

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

Judgment delivered on : March 14, 2016

+ CRL.M.C. 3688/2015

RUBINA RATNAKAR

..... Petitioner

Through: Mr.Manoj Ohri, Senior Advocate with
Mr. S. Kahta, Mr.Atin Chadha,
Advocates.

versus

STATE & ANR.

..... Respondent

Through: Mr.Izhar Ahmad, learned Additional
Public Prosecutor for the State.
Respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 482 of Cr. P.C., the petitioner seeks quashing of the Criminal Complaint filed under Section 200 of Cr. P.C. by the complainant – Sheetal Makol and for quashing the summoning order dated 15.10.2014 whereby the petitioner has been summoned and to quash the order dated 26.05.2015 whereby the directions were issued for initiating process under Section 82 and 83 of Cr. P.C., passed by learned Metropolitan Magistrate-01, Mahila Court, South-West, Dwarka, Delhi.

2. In nutshell, the brief facts of the case are that one Ms. Sheetal

Makol – complainant had filed an application under Section 200 of Cr. P.C. before learned Metropolitan Magistrate intimating that she was married with Vinit Makol on 10.12.2009 according to Hindu rites and ceremonies and she has filed a case under Section 125 Cr. P.C. against her husband. It is also alleged that the Vinit Makol had a property at Greater Noida, Gautam Budh Nagar, in his name and during evidence of Greater Noida Industrial Development Authority, deposed that the ownership and transfer records of property at I-1201, 12th Floor, Riviera, Eldeco Green Meadows at Pocket C, Sector Pi, Greater Noida, Gautam Budh Nagar, wherein it was deposed that the said property has been transferred on meagre amount of Rs.30 lacs to Rubina Ratnakar by Vinit Makol (husband of the complainant). It is further alleged that the property at Lajpat Nagar was more than crores and the same has been sold in a meagre amount of Rs.25 lacs. The complainant (respondent No. 2 herein) alleged that one Rubina Ratnakar and Pranav Makol are US citizens who came to India from Madrid to Bengaluru by EMIRATES during 22nd March, to 31st March, 2014 and for travelling in India they had to take visa and fill up the OCI FORM OR PIO FORM at the time of IMIGRATION in Bengaluru. The complainant sought the details of the husband of Rubina Ratnakar and identification of Pranav Makol to establish that her husband Vinit Makol has committed bigamy and is avoiding arrest by absconding from India.

3. The learned Metropolitan Magistrate while considering the aforesaid application under Section 200 of Cr. P.C., observed that the

complainant has raised grave apprehension that her husband has married with Rubina Ratnakar during subsistence of his marriage with complainant but she is not in possession of all the evidence required to prove the case against accused and the requisite documentary evidence can be given only by the concerned immigration authorities therefore she prayed for investigation under Section 202 of Cr. P.C. through the Police/Crime Branch. The learned Metropolitan Magistrate observed that the accused persons in the complaint are residing outside the jurisdiction of this Court and it is mandate of Section 202 to conduct inquiry/investigation before summoning the accused persons and while keeping in view the fact that the complainant is unable to gather the requisite documentary evidence without police assistance, directed notices to be issued to SHO, Police Station Sector 23, Dwarka to collect PIO/OCI Form from Immigration authorities or any other requisite documents concerning Rubina Ratnakar and her child Pranav Makol.

4. The inquiry was conducted by Sub-Inspector Jagdish, Police Station Dwarka, Sector 23, who filed his report before the Court of learned Metropolitan Magistrate reporting that the OCI Detailed Enquiry in respect of Rubina Ratnakar and Pranav Makol reveal that the husband's name of Rubina Ratnakar is Vinit Makol and the OCI detailed inquiry Form in respect of Pranav Makol reflects the name of mother of child is Rubina Ratnakar and father of child is Vinit Makol. Thereafter, on 15.10.2014, after hearing arguments on summoning, and on the basis of evidence on record, the learned Metropolitan

Magistrate find it a prima facie sufficient case for summoning the accused Vinit Makol and Rubina Ratnakar for the offence punishable under Section 494 and 495 of IPC read with Section 201 and 120B of IPC. Accordingly, the learned Metropolitan Magistrate directed summons to be issued to both the accused persons at the given address of India through SHO and at the address of USA through MHA on prescribed proforma. Since nobody was found at the Indian address, the summons were affixed at the outer door of the house and no report with regard to the summons issued through MHA was received. Further time was given to the complainant for preparing the documents for sending summons against through MHA.

