

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

% **RESERVED ON : 30.08.2012**
PRONOUNCED ON : 11 09.2012

+ **CRL.M.C. 2510/2011**

MANJU VERMA & ORS Petitioners
Through: Mr.K.B.Andley, Sr.Advocate with
Mr.M.L.Yadav, Advocate.

versus

STATE & ANR. Respondents
Through: Mr.Navin Sharma, APP for State/R-1
Ms.Meena Chaudhary Sharma and Mr.Manish
Rathor, Advocates for R-2.

+ **CRL.M.C. 4249/2011**

SUSHMA GUPTA & ORS Petitioners
Through: Mr.A.S.Kushwaha, Ms.Vandana
Sharma and Mr.Abhigya Kushwaha,
Advocates.

versus

STATE & ANR Respondents
Through: Mr.Navin Sharma, APP for State/
R-1.
Ms.Meena Chaudhary Sharma and Mr.Manish
Rathor, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J

1. These petitions under Section 482 Cr.P.C. have been preferred by the petitioners praying for setting aside the order dated 07.05.2011 passed by the learned Addl. Sessions Judge (North-West, Rohini) whereby the learned ASJ ordered for summoning the petitioners for committing the offences punishable under Sections 494/109 IPC. In CrI.M.C.No.4249/2011, the petitioners are Sushma Gupta (A-10), mother of Amit Gupta main accused who allegedly committed bigamy by marrying Jyoti Rajput @ Jyoti Verma(A-2) during subsistence of his marriage with the complainant/respondent No.2 Manjari Gupta. Petitioners No.2 and 3 are Nisha Jain (A-9) and Kusum Garg (A-11), who are the real sisters of Amit Gupta.

2. The second petition being CrI.M.C.No.2510/2011 has been filed by Smt.Manju Verma (A-4), Surya Dev Verma (A-3), who are parents of Jyoti Rajput @ Jyoti Verma (A-2), the alleged second wife of Amit Gupta. Petitioner No.3 Gaurav Verma (A-5) is the brother of Jyoti Verma (A-2), who remained unnamed in the complaint filed by respondent No.2 Smt.Manjari Gupta @ Anjali Gupta, first wife of Amit Gupta. In exercise of her revisional jurisdiction, these petitioners have also been ordered to be summoned by the learned ASJ for committing the offences under Sections 494/109 IPC.

3. As the question to be decided in both the petitions is whether the relations of the husband and second wife can be said to have abetted the

commission of offence of bigamy for the reason that they attended the second marriage of Amit Gupta (A-1) with Jyoti Rajput @ Jyoti Verma (A-2), both these petitions are being disposed of by this common order.

4. Before dealing with the question involved, it is necessary to look into the averments made in the complaint by Smt.Manjari Gupta against her husband Amit Gupta (A-1), Mrs.Jyoti Rajput @ Jyoti Verma (A-2), the alleged second wife of Amit Gupta, the parents and brother of Jyoti Rajput, uncle and Aunt (Chacha Chachi) of Jyoti Rajput, sisters and friends of Amit Gupta have been arrayed as accused No.3 to 14 in the said complaint.

5. The averments made in paragraph-5 of the complaint are to the effect that Jyoti Rajput @ Jyoti Verma was introduced to the complainant and her husband by her 'Bua Saas', namely, Mrs.Meena Chaudhary Sharma, Advocate, as her tenant. (Mrs. Meena Chaudhary Sharma, Advocate appeared as CW-13 in the complaint case and is representing the complainant in this case before this Court also). In paragraph-6 of the complaint, it is averred that illicit relationship developed between accused No.1 and 2 and they entered into illegal and void relationship on 21.07.2007 at UNI Club, Mehrauli-Gurgaon Road, Haryana. It is also averred that accused No.13 & 14, friends of accused No.1 & 2 did all the shopping for the marriage and also actively participated in the videography of the marriage and accused No.12 Tarun Chawla, who is vagabond, brought the pandit to perform the marriage ceremony and made other necessary arrangements for the marriage.

