

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

1. Crl. Revn. No. 2025 of 2016

Mamta SharmaPetitioner

versus

State of Haryana and ors. ...Respondents

2. