

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.219

CRM-M No.16969 of 2013
Date of decision: 09.01.2017

Manjit Kaur Dhani

....Petitioner

versus

Rajinder Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Mansur Ali, Advocate, for the petitioner.

Mr. Palvinder Singh, Advocate, for the respondent.

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DEEPAK SIBAL, J. (Oral)

Through the present petition filed under Section 482 Cr.P.C. quashing of a complaint No.102/1/99 dated 28.08.1999 filed under Sections 494/34 of the Indian Penal Code, 1860 (for short the 'Code') -'*Rajinder Kaur vs. Resham Singh and others*', (Annexure P-1) and summoning order passed in pursuance to the aforesaid complaint dated 19.10.2001 (Annexure P-2) is sought for.

The respondent filed the impugned complaint in the Court of Judicial Magistrate, Ist Class, Nawanshahar, as per which her husband Resham Singh had entered into second marriage with the petitioner and therefore, her husband, the petitioner alongwith other accused mentioned therein were sought to be proceeded against under Sections 494/34 of the Code.

On the basis of the preliminary evidence, the petitioner, along with Resham Singh and four others namely Balihar Singh, Mohinder Kaur,

Devinder Kaur and Santokh Singh were summoned for trial.

The petitioner did not appear and for that reason through order dated 02.02.2008 was declared a proclaimed offender. Such order was challenged by her before this Court through CRM-M No.197 of 2013 titled as '*Manjit Kaur Dhami vs. State of Punjab and another*' which through order dated 30.04.2013 was allowed and resultantly, the order declaring her as a proclaimed offender was quashed.

In the meanwhile, through order dated 10.03.2010 passed by the Judicial Magistrate, Ist Class, SBS Nagar the aforesaid Resham Singh was convicted and sentenced under Section 494 of the Code. Such order of conviction was challenged by him through an appeal filed before the Sessions Judge, SBS Nagar. Through order dated 12.07.2011, the appeal was allowed. Paragraphs 14 and 15 of the judgment passed by the Appellate Court which are relevant read as under:-

“Now if we go through the statement of complainant Rajinder Kaur, she has stated that on 19.05.1999 Resham Singh conducted second marriage with Manjit Kaur but in case we go through her cross examination, she has stated that she came to know after one month of the second marriage. She further stated that brother of Resham Singh had told about this fact, but infact she was not present at the time of second marriage. None of her relation was present at the time of second marriage. None of her relation was present at that time. She had also moved an application before SSP, but no such application has been produced on the record. She has nominated the accused as stated to her by Ranjit Singh. She has further stated that even Ranjit Singh did not participate in the second marriage. Therefore, whatever she has states, it is entirely hearsay

evidence. Rather, on the other hand, the accused has produced on the record Mark-A joint account of Balraj Singh Dhami and Manjit Kaur in Union Bank of India. There is also photostat copy of marriage certificate of Balraj Singh Dhami and Manjit Kaur. Although these documents are not legally proved on the record, but its onus was on the prosecution to prove the second marriage. The learned trial court has relied upon the statement of Granthi Gurdarshan Singh, who appear before the summoning stage and later on he died. The counsel for the respondent stated that his statement can be read under Section 33 of the Evidence Act, but this Court differs with this plea of the counsel for the respondent. In case he would have been cross examined in the pre-charge evidence, then certainly his statement could be considered. The basic principle of law its that unless a witness is put to the other party for the purpose of cross examination, then that statement cannot be read into evidence. In case Gurdarshan Singh would have been offered for cross-examination to the other party at any stage, then his statement can be read into evidence. But this witness was not offered for the purpose of cross examination to the other party at any stage. Therefore, learned trial court has wrongly relied upon the statement of Gurdarshan Singh to prove marriage between Resham Singh and Manjit Kaur. It has been further stated that accused failed to prove the marriage between Balihar Singh Dhami and Manjit Kaur. As stated above, the basic onus is upon the prosecution to prove the marriage between the accused Resham Singh with Manjit Kaur and in case the prosecution has failed to prove the marriage of accused no.1 with Manjit Kaur, then it will not effect the case of the accused in case has failed to prove the marriage of Manjit Kaur and Balihar Singh. There is no document to show that anywhere the accused

no.1 and Manjit Kaur have reside as husband and wife. There is no photograph or any other document to prove the relations of Resham Singh and Manjit Kaur. Therefore, in the opinion of this court, the learned trial court has no reason to hold the conviction of accused Resham Singh because evidence of prosecution is not at all sufficient to prove the marriage of accused Resham Singh with said Manjit Kaur. Therefore, findings of learned trial court holding the accused Resham Singh guilty under Section 494 of the IPC are legally not sustainable.

In view of the above discussion, the appeal filed by the appellant/accused is accepted. The impugned judgment of conviction and sentence is hereby set aside. The appellant/accused is acquitted of the charge under Section 494 of the Indian Penal Code. He is also discharged of his bail bonds and surety bonds. He will be entitled to refund of fine amount deposited before the trial court, after expiry of limitation period for filing appeal/revision, if any. A copy of this judgment alongwith trial Court file be sent back, whereas file of this Court be consigned to the record room.” (emphasis supplied).

A perusal of the afore-quoted judgment passed by the Sessions Judge, SBS Nagar clearly shows that the factum of marriage between the petitioner and above said Resham Singh was not proved.

Learned counsel for the respondent admits that no challenge was made by the respondent to the afore-referred judgment dated 12.07.2011 passed by the Sessions Judge, SBS Nagar. The judgment thus was allowed to have become final at the hands of the respondent. It can also be safely presumed that she accepted the findings returned therein.

Through the impugned complaint and the summoning order, the

petitioner is sought to be prosecuted under Section 494 of the Code, which reads as under:-

“494. Marrying again during lifetime of husband or wife.- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

A perusal of the afore-quoted Section shows that whoever having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife said to have committed an offence under the afore-quoted Section.

Once the factum of marriage between Resham Singh and the petitioner was not proved leading to the acquittal of Resham Singh; such finding became final and was presumably accepted by the respondent as no challenge to the same was made by her, then in my opinion, continuance of the impugned proceedings against the petitioner for prosecuting her under Section 494 of the Code would be an abuse of process of law.

In view of the above, the petition is allowed and resultantly, the impugned complaint and summoning order against the petitioner stand quashed.

No costs.

(DEEPAK SIBAL)
JUDGE

January 09, 2017

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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No