6. In paragraph-9 of the complaint it is stated that accused No.1 took his mother on the pretext of taking her to a Doctor at Moradabad, but

instead of Doctor, he took her to the venue where she participated in the marriage ceremony. Thus, the averments made in the complaint make it clear that except the allegations of being present in the marriage of accused No.1 with accused No.2, there is no other allegation against the petitioners to show that they abetted the commission of offence of bigamy.

7. The learned MM vide the impugned order dated 01.09.2009, after discussing the case law on the subject, was of the view that there was sufficient material for proceeding against the accused No.1 Amit Gupta for the offence punishable under Section 494 IPC and accused No.2 Jyoti Rajput for the offence under Section 494 read with Section 109 IPC. Further, in view of the other allegations made in the complaint, accused No.1 Amit Gupta was also ordered to be summoned for the offences under Section 341/506 (Part-I) IPC. Accused No.12 Tarun Chawla, who brought the *pandit* for the marriage, was also summoned for the offence under Section 494/109 IPC. However, finding no sufficient material, other respondents arrayed as accused in the complaint i.e. A-3 to A-11, A-13 & A-14 were not summoned by the learned M.M for any of the offences complained of.

8. Feeling aggrieved by the order passed by the learned M.M, the complainant/respondent No.2 preferred a revision petitioner before the Sessions Court.

9. On behalf of the petitioners, it has been submitted that the evidence adduced by complainant can at the most indicate presence of the petitioners at the alleged second marriage ceremony and mere presence in itself would not be a ground to summon them for committing

the offence punishable under Section 494/109 IPC and that the impugned order suffers from illegality and the same may be quashed. Counsel for the petitioners has relied upon the decision of this Court in ***CRL.M.C.888/2010 in the matter of Kanwar Singh vs. State of NCT of Delhi and Anr. decided on 26th July, 2011*** in support of his submissions wherein after referring to Section 494 IPC, it was held that:

“A perusal of the Section shows that the offence under the Section is committed by either spouse, who remarriages 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”.

10. On behalf of respondent No.2/complainant, it has been submitted by Mrs.Meena Chaudhary Sharma, Advocate that being mother and sister of Amit Gupta (A-1), they had full knowledge about the marriage of Amit Gupta with the complainant and that he was also having a son from his first marriage. Despite that they abetted commission of the offence of bigamy by active participation in the marriage. Similarly, the parents and brother of Jyoti Verma also knew about the subsistence of the first marriage of Amit Gupta with the complainant. They also abetted the commission the offence by active participation in the marriage of Jyoti Verma with Amit Gupta, hence they have also been rightly summoned by the learned ASJ and the impugned order may not be interfered with. Learned counsel for the respondent No.2 has relied upon the judgments of (i) ***Mohinder Singh vs. Gulwant Singh and Others AIR 1992 SC 1894*** (2) ***Chander Prakash Nagpal & Ors. vs. Hari Singh 1991(2) CLR 262*** (3) ***Kannan vs. Selvamuthukani AIR***

2012 Supreme Court 1217 and (4) Risalo and Ors. vs. Shakuntala I (1998) DMC 554 in support of her contentions.. Both the parties have also filed brief synopsis and the same have been perused by this Court.

11. During the course of arguments, learned counsel for the respondent No.2/complainant placed on record copies of complete set of evidence adduced in the complaint case by way of pre-summoning evidence. In the pre-summoning evidence, complainant Manjari Gupta has stated that Amit Gupta (A-1), who is her husband, performed second marriage. For purpose of finding out whether there is any material to summon the petitioners under Section 494/109 IPC, relevant portions of statement of CW-1 Anjali Gupta and CW-2 Shyam Bahadur are extracted hereinbelow:-

*“CW-1 Ms.Anjali Gupta, w/o Shri Amit Gupta, complainant
.....that my mother-in-law Sushma Gupta, my sister in laws namely Nisha, Kusum, brother in law Vijay Kumar Mangala, friends Sampat Dandekar, Tarun Chawla, Kavita Dandekar, Shyam Bahadur, niece of my husband Anu, Pooja and Ruchi, brothers of Kavita Dandekar namely Monti and Raja and from the girl side, parents of girl Surya Dev and Manju Verma, Sumitra (grandmother of accused Jyoti), Chacha and Chachi namely Satya Dev Verma and Anita Verma, r/o D-112 and younger brother of Jyoti, whose name I do not know. All attended the second marriage. That Tarun Chawla accused brought the pandit at Unitec Club at Gurgaon on 21.07.07 to perform the marriage and the pandit performed all the rites and customs of Hindu Marriage which includes Saptpadi and Kanyadan and vermala and pheras around the holy fire. Accused Sampat Dandekar was making the video coverage of the marriage which he has given to the accused Jyoti and Amit Gupta. After performing the marriage my husband and his second wife namely Jyoti who was pregnant at that time about 2 months.
.....”*