5. Vide order dated 26.05.2015, considering the fact that summons issued to the accused persons were served by way of affixation at their address at Eldeco Green Meadows, Greater Noida the learned Metropolitan Magistrate observed that the accused persons was intentionally avoiding process of Court and accordingly directed process under Section 82 and 83 of Cr. P.C. against Rubina Ratnakar. It is thereafter, the petitioner has preferred the present criminal miscellaneous petition for quashing of the summoning order as well as order initiating proceedings under Section 82 ad 83 of Cr. P.C.

6. Mr. Manoj Ohri, learned senior counsel appearing for the petitioner contended that the order of summoning and directions to serve the summons of the case upon the petitioner at Greater Noida Address, Uttar Pradesh, India and the directions for initiating proceedings against the petitioner under Section 82 and 83 of Cr. P.C.

is bad in law, perverse, arbitrary and without application of judicial mind. Learned counsel for the petitioner contended that the learned Metropolitan Magistrate despite considering the fact that the accused persons are residing outside the jurisdiction of the Court, has passed the order for summoning the petitioner at her USA address.

7. Learned senior counsel for the petitioner further contended that despite knowledge of the fact that the petitioner is permanent resident of USA, learned Metropolitan Magistrate has directed that summons be served at the address in India at Greater Noida, Uttar Pradesh. As regards, committing an offence punishable under Section 494/495/201/120B of IPC, learned senior counsel for the petitioner contended that the complaint prima facie does not fulfils the ingredients and no case under the said sections is made out. It is further contended that no efforts were ever made to serve the petitioner at USA address and the respondent No. 2 did not make any effort to serve the petitioner through MHA at USA vide order dated 30.01.2015. It is further contended that the learned Metropolitan Magistrate in the order dated 02.05.2015, has recorded that the house at Greater Noida is locked for the last four years and nobody was met at the address and the summons were affixed at the door outside by the constable who went for the service of the summons. However, there was no order for affixation of the summon.

8. On the basis of aforesaid report, the learned Metropolitan Magistrate vide order dated 26.05.2015 while observing that the summons to the petitioner were served by way of affixation at the

given address of Eldeco Greater Noida, Uttar Pradesh, India, and since the petitioner did not appear and observed that the petitioner was intentionally avoiding process of the Court, therefore, the proceedings under Section 82 and 83 of Cr. P.C. were directed to be initiated against the petitioner.

9. Learned senior counsel for the petitioner further contended that the allegations for the offence under Section 494/495 of IPC as levelled by the complainant are false, frivolous and devoid of merit and do not satisfy the basic and essential ingredients of the offences alleged to be committed by the petitioner. It is further contended that the complainant has not placed on record any document or evidence regarding solemnisation of marriage by the petitioner as per the rituals, rites and essential ceremonies which otherwise have to be performed for solemnizing a marriage and the complainant has also not mentioned the date of its occurrence and any person witnessing the said marriage.

10. Learned senior counsel for the petitioner contended that in order to attract or to fall under an offence of bigamy under Section 494 IPC against a person, the basic and cardinal principles have to be stated in the complaint and also needs to be satisfied and the Complainant has neither pleaded nor stated anything in her complaint regarding the ingredients/principles to satisfy the court about committing an offence under Section 494 of IPC.

11. Learned senior counsel for the petitioner further contended that

the order initiating the process under Section 82 and 83 of Cr.P.C. does not record satisfaction of the court that the warrants against the petitioner cannot be served or she is concealing herself or avoiding the process of law. In support of the aforesaid submissions, learned senior counsel for the petitioner has relied upon the judgments in ***Bhaurao Shankar Lokhande and Anr vs. The State of Maharashtra and another***, AIR 1965 SC 1564; ***Rohit Kumar @ Raju vs. State of NCT Delhi & Anr.***, 2008 Cri.LJ 3561; ***Lingari Obulamma vs. L. Venkata Reddy and others***, AIR 1979 SC 848, ***Smt. Priya Bala Ghosh vs. Suresh Chandra Ghosh***, AIR 1971 SC 1153.

12. Mr. Izhar Ahmed, Additional Public Prosecutor appearing for the State submitted that the orders passed by learned Metropolitan Magistrate are well reasoned orders and do not call for any interference by this Court.

13. I have heard the submissions made on behalf of the petitioner as well as the material placed on record. I have also gone through the impugned orders passed by learned Metropolitan Magistrate.

