

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M No.38794 of 2015 (O&M)
Decided on: 29.09.2017**

Harminder Singh

....Petitioner

Versus

Mukand Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Harshit Jain, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for quashing of the order dated 03.07.2014 (Annexure P2) passed by the trial Court dismissing the complaint No.31 dated 14.07.2010 as well as the order dated 11.09.2015 (Annexure P1) passed by the Revisional Court vide which the revision petition filed by the petitioner was dismissed.

Brief facts of the case are that the petitioner filed a complaint under Sections 420, 494, 467, 468, 120-B read with Section 34 of the Indian Penal Code (in short 'IPC') against his father namely Mukand Singh – accused No.1, Gursharan Kaur – accused No.2 with whom the accused No.1 has performed the second marriage, Parkash Kaur – accused No.3, the real sister of accused No.1 and one Major Singh – accused No.4. As per the allegations in the complaint, father of the petitioner i.e. accused No.1 – Mukand Singh performed second marriage with Gursharan Kaur – accused No.2 in the year 1960 whereas his mother namely Sukhdarshan Kaur died in the year 2007. It is further pleaded that after the death of mother of the petitioner in the year 2007,

Mukand Singh and Gursharan Kaur applied for registration of their marriage before the Registrar of Marriages and in those proceedings, accused No.1 i.e. father of the petitioner filed an affidavit declaring his marital status to be unmarried whereas he was a widower and as such, both the accused persons have committed fraud and cheating with the Registrar of Marriages. It is alleged that accused No.3 – Parkash Kaur who is real sister of accused No.1 has also shown favours to him and, therefore, she is also a part of criminal conspiracy. It is further alleged that marriage of respondent No.1 – Mukand Singh with mother of the petitioner – Sukhdarshan Kaur was performed in the year 1946 and 04 children were born out of this wedlock including the present petitioner/complainant, his brother Shamsher Singh, Devinder Singh and Bhupinder Singh. Since, marriage between accused No.1 and 2 was registered on 21.10.2009 by furnishing false information and affidavits, it is stated that a fraud has been committed with the Registrar of Marriages and accordingly, it is prayed that all the accused persons be punished, in accordance with law.

In support of his evidence, the petitioner examined CW1 – Shamsher Singh, CW2 – Jaswant Singh, Ex-Sarpanch of village Issapur, CW3 – Jagroop Kaur, CW4 – Kartar Singh, Namberdar of village Chaunda, CW5 – Amarjit Singh, CW6 – Harminder Singh and CW7 – Sukhdev Singh. The statement of all the complainant's witnesses is to the effect that marriage between accused No.1 – Mukand Singh and mother of the petitioner/complainant – Sukhdarshan Kaur was performed in the year 1946 and it was a subsisting marriage when accused No.1 performed his second marriage with accused No.2, the

real sister of mother of the petitioner on 18.02.1960.

The trial Court vide its judgment dated 03.08.2014 dismissed the complaint by observing that since 1960 till 2010, when the complaint was filed, the petitioner or any of his brother has not filed any complaint regarding the second marriage of their father and holding that no offence of cheating is made out as the necessary ingredients of Section 420 IPC are not made out. It was also held that no offence of forgery is proved on record from the evidence led by the petitioner/complainant and, therefore, the complaint was dismissed.

The petitioner, thereafter, filed the revision before the Additional Sessions Judge, Sangrur which was also dismissed vide impugned order dated 11.09.2015.

It is submitted on behalf of the petitioner that during the pendency of the complaint, the trial Court has directed the SHO to submit a report under Section 202 Cr.P.C. and as per the report, it was held that accused No.1 – Mukand Singh was married to Sukhdarshan Kaur earlier and with the consent of Sukhdarshan Kaur, Mukand Singh performed second marriage with accused No.2, who is real sister of Sukhdarshan Kaur. Accordingly, it is submitted that the trial Court has not taken into consideration this report while passing the impugned order. It is also submitted that by giving a wrong declaration in the affidavit before the Registrar of Marriages, accused Nos.1 and 2 have committed the offence of cheating and forgery.

The operative part of the judgment dated 11.09.2015 passed by the Lower Appellate Court reads as follows:-

“7. In the preliminary evidence, he examined his

brother Shamsher Singh as CW1, Jaswant Singh Ex-Sarpanch as CW2, Jagrup Kaur, sister of Mukand Singh as CW3, Kartar Singh Nambardar as CW4, Amarjit Singh Nambardar as CW5, himself as CW6 and Sukhdev Singh as CW7.

