

HIGH COURT OF ALLAHABAD**Bench: Hon'ble Dr. Gautam Chowdhary, J.****Date of Decision: 25th April 2024**

CRIMINAL REVISION DEFECTIVE No. 470 of 2024

Nisha**VS****State of U.P. and Another****Legislation and Rules:**

Sections 494, 504, 506 of the Indian Penal Code (IPC)

Section 397/401 of the Criminal Procedure Code (Cr.P.C.)

Section 13-B of Hindu Marriage Act

Sections 200 & 202 Cr.P.C.

Subject: Criminal revision petition challenging the summoning order for offences under IPC Sections 494 (bigamy), 504, 506 involving allegations of a second marriage without proper dissolution of the first marriage and subsequent threats and demands.

Headnotes:

Criminal Procedure – Delay Condonation – Delay of 275 days in filing criminal revision justified by affidavit and consented by parties – Delay condonation application allowed – [Para 3].

Family Law – Bigamy – No evidence of valid solemnization of second marriage according to Hindu rites, particularly the 'Saptapadi', essential for a valid Hindu marriage – Revisionist previously filed for divorce which was granted before the alleged second marriage – Allegations of bigamy under Section 494 IPC not established – [Paras 4-5, 11-12].

Legal Principles – Valid Marriage – To establish an offence under Section 494 IPC, a valid second marriage during the subsistence of the first is necessary – Absence of valid marriage rituals in the present case negates the charge of bigamy – [Para 10].

Quashing Proceedings – Summoning order for bigamy quashed due to lack of prima facie evidence of valid marriage ceremony – Criminal proceedings under Sections 504, 506 IPC to continue – Protection against malicious prosecution affirmed by reference to precedents setting criteria for quashing – [Paras 19-21].

Referred Cases:

- Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692
- State of Haryana vs Chaudhary Bhajan Lal, 1992 SCC (Cri) 426
- Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749
- Dilawar Balu Kurane vs. State of Maharashtra, (2002) 2 SCC 135
- Som Mittal vs. Government of Karnataka, (2008) 3 SCC 753
- Ravinder Singh vs. Sukhbir Singh & Ors, (2013) 9 SCC 245

Representing Advocates:

For Revisionist: Diwakar Mishra, Gaurav Kumar Srivastava, Mohd Afroz Khan

For Opposite Party: Baleshwar Dayal, G.A., Mayank Prakash Rawat (represented by Surendra Kumar)

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Shri Gaurav Kumar Srivastava, learned counsel for the revisionist, Shri Jai Kishan Chaurasia, learned A.G.A. for the State and Shri Surendra Kumar, Advocate, holding brief of Shri Mayank Prakash Rawat, the learned counsel for the opposite party No. 2 and perused the record.

2. There is a delay of 275 days in filing the present revision as per report of the Stamp Reporter.

3. Considering the cause shown in the affidavit filed in support of the delay condonation application and considering the consent of both the parties for condoning the delay, the CrI. Misc. Delay Condonation Application No. 01 of 2024 is allowed and accordingly the delay is condoned.

4. The present revision under Section 397/401 Cr.P.C. has been filed with a prayer to quash the summoning order dated 20.02.2023 passed by learned Additional Chief Judicial Magistrate, Court No. 2, Agra in Complaint Case No. 15795 of 2022 (Shubham Sharma Vs. Nisha), under Sections 494, 504, 506 I.P.C., Police Station Sikandra, District Agra.

5. The facts of the case which are required to be stated here are that on 05.12.2022 the opposite party No. 2 filed a complaint case against the present revisionist with the allegation that earlier revisionist had solemnized marriage with one Vijay Singh, and without obtaining any decree of divorce from any court of law and while her earlier husband is also alive, concealing these facts she has solemnized marriage with him in Arya Samaj Mandir according to Hindu rites and rituals and when it came into his knowledge he asked about the same from the revisionist then she threatened her for implicating him in false cases and she has also made demand of ten lakh rupees. On filing of the said complaint the court concerned, after recording statements of complainant and witnesses under Section 200 & 202 Cr.P.C. summoned the revisionist for the offence under Sections 494, 504, 506 I.P.C., which is the subject matter of challenge in the present revision.