14. After careful scrutiny of the case in hand, this court observes that the petitioner is a resident of USA, the property at Greater Noida is transferred in her name by the husband of the Complainant (respondent No. 2 herein), the marriage of Complainant was solemnised with Vinit Makol as per Hindu Rites and Ceremonies on 10.12.2009, who was working in U.S.A. and due to visa issues, he could not take his wife with him. The case under Section 125 of

Cr.P.C. is also filed by the Complainant. The Complainant had an apprehension regarding the second marriage of her husband with the petitioner herein and therefore, she filed an application under Section 200 of Cr.P.C. before learned Metropolitan Magistrate and the learned Metropolitan Magistrate vide order dated 15.10.2014 passed an order for summoning the petitioner and vide order dated 26.05.2015 ordered for initiating the proceedings under Section 82 and 83 of Cr.P.C. The petitioner herein seeks quashing of the summoning order as well as order directing initiation of proceedings under Section 82 and 83 of Cr.P.C.

15. Hon'ble Supreme Court, time and again has observed that the summoning of accused in criminal case is a serious matter and criminal law cannot be set in motion as a matter of course. In ***Pepsi Foods v. Special Judicial Magistrate***, JT 1997(8) SC 705, Hon'ble Supreme Court has held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course, it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof

and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

16. This court observes that the learned Metropolitan Magistrate before passing the impugned orders has directed inquiry under Section 202 of Cr.P.C. and it is only after receipt of the report of the Sub-Inspector Jagdish, Police Station Dwarka, Sector 23 and perusing the OCI FORM OR PIO FORM in respect of the petitioner as well as her son Pranav Makol, has reached to the conclusion that the petitioner is the wife of Vinit Makol who was already married to the Complainant herein and prima facie opined that the petitioner has committed the offence punishable under Section 494/495 of the IPC.

17. With regard to the jurisdictional part, it would be relevant to reproduce section 182(2) of Cr.P.C. which is as under:-

“182. Offences committed by letters, etc. –

(1) xxx

(2) *Any offence punishable under Section 494 or section 495 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage, or the wife by first marriage has taken up permanent residence after the commission of offence.”*

18. Since the petitioner has come to India, i.e., from Madrid to Bengaluru during 22nd March 2014 to 31st March 2014 and the fact that she owns a flat at Greater Noida, Uttar Pradesh, and the OCI Form or PIO Form in respect of petitioner as well as her son Pranav Makol discloses the name of Vinit Makol, (husband of the complainant), therefore, prima facie, the offence under Section 495 appears to be made out.

19. So far as the contention raised by the petitioner that the ingredients of offence punishable under Section 494 are not available, it is a matter of trial and which can be adjudicated during trial by leading evidence. At this stage, this court has to see whether there is any infirmity or illegality in the order passed by learned Metropolitan Magistrate or not. Since the learned Metropolitan Magistrate had directed an inquiry into the complaint of the Complainant and it is only after perusing the documents placed by the Investigating Officer which were sufficient for passing the order of summoning the petitioner, therefore, this court does not find any illegality or infirmity

in the impugned orders passed by learned Metropolitan Magistrate.

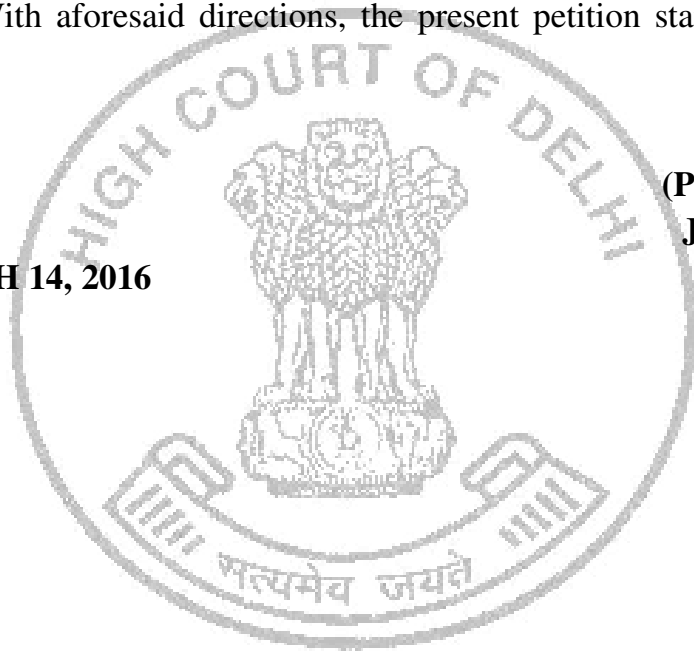
20. Resultantly, the present petition filed by the petitioner is dismissed and the petitioner is directed to appear before the Trial Court and to take appropriate legal remedies as available under the law.

21. A copy of this order be sent to Trial Court for information.

22. With aforesaid directions, the present petition stands disposed of.

MARCH 14, 2016

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**(P.S.TEJD)
JUDGE**