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RAM ABHILAKH
v.
STATE OF U.P. & ORS.

FEBRUARY 2, 2007

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[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Code of Criminal Procedure, 1973:

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s.397—Revision Petition filed challenging conviction under s.494, IPC—When matter called, petitioner's counsel failed to appear—Dismissal of revision petition by High Court—Propriety of—Held, not proper as petitioner had been diligently pursuing the remedy for five years—Also circumstances due to which counsel could not appear, duly explained—Peral Code, 1860—s.494.

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Respondent No.2 alleged that her husband, Appellant, had married for a second time while his marriage with Respondent No.2 was still subsisting and thereby committed offence punishable under S.494, IPC. Trial Court held the Appellant guilty. The conviction was upheld by the First Appellate Court. Appellant filed Revision Petition under S.397, CrPC. However his counsel failed to make appearance when the matter was taken up. High Court dismissed the revision petition in the absence of Appellant's counsel.

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In appeal to this Court it was contended by the Appellant that he had been pursuing the remedy diligently for nearly five years and without taking note of the difficulties due to which his counsel could not appear, the Revision Petition should not have been dismissed.

Allowing the appeal, the Court

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HELD: 1. There is no dispute that prior to the date of disposal by the High Court the appellant was diligently pursuing the remedy. The appellant had also pointed out circumstances due to which the appellant's counsel could not appear on the date fixed. The plea has not been disbelieved. Considering the background facts as highlighted above it is clear that the appellant has always been diligently pursuing the case. It is not the case of the respondent No.2 that the appellant was in any manner responsible for delay in the

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proceedings. Above being the position, the orders of the High Court are set aside. The High Court shall hear the matter on merits. [Paras 7-9] A

[214-C-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 150 of 2007.

From the Final Judgment and Order dated 17-4-2006 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in C.M.A. No. 6838/2005 in Criminal Revision No. 306/1999. B

Anurag Kishore and Rajesh Kumar for the Appellant.

The Judgment of the Court was delivered by C

DR. ARIJIT PASAYAT, J. I. Leave granted.

2. Appellant challenged the order passed by a learned Single Judge dismissing the revision petition filed by the appellant. D

3. Detailed reference to the factual aspect is unnecessary in view of the limited nature of the controversy.

4. Marriage between the appellant and respondent No. 2 was solemnized in June 1980. Differences cropped up between the parties and various cases were instituted. Grievance was made by the respondent No. 2 that appellant had married for a second time though his marriage with respondent No.2 was subsisting and thereby he committed offence punishable under Section 494 of the Indian Penal Code, 1860 (in short the 'IPC'). Learned First Additional Chief Judicial Magistrate, Raebareli held that the appellant was guilty. An appeal was preferred before the District and Sessions Judge Raebareli. By order dated 29.9.1999 the appeal was dismissed and the judgment of the trial court was affirmed. A Revision Petition under Section 397 of the Code of Criminal Procedure, 1973 (in short the 'Code') was filed before the Allahabad High Court, Lucknow Bench. By the impugned judgment learned Single Judge of the High Court dismissed the Criminal Revision holding that concurrent findings had been recorded by the courts below and therefore no interference was called for. The application was disposed of in the absence of appellant's counsel. An application to recall the order was filed on the ground that the matter could not have been decided ex parte. The review application was also dismissed on the ground that there was belated approach for recalling the order. E F G

5. In support of the appeal, learned counsel for the appellant submitted H

A that on 30.1.2004 because of circumstances beyond control there was no appearance when the matter was taken up. The appellant has been pursuing the remedy diligently for nearly five years and without taking note of the various difficulties due to which the appellant's counsel could not appear, the Revision Petition should not have been dismissed.

B 6. On 29.9.2006 notice was issued, limited to the question as to why the High Court should not re-hear the matter since the High Court dismissed the Revision Petition without hearing the appellant. There is no appearance on behalf of the respondent.

C 7. There is no dispute that prior to the date of disposal i.e. 30.1.2004 the appellant was diligently pursuing the remedy. The appellant had also pointed out circumstances due to which the appellant's counsel could not appear on the date fixed. The plea has not been disbelieved.

D 8. Considering the background facts as highlighted above it is clear that the appellant has always been diligently pursuing the case. It is not the case of the respondent No.2 that the appellant was in any manner responsible for delay in the proceedings.

E 9. Above being the position, we set aside the orders of the High Court dated 30.1.2004, 17.4.2006. The High Court shall hear the matter on merits. To avoid unnecessary delay, let the parties appear without further notice on the 9th March, 2007 so that the concerned Bench can fix a date for hearing of the matter. Learned Chief Justice of the High Court is requested to pass necessary orders as to before which Bench the matter shall be listed.

F 10. Appeal is allowed to the aforesaid extent.

B.B.B.

Appeal allowed.