8. Vide order dated 10.07.2012, the complaint was ordered to be dismissed by the Lower Court. The said order was set-aside vide judgment dated 11.09.2013 of the Court of learned Additional Sessions Judge, Sangrur and the learned Lower Court was directed to hold further inquiry and proceed in accordance with law. Then vide the impugned order, the complaint was again dismissed. As per the marriage registration certificate Ex.PW6/B, marriage of Mukand Singh with Gursharan Kaur took place on 18.02.1960. The complainant or any of his family members do not file any complaint regarding marriage of his father Mukand Singh with his step-mother Gursharan Kaur immediately after their marriage. Learned counsel for the respondents has relied upon the law settled in Dr. Manish Das vs. State of U.P. and another, 2007(2) RCR (Criminal) 556 and has submitted that the complaint filed under Section 494 IPC by the son regarding the second marriage of his father with his step-mother is not maintainable. In the said case, the complaint under Section 494 IPC was not filed by the wife, but was filed by her father on her behalf. It was held that initiation of prosecution on such complaint is not proper and the Magistrate is not justified in taking cognizance of same. In the present case, no complaint under Section 494 IPC regarding offence of bigamy was filed by Sukhdarshan Kaur, the mother of the complainant. The complaint filed by the son of Sukhdarshan Kaur is not proper in view of the law settled in the above mentioned ruling.

9. There is oral evidence on record that

marriage of respondent Mukand Singh with Sukhdarshan Kaur was solemnized in the year 1946. No documentary evidence is on record to prove the date of marriage of Mukand Singh with Sukhdarshan Kaur. The date of marriage of respondent Mukand Singh with Gursharan Kaur is mentioned in the marriage certificate Ex.CW6/B as 18.02.1960. The offence of bigamy punishable under Section 494 IPC or the offence for giving false information and affidavits could have been proved, if it was proved that respondent Mukand Singh was married with respondent Sukhdarshan Kaur and their marriage subsisted on 18.02.1960. The death certificate of Sukhdarshan Kaur Ex.CW6/A reveal that she died on 30.05.2007. The school certificates of Harminster Singh Ex.C7, Devinder Singh Ex.C8, voter card Ex.C9 of Sukhdarshan Kaur reveal that Mukand Singh is the father of complainant Harminster Singh and Devinder Singh and husband of Sukhdarshan Kaur, but these documents do not prove the date of marriage of Mukand Singh with Sukhdarshan Kaur. Thus, the evidence on record does not prove that marriage of Mukand Singh and Sukhdarshan Kaur subsisted, when the marriage of Mukand Singh and Gursharan Kaur took place on 18.02.1960. The allegations that all the respondents furnished false information to the Registrar of Marriages that Mukand Singh was unmarried at the time of his marriage with Gursharan Kaur on 18.02.1960 are not prima facie proved from the evidence on record.

10. It has been held in Smt. Nagawwa vs Veeranna Shivalingappa Konjalgi and others, AIR 1976 Supreme Court 1947 as under:-

“It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the

allegations, but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 which culminates into an order under Section 204.”

In view of the law settled in this ruling, I am of the opinion that the Magistrate has rightly exercised his discretion in not summoning the respondents as accused and this Court cannot substitute its own discretion for that of the Magistrate and cannot order the Magistrate to summon any of the respondents. Moreover, the delay in filing of the complaint is also to be taken into consideration. More than 50 years have passed since the marriage of Mukand Singh with Gursharan Kaur. This delay has rightly been considered by the learned Lower Court while passing the impugned order.

11. As a result of discussion made above, no ground is made out to interfere with the impugned order, hence, the same is upheld and the revision petition is ordered to be dismissed. File be consigned. Lower Court record along with copy of this judgment be returned forthwith.”

After hearing counsel for the petitioner, I find no merit in the present petition. As per the allegations in the complaint itself, the second marriage was performed by father of the petitioner way-back in the year 1960 and till 2010, for a period of about 50 years, no complaint whatsoever was lodged with any authority or Court. There is no

explanation of this unexplained delay and the only reasoning given while filing the complaint is that it is filed after registration of the marriage of accused Nos.1 and 2 will not condone such delay. Moreover, both the Courts below have rightly held that by registering the marriage, accused Nos.1 and 2 have neither committed any offence under Section 420 IPC or under Sections 467, 471 IPC as no forgery on the part of accused Nos.1 and 2 has been proved.

Accordingly, I find no merit in the present petition.

Dismissed.

At this stage, counsel for the petitioner has argued that he has reasonable apprehension that in view of filing of this complaint his right of inheritance, if any, will be effected.

I find no substance in this argument as well, however, it will always be open for the petitioner to avail his civil remedy, in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

29.09.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No