6. Assailing the impugned summoning order dated 20.02.2023, main substratum of argument of learned counsel for the revisionist are as under:-

(i) The revisionist and her first husband, Vijay Singh, are residing separately for the last 16 years and they have no concern with each other. Earlier the revisionist has lodged an F.I.R. under Sections 147, 323, 354(Kha), 504, 506 I.P.C. against her husband, i.e., opposite party No.2 and his family members alleging therein that she had solemnized marriage with the opposite party No. 2 on 08.03.2022 in Arya Samaj Mandir, after marriage the opposite party No. 2 has not taken her to his home and stayed her in a rented house and he used to made sexual relations with her, on 28.12.2022 when she reached at the house of opposite party No. 2 to reside with him then the opposite party No. 2 and his other family members had abused her, and the opposite party No. 2

had torn her clothes and broken her one leg, regarding which she had also lodged an F.I.R. dated 16.01.2023 which was registered as Case Crime No. 06 of 2023, under Sections 147, 323, 354(Kha), 504, 506 I.P.C., Police Station Trans Yamuna, District Agra, and in counter blast the present complaint case has been filed by her husband.

(ii) The revisionist and her first husband namely Vijay Singh filed divorce petition under Section 13-B of Hindu Marriage Act before the Additional Principal Judge/ Family Court, Mathura on 27.07.2022 and the Family Court allowed the said divorce petition dated 04.07.2023 and the said divorce petition was filed before she has solemnized marriage with the opposite party No. 2, thus, a false complaint has been filed against her.

(iii) Much emphasis has been given by contending that the allegations levelled against the revisionist are wholly false and based on concocted facts.

(iv) Referring to the contents of complaint and statements under Section 200 and 202 Cr.P.C., it is also argued that there is no whisper about the facts that as to what rites, ceremonials, rituals, formalities, protocols, customary acts and procedure were performed in the alleged second marriage of revisionist with the opposite party No. 2.

(v) In the complaint and statements of the complainant as well as witnesses, there is lack of 'solemnization' of marriage and ceremony of 'Saptapadi' as per Section 7(2) of Hindu Marriage Act. There is no mention of the name of priest in the complaint who recited the rites of alleged second marriage, hence, no offence under Section 494 I.P.C. is made out against the revisionist.

(vi) On the strength of aforesaid arguments, lastly it is submitted that criminal proceeding of this case against the revisionist is nothing but a malicious prosecution, which is abuse of process of court and is liable to be quashed.

7. Learned A.G.A. for the State as well as learned counsel for the opposite party No. 2 have submitted that there is allegation against the revisionist for bigamy, therefore, after recording statements under Sections 200 & 202 Cr.P.C. the court concerned has rightly summoned the revisionist, thus, there is no error in the order impugned and the same needs no interference.

8. Before entering into the matter, it would be relevant to quote Section 494 of I.P.C. :-

“Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception – This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

9. The expression 'whoever.....marries' mentioned in Section 494 of I.P.C. must mean 'whoever.....marries validly' or 'whoever.....marries and whose marriage is a valid one if the marriage is not a valid one, according to law applicable to the parties, no question of its being void by reason of its taking place during life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law.

10. In order to make out an offence of bigamy under Section 494 I.P.C., following ingredients should be established by the prosecution.

(i) That the accused was already married to some person; proof of actual marriage is always necessary;

(ii) That the husband or wife to whom the person was married as the case may be, was alive on the date of the second marriage and proof thereto satisfactory to the Court must be adduced;

(iii) That the accused married another person proof of celebration of second marriage must be in the same manner as that of the first; and

(iv) That the second marriage was void by reason of its taking place during the lifetime of the first spouse.