“CW-2 Shyam Bahadur, s/o Dil Bahadur, r/o Village & P.O. Naharpur, Sector-7, near Car Market, Chaiwali Ke Uppar.

That I have seen the affidavit on page 23 of the file which has been given by me to the complainant regarding the second marriage of Sh.Amit Gupta with Jyoti, d/o Surya Dev. That Amit Gupta performed illegal second marriage with Jyoti in front of his mother Sushma Gupta, sisters namely Nisha, Kusum, brother in law Vijay Kr. Mangala, friends Sampat Dandekar, Tarun Chawla, Kavita Dandekar, myself, niece of Amit Gupta namely Anu, Pooja and Ruchi, brothers of Kavita Dandekar namely Monti and Raja and from the girl side, parents of girl Surya Dev and Manju Verma, Sumitra (grandmother of accused Jyoti), Chacha and Chachi namely Satya Dev Verma and Anita Verma, r/o D-112. All attended the second marriage. That Tarun Chawla accused brought the pandit at Unitec Club at Gurgaon on 21.07.07 to perform the marriage and the pandit performed all the rites and customs of Hindu Marriage which includes Saptpadi and Kanyadan and vermala and pheras around the holy fire. Accused Sampat Dandekar was making the video coverage of the marriage which he has given to the accused Jyoti and Amit Gupta. After performing the marriage my husband and his second wife namely Jyoti who was pregnant at that time about 2 months.”

12. At the outset, it is necessary to observe that part of statements of CW-1 & CW-2 in bold are identical to the extent that even servant has referred accused Amit Gupta as husband and making statement as if he is CW-1, i.e. complainant/wife. CW-1 was not present at the venue so as to depose who was present there and what happened, so her statement in this regard can only be termed as ‘hearsay’.

13. CW-2, who claims himself to be the servant of Amit Gupta, stated that he was present at the marriage, but on what basis he could say that Jyoti Verma was having two months pregnancy, is difficult to gather from the record.

14. The complainant has filed the affidavits of her mother-in-law Sushma Gupta (page 30) which clearly shows that she has sworn the

affidavit stating about the first marriage of her son with the complainant and his second marriage during subsistence of first marriage with Jyoti Verma. But so far as participation part is concerned, in paragraph-5, she has specifically stated that Amit Gupta took her, his sister and brother-in-law, on the false pretext of taking her to the Doctor at Moradabad. Similarly, Renu Mangla sister of Amit Gupta, has also given the affidavit that she was called at the venue on the false pretext of illness of her mother. Third affidavit is of Vijay Mangla, husband of Renu Mangla i.e. brother-in-law (jija) of Amit Gupta, who has also stated that he was called by Amit Gupta on the false pretext of illness of his mother-in-law. The transcript Ex.CW-13/1 & 2 (on the copy it is mentioned as Ex.PW-13/A), of the telephonic conversation between Sushma Gupta, mother-in-law of the complainant and Mrs.Meena Chaudhary Sharma which has been recorded by CW-13 Smt.Meena Chaudhary Sharma, who is 'Bua Saas' as well as counsel for the complainant also shows that she or her daughters have not abetted the commission of offence under Section 494/109 IPC. In that conversation also, at page-3, Smt.Sushma Gupta told Meena Chaudhary Sharma that she was taken on the pretext of showing her to the Doctor at Moradabad. She also informed that since it was difficult for her to walk without support, Ruchi was taken along. When they reached the venue they saw Nisha and Kuku (Kusum) sitting. At page-5 of the transcript, she was feeling pity for Anjali. Further Smt.Sushma Gupta told that during the ceremony "*Nisha Aur Kukku* (petitioners No.2 & 3 in Crl.M.C.No.4249/2011) *To Roye Aur Pite*".

