

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3700 of 2016

Date of decision: September 21, 2016

Kulwant Singh and Another

...Petitioners

Versus

Tarlochan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. R.S. Randhawa Advocate for the petitioners.

Ms. Puja Chopra, Advocate for the respondent.

A.B. CHAUDHARI, J.(ORAL).

Rule .

Heard forthwith.

Heard learned counsel for the rival parties.

The petitioners who are the parents of Veerpal Kaur have approached this Court by way of present petition challenging the order dated 10.12.2015 passed by the Revisional Court by which the revisional Court set aside the order made by JMIC, Ludhiana discharging the petitioners from the prosecution under Section 495 of IPC. I have heard learned counsel for the parties at length and also seen the reply filed by learned counsel for the respondent. I have seen the reasons given by both the Courts below and considered the same in the premises in which the same is required to be considered. I quote para Nos.14, 15 and 17 from the order dated 12.08.2015 passed by learned JMIC, Ludhiana.

“14. Now the entire evidence led on behalf of complainant goes to imply that accused Veer Pal Kaur had solemnized marriage with Tarlochan Singh after concealing the factum of her previous marriage with Avtar Singh from Tarlochan Singh. All the witnesses examined by the complainant have deposed in

regard to Accused No. 1 Veer Pal Kaur having concealed the factum of her previous marriage. The complainant has also placed on record certified copy of judgment and decree dated 01.04.03 Ex. P3 and ex. P4 vide which the marriage of Veer Pal Kaur and Avtar Singh was dissolved by grant of decree of divorce under Section 13 of the Hindu Marriage Act, on the ground of cruelty being caused by Avtar Singh. Moreover, perusal of judgment and decree dated 14.02.13 Ex.P8 and Ex.P9 reveals that the marriage of Tarlochan Singh with Veer Pal Kaur has been declared to have been solemnized in contrary to the provisions of Hindu Marriage Act under Section 11 of the Act, whereby, it has also been held by the Court that the second marriage solemnized by Veer Pal Kaur with Tarlochan Singh on 08.01.03 was void ab initio being solemnized during the subsistence of the first marriage.

15.The entire oral as well as documentary pre-charge evidence led on behalf of the complainant goes to make out a prima facie case against Accused No. 1 Veer Pal Kaur, whereas, no evidence has come up to show that Accused No. 2 and 3 who are the parents of Accused No. 1 had also taken any active participation. Moreover, the offence under 495 IPC is a personal offence and confined to the person who had solemnized the second marriage during the subsistence of the first marriage after concealment of the said fact.

17. The entire oral and documentary evidence led by the complainant goes to establish a prima facie case only against Accused No. 1 Veer Pal Kaur under Section 495 IPC, whereas, no case is found to be made out against the Accused No. 2 and 3 i.e. Kulwant Singh and Tej Kaur, so, they are hereby ordered to be discharged. In view of the above discussion, only Accused No. 1 Vir Pal Kaur is considered to be charge-sheeted under Section 495 IPC”.

As against above, well reasoned finding of fact, the learned

revisional Court devoted large number of paragraphs only for stating the legal position rather than adverting to the factual aspect involved in the case. The revisional order is sans any reasons on facts. In such a situation, I have myself gone through the relevant evidence. The learned counsel for the respondent draw my attention to the letters in order to prove the case of the respondent. These letters have been seen by me, i.e. Annexures R-4 and R-5. But these letters do not indicate any prima facie as to the offences complained of.

Learned counsel for the respondent-husband then contended that by now the entire evidence is almost over and liberty was granted to the petitioners to participate in the trial. Therefore, since they have participated in the trial, petition should not be entertained. I do not agree this Court is obliged to decide the petition on its own merits. In my opinion merely because during the pendency of this petition the petitioners have participated in the trial, this petition cannot be thrown out. The reasons given by the learned trial Court in the abovesaid paragraphs are legal, correct and proper with factual foundation, while the revisional order is clearly illegal.

There is no evidence against the petitioners and it clearly appears that respondent-husband is unnecessarily after the parents of Veerpal Kaur which is not at all justified. Veerpal Kaur is facing the trial. The offence under Section 495 of IPC is personal in nature as rightly found by the Magistrate.

In that view of the matter, in my opinion, the revisional Court's order made by the Sessions Court being illegal, will have to be set aside.

In that view of the matter, the petition is allowed. The revisional Court order dated 10.12.2015 (Annexure P-3) is quashed and set aside. The trial to proceed only against Veerpal Kaur.

Disposed of.

(A.B.CHAUDHARI)
JUDGE

September 21, 2016
Poonam (II)

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No.