

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 526 of 2015

Rashida Bano, Divorcee, W/o. Md. Amin Khan, Aged About 48 years, R/o. Gram Panchayat Umjhar, Village Tilvandhandh, Police Station- Charcha, District Korea Chhattisgarh.

---- Petitioner

Versus

Md. Amin Khan, S/o. Late Yashin Khan, Aged About 58 Years, Occupation Service in SECL, R/o. Near Post Office, Charcha, Colliery, Police Station Charcha, District Korea, Chhattisgarh.

---- Respondent

For Petitioner : Smt. Anju Ahuja, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27/07/2015

Heard on admission.

1. The instant petition is against the order dated 25.04.2015 passed in Criminal Revision No.13/2015 by the Session Judge, Baikunthpur, District Koriya (C.G.). By such order, taking cognizance of the complaint by JMFC on complaint filed by the wife with a bigamy against the husband was set aside.
2. Admittedly, the parties are governed by the Mohammedan Law. The facts of the case are that the Respondent was married to the petitioner 30 years back and out of the wedlock they have three sons. It was further stated that during the lifetime of the wife, the complainant, the husband/ Respondent again married to a lady named Rehana at Orissa without any lawful divorce with the first wife. The complaint case for bigamy under Section 494 of IPC was filed by the first wife wherein the learned trial Court took the cognizance. Taking cognizance of such offence was a subject of challenge before the revisional Court of Sessions Judge, Baikunthpur. The Sessions Judge, Baikunthpur, by the impugned order dated 25.04.2015, quashed the order passed by the JMFC. Consequently, this petition

before this Court.

3. It is not in dispute that the parties are governed by the Mohammedan Law. Therefore, the Rule 44 of the Mohammedan Law would be relevant in the case, which reads as under :

Rule 44. Polygamous Marriage - (i) A Mohammedan male may have four wives at the same time and the marriage with the fifth wife, in the presence of four, is void according to the Shia Law and irregular according to the Sunni Law.

(ii) The same is not true to the Mohammedan female. She can marry only one husband if she marries the second in presence of the first, she will be liable for bigamy under Section 494, I.P.C.

(iii) The restriction of four wives applies in case of permanent marriage, but in temporary or Muta marriage, there is no such limit.

4. Taking into the provisions, which is applicable as per the personal law to the parties, the muslim male can have four wives and therefore in view of fact that personal law permits four wives of a muslim male, the second marriage would not within the ambit of Section 494 of IPC.
5. Therefore, after going through the impugned order, I am of the opinion that, no jurisdictional error has been committed by the Court below so as to make interference by invoking the powers under Section 482 of Cr.P.C. vested in this Court.
6. Accordingly, the petition is dismissed at the admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE