

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

Reserved on: 16.07.2015

Date of decision: 26.08.2015

+ CRL.M.C. 1758/2010

DARSHNA Petitioner

Through Mr.R.S. Juneja, Adv.

versus

STATE & ORS Respondents

Through Mr. Lovkesh Sawhney, APP.
Mr. R.K. Singh, Ms.Deepa Rai,
Mr.Ankit Kumar Gulia, Adv.
for R2.
SI Karamvir Singh PS Malviya
Nagar

+ CRL.REV.P. 254/2010

POONAM Petitioner

Through Mr. R.S. Juneja, Adv.

versus

STATE Respondent

Through Mr. Lovkesh Sawhney, APP.
Mr. R.K. Singh, Ms.Deepa Rai,
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**CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

ASHUTOSH KUMAR ,J.

1. Both the petitions have been heard together and are being disposed of by common order.
2. The Petitioners in Crl. M.C. No. 1758/2010 are sisters of the husband of Respondent no.2.
3. On the case lodged by Respondent no.2 against them and other accused persons including their brother and others (FIR No. 651/2001 dated 11.08.2001, PS Malviya Nagar, instituted under sections 498A/406/420/494/327/506/34 IPC), they were chargesheeted on 09.04.2004.
4. The petitioners, by order dated 02.09.2009 passed by the Metropolitan Magistrate, were charged under section 120B IPC.
5. The brother of the petitioners (husband of the Respondent no.2) was charged for offences under section 498A/494/120B IPC.
6. The petitioners were discharged for other offences for which they were chargesheeted. Some of the accused persons namely the parents and brother of the second wife of K.D.Kapoor (the husband of Respondent no.2) and the second wife (Smt. Poonam, petitioner in Crl. Rev. P. No. 254/2010) were discharged of all offences.
7. The Petitioners, against the aforesaid order dated 02.09.2009 passed by the Learned MM, preferred a revision petition before the Additional Sessions Judge 1/South, Patiala House Courts, New Delhi (Crl. Rev. No. 284/2009). The order by which the petitioners were

charged under section 120B IPC was upheld in the revision petition by order dated 02.03.2010.

8. The order of the learned MM, whereby the second wife of K.D. Kapoor (husband of the Respondent no.2) was discharged of all offences, was modified and the second wife (Smt. Poonam, petitioner in Crl. Rev. P. No.254/2010) was also directed by the Revisional Court to be charged for the offence under section 120B IPC.

9. The aforesaid revisional order dated 02.03.2010 is under challenge in both the petitions.

10. In order to appreciate the contention of the Petitioners, it would be necessary to refer to the first information report ('FIR' for short) lodged by the Respondent no.2. It has been alleged by Respondent no.2 that after her marriage with K.D. Kapoor, her husband, on 07.05.1985 she stayed in the matrimonial home till 12.06.2001. During this period she was tortured by her husband, her three sisters-in-law (Petitioners in Crl. M.C. No. 1758/2010) and her late mother in law. In the year 1992, one Poonam, who was introduced as a distant cousin, also joined hands with the accused persons in harassing and troubling her.

11. Aforesaid Poonam (Petitioner in Crl. Rev. P. 254/2010) is alleged to be the second wife of the husband of the Respondent no.2. It has been specifically averred by the Respondent no.2 that her sisters-in-law and Poonam visited the matrimonial home of Respondent no.2 and suggested the Respondent no. 2 to allow her husband to get married and beget children. Such a suggestion was

stoutly refused by Respondent no.2, considering it to be the high point of cruelty perpetrated upon her. Any suggestion of Respondent no.2 to her husband to adopt a child (Respondent no.2 remained issue less) met with a very angry response by her husband. She could only later learn that such a response was because of the fact that her husband had already married Poonam and was having children with her.

12. The fact of Poonam having married the husband of Respondent no.2 was revealed when her husband made a confession to Respondent no.2 at a temple in Jalandhar on 07.06.2000, where the couple had visited for getting an auspicious date for house warming of a newly acquired house in DLF Qutab Enclave, Gurgaon. She was made to understand that her husband had married Poonam in the year 1992 and that they already had three sons. The respondent no.2 was introduced to Poonam, the second wife on 08.06.2000 along with her children but was, even then, told that Poonam was a distant cousin. As the allegation stands, Poonam was accompanied by Petitioner no.2 of Crl. M.C. No. 1758/2010. Petitioner no.3 had accompanied Respondent no.2 and her husband to Jalandhar. Poonam is said to have interacted with Respondent no.2 and confirmed the fact that she had married K.D. Kapoor and had also delivered three children from such marriage. The Respondent no.2 was also made to understand that the marriage ceremony had also taken place in the house of K.D. Kapoor and in the presence of the Petitioners in Crl. M.C. No. 1758/2010.

