

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. M.C. No.888/2010 & Crl.M.A. No.3247/2010 (Stay)**

% **Decided on: 26th July, 2011**

KANWAR SINGH Petitioner
Through: Mr. K.S. Negi, Advocate.

Versus

NCT OF DELHI & ANR Respondents
Through: Mr. Pawan Bahl, APP for the State.
Mr. Surender Tyagi, Adv. for R-2.

AND

+ **CRL.M.C. 896/2010 & Crl.M.A. No.3260/2010 (Stay)**

DIWAN SINGH Petitioner
Through: Mr. K.S. Negi, Advocate.

Versus

NCT OF DELHI & ANR Respondents
Through: Mr. Pawan Bahl, APP for the State.
Mr. Surender Tyagi, Adv. for R-2.

AND

+ **CRL.M.C. 897/2010 & Crl.M.A. No.3262/2010 (Stay)**

CHATAR SINGH Petitioner
Through: Mr. K.S. Negi, Advocate.

Versus

NCT OF DELHI & ANR Respondents
Through: Mr. Pawan Bahl, APP for the State.
Mr. Surender Tyagi, Adv. for R-2.

AND

+ **CRL.M.C. 942/2010 & Crl.M.A. No.3405/2010 (Stay)**

JAIPAL SINGH

..... Petitioner

Through: Mr. K.S. Negi, Advocate.

Versus

NCT OF DELHI & ANR

..... Respondents

Through: Mr. Pawan Bahl, APP for the State.

Mr. Surender Tyagi, Adv. for R-2.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Not Necessary
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MUKTA GUPTA, J. (ORAL)

1. The abovementioned petitions are disposed off by a common order. The Petitioners in these petitions seek quashing of order dated 27th November, 2009 passed by the learned ACMM summoning the Petitioners for offence punishable under Section 494 IPC. The Petitioners are the brothers of accused No.2 Seema Devi.

2. The brief facts of the case are that Smt. Savita, Respondent No.2 got married to Satpal on 26th April, 1996 according to Hindu Rites at Faridabad and out of the wedlock, a male child was born on 1st July, 1999. Till 20th June, 2001 Savita

and Satpal resided together at House No.1020, Ward No.7, Mehrauli, New Delhi. It is alleged that soon after the marriage, the Petitioners started harassing Savita and finally in the year 2001, she filed a divorce petition under Section 13(1)(a) of Hindu Marriage Act against Satpal which was later on converted into a divorce petition by mutual consent under Section 13(B)(1) of the Hindu Marriage Act. The order on first motion petition was passed on 6th March, 2003 by the Additional District Judge. It is alleged that Satpal did not come forward for the second motion and hence the marriage between Savita and Satpal could not be dissolved. Further, it is alleged that during the subsistence of marriage between Satpal and Savita, Satpal married Seema according to Hindu Rites and ceremonies in Dehradun on 23rd January, 2005. Thereafter, Satpal and Seema resided together as husband and wife. On 11th January, 2009 both Satpal and Seema forcibly entered in the house of Savita at House No.1043, Ward No.8, Mehrauli, New Delhi. Hence, Savita filed Complaint Case No.18/2009. Taking cognizance in the said case, the learned ACMM passed the order dated 27th November, 2009 summoning the Petitioners herein along with other accused persons, which order is impugned in the present petition.

3. Learned counsel for the Petitioners contends that they have been falsely implicated by the Respondent No.2 Savita in the present case. The only allegation against the Petitioners is that they hatched a conspiracy against the complainant and were the witnesses to the marriage between accused No.1 Satpal and accused No.2 Seema. It is contended that the complaint of the Savita is highly motivated and

mala fide as is apparent on its face, as all the near relatives have been implicated to face the rigors of criminal trial merely because they attended the wedding of Satpal and Seema. The marriage between them took place in the year 2005 and complainant Savita filed a complaint only in the year 2009 after a lapse of four years which is highly belated. The complainant Savita is using the complaint case as a tool to harass Satpal and Seema. An offence under Section 494 IPC is committed by either spouse who remarries during subsistence of a legal and valid marriage and hence the Petitioners only being relatives of Satpal and Seema ought not to have been summoned under Section 494 IPC as they are not covered under its ambit by any stretch. Thus, the impugned order is bad in law and hence liable to be set aside.

4. Learned counsel for Respondent No.2 Savita contends that the Petitioners have been rightly summoned as the Petitioners have abetted the offence punishable under Section 494 IPC. The Petitioners, according to the learned counsel, did not merely attend the marriage but also actively participated in the marriage and conspired against her. The Petitioners had complete knowledge of the fact that the first marriage of Satpal with Savita was not dissolved, therefore, they have committed an offence punishable under Section 109 IPC read with Section 494 IPC.

5. I have heard learned counsel for the parties. It is clear that the accused No.1 Satpal and Respondent No.2 Savita had moved to the Court for divorce and had proceeded towards the first motion but the decree of divorce could not be passed as accused No.1 did not come forward for the second motion. Respondent No.2 Savita

thereafter in 2009 filed the Complaint Case against the Petitioners, Satpal, and other accused wherein she alleges about the second marriage in the year 2005. The present petitions can be disposed of on the short point as to whether the ingredients of offence under Section 494 IPC are made out against the Petitioners or not. It would be relevant to note Section 494 IPC at this stage:

“Section 494. Marrying again during lifetime of husband or wife

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.”

6. A perusal of the Section shows that the offence under the Section is committed by either spouse, who remarries during subsistence of a legal and valid marriage. The Petitioners in the present petitions could not be summoned under the said provision. The Petitioners are merely the relatives of accused No. 2, who

attended the wedding. Hence summons issued against them under Section 494 IPC is bad in law. Thus, the impugned order dated 27th November, 2009, qua the Petitioners cannot be sustained in law. The same is accordingly quashed.

7. Petitions are disposed of.

(MUKTA GUPTA)
JUDGE

JULY 26, 2011
VKM