15. On the basis of the pre-summoning evidence as well as affidavits and the transcript of the telephonic conversation between Smt.Meena

Chaudhary Sharma, who is not only counsel for the complainant, but also happens to be the relative of the complainant, it is prima facie brought on record that none of the petitioners had been attributed any act which can constitute abetment so as to make them liable to be summoned for the offence under Section 494/109 IPC.

16. Counsel for the respondent No.2 has relied upon ***AIR 1992 SC 1894 Mohinder Singh vs. Gulwant Singh*** in support of her contention that at the stage of summoning, the scope of inquiry is very restricted. In the judgment relied upon by counsel for the complainant, in para-12 it was observed as under:-

“12. The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate or supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. Vide Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and anr. and Pramath Nath and Talukdar vs. Saroj Ranjan [1962] 2 SCC 297

17. I agree with learned counsel for the respondent No.2/complainant that at the stage of inquiry under Section 202 Cr.P.C., pre-summoning evidence has to be examined to ascertain the truthfulness of the allegations made in the complaint and the Court is not supposed to look into the question of sufficiency of evidence so as to base conviction for the offence complained of.

18. It has already been referred to above that statement of CW-1 regarding the presence of the petitioners can only be termed as 'hearsay' and so far as CW-2 is concerned, he stated about the presence of the petitioners without making any statement about the role played by them during the wedding so as to constitute the abetment. On the contrary, the telephonic conversation transcript between Mrs.Sushma Gupta and Mrs.Meena Chaudhary Sharma as well as affidavits relied upon by the complainant during pre-summoning evidence show that mother and sisters of Amit Gupta were taken to the venue on false pretext keeping them in dark about the alleged act of Amit Gupta marrying accused No.2 Jyoti Verma during subsistence of his first marriage.

19. In the case of ***Malan and Others vs. State of Bombay AIR 1960 Bom 393***, it was observed that mere presence at the commission of crime even with awareness that a crime was being committed, is not in itself an intentional aid. While dealing with the submission of Govt. pleader that the bride was under 16 years of age and her parents who have performed Kanya Dan were liable to be convicted, in para-10, it was held as under:-

“10. Before I part with the case of the aforesaid accused Nos.2, 4, 5 to 8 to 13, I may mention that the learned Government Pleader had submitted that, in any case, the parents of the bride, i.e. accused Nos. 11 and 12 should be convicted of the offence of abetment. He

contended that the bride Krishnabai, being under 16 year of age, unless and until the aforesaid two parents had given the girl in marriage, the marriage ceremony could not have been performed. However, there is no prosecution evidence at all that these accused had played any such part. The only witness does not say a word about any part having been held proved by the learned trial Judge and the learned appellate Judge. Therefore, I do not think that I would be justified in upholding the convictions of accused Nos.11 and 12 on the footing that these two persons had given 'kanyadan' or done any other special acts which would bring them within the purview of Section 107 IPC."

20. The above mentioned decision was a case where accused No.1 went through a marriage ceremony with another lady during the lifetime of his wife. Accused No. 2 to 9 and 11 to 13 were charged and convicted, during the trial along with accused No.1, of offences under Section 494 read with Section 114 IPC. The facts found against them were that they were present at the time of the celebration of the marriage at the house of accused No.9; they had knowledge of the fact that accused No.1 was purporting to marry second time during the lifetime of his first wife; that they threw holy rice over the couple during the performance of the marriage; that accused No.3 distributed Pan after the ceremony was over and that accused No.9 held the "anterpat" during the performance of the ceremony and permitted the use of his premises for the performance of the marriage. It was held after going through the evidence and the facts that case by the learned Single Judge of the Bombay High Court that "the mere presence of the accused at the ceremony knowing that the offence of bigamy was being committed and the throwing of holy rice over the couple did not amount to abetment of bigamy notwithstanding that accused No.3 had distributed pan after the ceremony.