11. As per Section 7 of Hindu Marriage Act, 1955, ceremonies in a hindu marriage is explained as under:-

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

12. Having heard the submissions of learned counsel for the parties and perusing the record, I find that so far as the second marriage of revisionist is concerned, it is well settled that the word 'solemnize' means, in connection with a marriage, 'to celebrate the marriage with proper ceremonies and in due form'. Unless the marriage is celebrated or performed with proper ceremonies and due form, it cannot be said to be 'solemnized'. If the marriage is not a valid marriage, according to the law applicable to the parties, it is not a marriage in the eyes of law. It is also well settled that to constitute an offence under Section 494 I.P.C., it is necessary that the second marriage should have been celebrated with proper ceremonies and in due form. The 'Saptapadi' ceremony under the Hindu Law is one of the essential ingredients to constitute a valid marriage but the said evidence is lacking in the present case. Even there is no averment with regard to 'Saptapadi' in the complaint as well as in the statements under Section 200 and 202 Cr.P.C., hence, this Court is of the view that no prima facie offence is made out against the revisionist as the allegation of second marriage is a bald allegation without corroborative materials. In absence of cogent evidence in this regard, it is difficult to hold that the 'Saptapadi ceremony' of the marriage as contended by the complainant was performed so as to constitute a valid marriage between the parties concerned. As such on taking into consideration the contents of the complaint on its face value, the basic ingredients to constitute an offence under Section 494 of I.P.C. are lacking, hence, no offence under Section 494 I.P.C. is made out against the revisionist.

13. Here it would be apposite to quote some relevant judgments of the Apex Court, which are as under:-

14. The Apex Court in *Madhavrao Jiwajirao Scindia and others vs. Sambhajirao chandrojirao Angre and others*, (1988) 1 SCC 692 observed in para 7 as under :-

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

15. The Apex Court in *State of Harayana and others vs Chaudhary Bhajan Lal and others*, 1992 SCC (Cri) 426, considering a series of decisions has laid down seven criteria for quashing the entire proceedings in exercise of powers under Section 482 Cr.P.C. by this Court, which reads as under:-

"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can

ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. The Apex Court in the case of *Pepsi Foods Ltd. vs. Special Judicial Magistrate*, (1998) 5 SCC 749, has observed that:-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

17. The Apex Court in case of *Dilawar Balu Kurane Vs. State of Maharashtra*, (2002) 2 SCC 135, has observed that:-

"In exercising jurisdiction under Section 227 Cr.P.C, the Judge cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence

and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

18. The Apex Court in the case of Som Mittal vs. Government of Karnataka, (2008) 3 SCC 753, has held that :-

"When grave miscarriage of justice would be committed if the trial is allowed to proceed; or where the accused would be harassed unnecessarily if the trial is allowed; or when prima facie it appears to Court that the trial would likely to be ended in acquittal. Then the inherent power of the Court under section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court, or otherwise To secure the ends of justice."

19. The Apex Court in case of Ravinder Singh Vs. Sukhbir Singh & Ors, (2013) 9 SCC 245, has held as under:-

"It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. Ex debito justitiae is inbuilt in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint."

20. On the aforesaid discussion, this Court is of the view that the criminal proceedings against the revisionist initiated by the opposite party No. 2 under Section 494 I.P.C. is nothing but a malicious prosecution with an ulterior motive, which is clear abuse of process of the Court, thus, summoning the revisionist under Section 494 I.P.C vide impugned order dated 20.02.2023 is not sustainable. This Court, under the facts and circumstances of the case, feels that it is the solemn duty of the Court to protect apparently an innocent person, not to be subjected to such frivolous prosecution on the basis of wholly untenable allegations and complaint, thus, if criminal proceeding initiated against the revisionist under Section 494 I.P.C. is permitted to go on, the same will tantamount to causing grave miscarriage of justice, therefore in order to secure the ends of justice, the impugned criminal proceeding under Section 494 I.P.C. initiated against the revisionist is liable to be quashed.

21. As a fallout and consequence of aforesaid discussion, the impugned summoning order dated 20.02.2023 and further proceedings of Complaint Case No. 15795 of 2022 (Shubham Sharma Vs. Nisha), pending in the court of learned Additional Chief Judicial Magistrate, Court No. 2, Agra, so far as it relates to the provisions under Section 494 I.P.C. is concerned, the same is hereby quashed. However, so far as the aforesaid criminal proceeding initiated against the revisionist in other provisions, i.e., under Sections 504, 506 I.P.C. is concerned, the same shall go on and for the same revisionist is at liberty to appear before the court concerned and apply for bail.

22. Accordingly, the present revision is partly allowed.

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