

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 413/2013**

Decided on 26.07.2013

IN THE MATTER OF :
JAGDISH NAUTIYAL

..... Petitioner
Through: Mr. Prem Kumar, Advocate with
Mr. Rakesh Kumar, Advocate

versus

STATE

..... Respondent
Through: Mr. Naveen Sharma, Addl. PP

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present petition has been filed by the petitioner under Section 397 read with Section 401 Cr.PC praying *inter alia* for setting aside the order on charge dated 02.07.2013 passed by the learned ASJ in respect of case FIR No.67/2011, lodged under Sections 376/420 IPC.

2. Before dealing with the submissions of the counsel for the petitioner, a brief reference to the relevant facts of the case leading to the registering of the FIR is considered necessary.

3. In a nutshell, the facts of the case are that the complainant/prosecutrix had alleged commission of offences of cheating, rape and bigamy against the petitioner. She had stated that in the year 1994, she was married to one Shri Sushil Kumar and from out of the said wedlock, she had a daughter. However, Shri Sushil Kumar had expired in the year 2010. Soon thereafter, the accused, who had a friendly relationship with the deceased husband of the prosecutrix, had approached her and proposed to marry her on the representation that he was unmarried. The prosecutrix claimed that relying on the statement made by the petitioner/accused, she had accepted the proposal and both the parties had got married on 11.05.2010 in a Buddhist Temple situated on Mandir Marg, Near Birla Mandir at New Delhi as per Hindu customs. The prosecutrix has stated that the petitioner/accused had also filled up the marriage form in his own handwriting and the said marriage had been registered on 17.05.2010 in the office of the Registrar of Marriages, Dehradun, Uttrakhand. Thereafter, both the parties had cohabited as husband and wife. However, on 04.06.2010, the complainant came to know that the accused was already married to one Smt. Sunita and when she had confronted him with the said marriage, he had maintained that he was not married to the said lady. It is stated in the complaint that the petitioner had concealed the factum of his previous marriage and later on, he had threatened her, thus compelling her to file the complaint.

4. On the basis of the aforesaid complaint received from the prosecutrix, the subject FIR was registered and investigation was undertaken by the IO. While passing the impugned order on charge, the learned ASJ took notice of the fact that after the investigation was conducted, a zero FIR was registered and sent to Dehradun for further investigation and thereafter the matter was received back from Dehradun and finally, it had culminated in filing of the charge-sheet. After considering the submissions of counsels for the parties and the material accumulated during the investigation, including the statements of the parties and other witnesses, the trial court was of the opinion that the petitioner herein is liable to be charged for the offence under Sections 420/376/495 IPC.

5. Aggrieved by framing of the aforesaid order on charge, the petitioner has filed the present revision petition stating *inter alia* that the trial court had failed to appreciate the fact that there was no evidence on record to establish that the petitioner had married the prosecutrix and therefore, the provisions of Section 495 IPC were inapplicable. Learned counsel states that the learned ASJ had overlooked the fact that the petitioner and the complainant had known each other for several years even prior to the demise of the husband of the prosecutrix. He further states that the trial court did not take into consideration the statement of

SI Narender Singh, Police Station Dalanwala, Dehradun or of Ms. Sunita, the petitioner's wife.

6. Mr. Prem Kumar, Advocate urges that there is no evidence of the petitioner having committed the offence of bigamy for the reason that there was no legal or valid marriage that had been solemnized between the petitioner and the prosecutrix and the evidence that was gathered by the police in the course of the investigation, do not substantiate the allegations levelled by the prosecutrix to the said effect. He contends that for a Hindu marriage to be valid and legal, invocation before the sacred fire and a *Saptapadi* ceremony are a prerequisite and in the present case, neither of the aforesaid ceremonies had taken place and therefore, the marriage, if any, was incomplete. Consequently, the registration of the marriage by the petitioner and the prosecutrix at the office of the Registrar of Marriages at Dehradun loses significance. It is thus contended by the counsel for the petitioner that there was hardly any evidence before the trial court to have framed charges against his client.

7. Learned Addl. PP opposes the present petition and submits that the impugned order on charge is a legal, valid and cogent order and does not deserve interference. He submits that at the time of framing of charges, the Judge is required to examine the evidence only to arrive at a *prima facie* conclusion as to whether charges are required to be framed in the

case. He states that in view of the statement given by the complainant as has been recorded by the police, and the documents gathered during the investigation, including the marriage certificate of the parties produced by the complainant, the marriage form, the joint affidavit signed by the petitioner and the complainant and submitted in the office of the Registrar of Marriages, Dehradun and the photographs of the marriage, there was sufficient material placed before the trial court for purposes of framing of charges against the petitioner.

8. The Court has examined the impugned order and considered the submissions made by the counsel for the petitioner and the learned Addl. PP in the light of the facts of the case. It is settled law that at the time of framing of charges, the trial court is required to examine the evidence brought before it only for the limited purpose of deciding as to whether a *prima facie* case has been made out against the accused or not. Based on the said evidence, if the Judge is satisfied that a sufficient case is made out, then it ought to proceed to direct framing of charges and conduct the trial based thereon. However, at that stage, the Judge is not required to sift the entire evidence and discuss the relative merits and demerits thereof to arrive at a conclusive decision. The only requirement is that if the Judge is satisfied that the evidence produced before him gives rise to suspicion, enough for him to discharge the accused, then he ought to be discharged but if that is not the case and the material on

record is sufficient to make a conviction reasonably possible, then the Court should proceed to frame the charges.

9. In the present case, a perusal of the impugned order reveals that the trial court has examined the evidence produced before it as would be apparent from the observations made in paras 10, 11, 12 and 13 and only thereafter had it concluded that if the material on record is taken on the face value and it remains unrebutted, then the conviction of the petitioner is reasonably possible for offences punishable under Sections 420/376/495 IPC. The trial court has also taken note of the objection raised on behalf of the petitioner that there was delay on the part of the complainant in making her complaint, but has turned down the same on the ground that delay alone cannot be a ground for not framing charges against the accused.

10. In para 10 of the order on charge, the trial court has discussed the undisputed evidence in respect of the case, which is that the petitioner/accused is married to one Smt. Sunita and has children from the said marriage and that he was in a relationship with the prosecutrix after her husband's demise. The petitioner has not denied the factum of submitting a marriage form, wherein he had declared his status as "unmarried" as also filing of a joint affidavit for purposes of registration of his marriage with the prosecutrix in the office of the Registrar of Marriages, Dehradun. Further, the investigation had revealed that the

marriage of the petitioner and the prosecutrix was duly registered at Dehradun on 11.05.2010. After evaluating the material and documents brought on record during the investigation; and on being satisfied that there existed sufficient grounds, charges were framed against the petitioner.

11. In view of the aforesaid facts and circumstances and upon perusing the impugned order, this Court is of the opinion that no such illegality, arbitrariness or perversity has been pointed out in the conclusion arrived at by the learned ASJ while framing the charges against the petitioner, for this Court to interfere therein. As a result, the present petition is dismissed.

JULY 26, 2013
rkb/sk

(HIMA KOHLI)
JUDGE