21. In ***Muthammal and Ors. vs. Maruthathal*** 1981 Crl.L.J 833 , it was held as under:-

“ Instigation must have reference to the thing that was done. By mere association of the accused persons in this case, who are charged for an offence of abetment and the principal offender in the absence of any material to show that there was an instigation by the petitioners or that there was any intention either in aiding or in commissioning the offence committed by the first accused, it cannot be said that they have committed an offence of abetment. The accused persons can be charged and convicted for the offence of abetment where there is evidence to show such persons have instigated or otherwise abetted in the acts of the person who has actually committed the offence or the crime. In so far as the instant case is concerned, from the evidence, it cannot be said that the petitioner have committed an offence of abetment. As stated above, abetment is an instigation to a person to do an act in a certain way or aid some other person in doing an act which is an offence. In other words, it is a preparatory act and connotes active complicity on the part of the abettor at a point of time prior to the actual commission of the offence.”

22. Adverting to the facts of the present case, after considering the pre-summoning evidence, the learned M.M. rightly came to the conclusion that material was not sufficient on record, except against accused No.1, 2 and 12, who are not the petitioners before this Court, so as to summon them for committing the offence of abetment to bigamy. Accordingly, accused No.1 Amit Gupta was summoned for the commission of offences punishable under Sections 494/341/506 IPC (Part-I) and accused No.2 Jyoti Rajput @ Jyoti Verma and accused No.12 Tarun Chawla @ Nanhe were summoned for the offence under Section 494 read with Section 109 IPC. The decisions relied upon by learned counsel for the complainant/respondent No.2 are of no help to

the complainant being clearly distinguishable from the facts of the present case.

23. The learned Addl. Sessions Judge in the impugned order, on the basis of pre-summoning evidence on record, while maintaining the order of learned M.M. in respect of respondent No.1 Amit Gupta, respondent No.2 Jyoti Rajput @ Jyoti Verma and respondent No.12 Tarun Chawla @ Nanhe, on the same set of evidence i.e. participation in the alleged second marriage of accused No.1 Amit Gupta and accused No.2 Jyoti Verma, with no material available to infer abetment, preferred to summon the petitioners, whereas revision was dismissed in respect of respondents No.7 Sh.Satya Dev Verma, respondent No.8 Smt.Anita Verma, (uncle & aunt) respondent No.13 Sh.Sampat Dandekar and respondent No.14 Smt.Kavita Dandekar (friend and his wife who were doing videography of the ceremony as per complainant).

24. In the impugned order, while observing that it is settled law that mere participation in the second marriage would not ipso-facto make the relatives or the participants liable for abetment to Bigamy, the learned ASJ observed that those closely associated with the conduct of essential ceremonies of marriage and having actively supported the conduct of the second marriage cannot be let off since that would defeat the very purpose of the provision. While dealing with the allegations against the parents and brother of Jyoti Verma (accused No.2), it was observed that:-

“In the present case the parents of the alleged second wife of Amit Gupta @ Sonu i.e. Surya Dev Verma (respondent No.3), Smt.Manju Verma (respondent No.4) and younger brother (respondent NO.5) and blood relations of Jyoti Rajput @ Jyoti Verma being parents and real brother residing in the same house, who had actively participated in the second marriage and had performed the essential

ceremonies of marriage including Kanyadan. Their case is required to be distinguished from the case of the other respondents. Whether they had the knowledge with regard to the first marriage of the respondent No.1 Amit Gupta @ Sonu, is a triable issue which has to be proved or distinguished only during trial. Prima facie on the basis of the testimonies of the witnesses, they are liable to be summoned for abetment to Bigamy.”

25. While dealing with the case of mother and sister of accused No.1 Amit Gupta, it was so held:-

“Now coming to the relatives of respondent No.1 Amit Gupta @ Sonu, it is evident that Sushma Gupta (respondent No.10) is his mother and Smt.Nisha Gupta (respondent No.9) is his married/divorcee sister who is also residing in the same house as that of her mother. Further, Ms.Kusum Garg (respondent No.11) is also the married sister of Amit Gupta @ Sonu who is residing separately but being the close blood relative, their case is required to be distinguished from the case of the other respondents. All the above respondents being aware of the subsistence of first marriage of the accused Amit Gupta, had participated in essential ceremonies of the second marriage of the accused Amit Gupta. Keeping in view their close relationship and the evidence on record, it is evident that they were already aware of the subsistence of the first marriage of the respondent Amit Gupta @ Sonu with the revisionist Manjari Gupta from whom Amit Gupta had even born a child. The evidence on record prima facie show that all the above persons were present at the time of marriage with the respondent Jyoti Rajput @ Jyoti Verma and their active participation in the ceremonies of the marriage and abetment in the second marriage is writ large and hence their case is required to be differentiated from the case of other accused/respondents not so summoned. Prima facie there is sufficient material on record to summon Sushma Gupta, Nisha Gupta and Kusum Garg for the offence of abetment to marriage.”

