and A2 itself does not prove any common intention of A4, A5 and A9 for the offence punishable under Section 494 IPC. To prove any common intention of a person to a particular fact, the prosecution has to prove that not

only instant knowledge but also they have to examine as to whether accused person had complete control and authority to prevent A1 and A2 to commence their bigamous marriage but instead of that they willfully abated such offence.

16. On the attending facts and circumstances, though there are evidences of PWs.1 and 2 have requested elders of A1 and A2 to prevent the marriage but they did not prevent it which if *ipso facto* cannot prove their *mens rea* or any intention of commission of offence under Section 494 IPC. Learned appellate Court has assigned sufficient reasons to hold that A4, A5 and A9 had no intention to commit offence under Section 494 IPC.

17. On the above aspect, I am of the view that learned appellate Court has assigned sufficient reasons to hold that A4, A5 and A9 had no intention to commit offence punishable under Section 494 IPC. I have no hesitation to hold that the reasons and findings of the learned appellate Court are justifiable.

18. In the attending facts and circumstances, I find no merit to entertain the instant Criminal Revision Cases. Accordingly, Crl.R.C.Nos.386 and 387 of 2007 are hereby dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand disposed of.

JUSTICE SUBHENDU SAMANTA

Date : 07.05.2026

SPP

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE Nos.386 and 387 of 2007

Dated 07.05.2026

SPP