13. Respondent no.2 categorically alleged that her sisters-in-law pestered her to condone K.D. Kapoor and agree to live in the same

house along with Poonam and her children. These revelations put the Respondent no.2 in great consternation. Poonam was made to stay with Petitioner no.3 (Crl. M.C. No.1758/2010) at the latter's residence in Tilak Nagar. These developments made Respondent no.2 leave her matrimonial home. The Respondent no.2 thereafter started living with one of her brothers. Respondent no.2 was also made to transfer her self-acquired property i.e. Plot No.14/8 in DLF phase II, in the name of K.D. Kapoor and was also made to write a letter to the DLF authorities, relinquishing her lien or claim on that plot. The savings made by the Respondent no.2 were also taken away by her husband in a sly manner. She was, as alleged, beguiled into signing a document for obtaining loan for construction of a three storied house on the plot referred to above. Thus, Respondent no.2 alleged that the Petitioners also took active part in subjecting her to torture and in conspiring to get her husband married to another person during the subsistence of her marriage with him.

14. The aforesaid complaint was made on 13.10.2000 which was registered with the CAW cell Nanakpura on 15.11.2000.

15. It is worthwhile to mention that from 07.05.1985 till she came to learn about the second marriage of her husband, no complaint was lodged by her against any one of the accused persons including the Petitioner in Crl. Rev. P. No. 254/2010.

16. What has only been alleged in the complaint of Respondent no.2 is that the Petitioners (in Crl. M.C. No.1758/2010), her sisters-in-law, conspired and took active part in getting her husband remarried.

So far as the other allegations are concerned, they are vague and do not at all state as to how she was subjected to torture at the hands of her sisters in law.

17. It has been submitted on behalf of the Petitioners (Crl. M.C. No. 1758/2010) that they are senior citizens and have unnecessarily been dragged in the matrimonial dispute of their brother with Respondent no.2. Petitioner no.1, Smt. Darshana, is stated to be 68 years of age, whereas Petitioners no. 2 and 3, namely Smt. Raj Rani Dhawan and Smt. Sumitra Devi respectively, are of 73 years and 82 years respectively, who are suffering from serious ailments.

18. Section 120A IPC defines criminal conspiracy whereas section 120B IPC provides for punishment for criminal conspiracy.

“120A. Definition of criminal conspiracy: When two or more person agree to do, or cause to be done,

(1) An illegal act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120B. Punishment of criminal conspiracy.- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards shall, where no express provision is made in this Code for the

punishment of such a conspiracy, be punished in the same abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

19. A bare reading of sections 120 A and 120 B IPC outlines two forms of conspiracy namely:

- i. where overt act is not necessary and an agreement *per se* is made punishable; and
- ii. where overt act is necessary.

In the former, a mere agreement to commit an offence amounts to criminal conspiracy whereas in the latter there is a requirement of some overt act in pursuance to the agreement.

20. The marriage of a person during the subsistence of another/earlier marriage is an illegal act. No overt act is required for conspiracy to commit or cause to be committed, such an illegal act. However, in the present case specific instances have been given by Respondent no.2 that her sisters in law played a proactive role in entertaining Poonam (second wife), suggested Respondent no.2 to permit the second marriage and when the fact of second marriage was made known to the Respondent no.2, impressed upon her to condone such an illegal act and live in the same household with the second wife and children of her husband.

21. It has been urged on behalf of the Petitioners in Crl. M.C. No. 1758/2010 that section 198 Cr.P.C. provides that no cognizance could be taken of an offence punishable under Chapter XX of the IPC except upon a complaint made by the person aggrieved by the offence. Since Section 494 forms part of Chapter XX of the Penal Code which deals with offences relating to marriage, no cognizance could have been taken under Section 494 IPC as against K.D. Kapoor as well. It was argued that since no cognizance could have been taken under Section 494 IPC as against K.D. Kapoor because of the bar under Section 198 Cr.P.C., the sisters in law therefore could not have been, in turn, charged for conspiracy for causing/facilitating/conspiring the second marriage of K.D. Kapoor.

22. Section 155(4) Cr.P.C. categorically states that where a case relates to, two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. K.D. Kapoor has incidentally been charged for other offences as well.

23. Section 494 IPC provides for punishment for marrying again during the lifetime of husband or wife. Since Poonam (Petitioner in Crl. Rev. P. No. 254/2010) was aware of the fact that K.D. Kapoor was earlier married to Respondent no.2, she was rightly directed to be charged under section 120B IPC.

24. The argument of the petitioners that since the marriage of Poonam was not solemnised and therefore no offence under section 494 IPC could have been made out, is not tenable as it is a matter of

trial by way of fact finding exercise whether Poonam was formally married to the husband of Respondent no.2.

25. Thus the order dated 02.03.2010 passed in Crl. Rev. P. No. 299/2009 cannot be faulted with.

26. This court also takes notice of the fact that the trial of the case in question has progressed a bit too far. Keeping the aforesaid facts and circumstances and the stage of the case in consideration, the Crl. M.C. No. 1758/2010 and Crl. Rev. P. No. 254/2010 are dismissed.

27. However, keeping in mind the age of the sisters in law (Petitioners in Crl. M.C No. 1758/2010) and the circumstance of Smt. Poonam (petitioner in Crl. Rev. P. No. 254/2010), the Trial Court is directed to conclude the trial at the earliest and without any unnecessary delay.

28. The aforementioned petitions are disposed of accordingly.

ASHUTOSH KUMAR, J

AUGUST 26, 2015

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