26. Respondents No.12 Sampat Dandekar and respondent No.13 Kavita Dandekar, who were friends of main accused Amit Gupta and have done videography, were let off, observing that being not related,

their knowledge with regard to the subsistence of first marriage and active involvement in the alleged act prima facie not borne out from record.

27. Respondents No.7 & 8, namely, Satya Dev Verma and Anita Verma, who are uncle and aunt, were let off for the reason that they were residing at a different address and there was no evidence of their active participation in the essential ceremonies of accused No.1 and 2 and thus finding no error in the order of learned Trial Court on summoning them.

28. After analyzing the pre-summoning evidence, the learned MM rightly came to the conclusion that the material on record was not sufficient to summon the accused Nos.3 to 11, 13 & 14 for committing the offences referred to above. In the revisional jurisdiction, order has been passed by the learned ASJ on non-existent and drawing certain inferences and presumptions which were contrary to the material placed on record by none else but the complainant.

29. It is settled law that the High Court can exercise its power of judicial review in criminal matters. In ***State of Haryana & Ors. vs. Bhajan Lal and Ors. 1992 CriLJ 527*** the extraordinary powers under Article 226 of the Constitution and inherent powers under Section 482 Cr.P.C. were examined by the Apex Court and in para-105, it was held as under:-

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 Code which we have extracted and reproduced above, we given the following categories of cases by

way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. 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.*
- 2. 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 an Magistrate within the purview of Section 155(2) of the Code.*
- 3. 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.*
- 4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence , no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.*
- 5. 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.*
- 6. 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.*

7. *Where a criminal proceeding is manifestly attended with mala fide 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.”*

30. In **NCB vs. Rakesh Dwivedi 2011 VI AD (Delhi) 257**, it was held as under:-

“In appropriate cases, inherent power of the High Court, under Section 482 Cr.P.C. can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure to prevent abuse of the process of any Court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 of the Code of Criminal Procedure for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out.”

31. While laying down the guidelines where the Court will exercise the jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or rigid and were to be applied after considering facts and circumstances of each case.

32. Undisputedly, the powers under Section 482 Cr.P.C. have to be exercised sparingly and with great caution in those cases where the Court comes to the conclusion that there was manifest injustice or abuse of process of the Court.

33. The petitioners have sought quashing of order dated 07.05.2011 passed by the learned ASJ, Rohini Courts, Delhi in Criminal Revision No.350/2009 on the ground that mere participation in the bigamous

marriage is not sufficient to summon them for committing the offence punishable under Section 494/109 IPC. After carefully perusing the averments made in the complaint, statement of the complainant and other witnesses examined by her as well as the contents of the affidavit and the transcript of the conversation placed on record, I am of the considered view that so far as petitioners are concerned, no offence of abetment has been made out and, therefore, the order passed by the learned ASJ in exercise of revisional jurisdiction was not passed on any material brought on record by the complainant while leading pre-summoning evidence.

34. The accusations made in the complaint and the pre-summoning evidence adduced by the complainant, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence so as to pass an order summoning the petitioners for committing the offence punishable under Section 494/109 IPC. In the given facts and circumstances of the case, I find it to be a fit case to exercise the inherent power to prevent the abuse of process of the Court.

35. Accordingly, taking into consideration the settled legal position that mere participation in the marriage in itself is not sufficient to make the close relatives liable for abetment in a case of bigamy, both the petitions are allowed. The impugned order passed by the learned ASJ summoning the petitioners for committing the offence punishable under Section 494/109 IPC is quashed.

36. CRL.M.C. Nos. 2510/2011 and 4249/2011 stand allowed in the above terms.

PRATIBHA RANI
(JUDGE)

SEPTEMBER 11, 2012
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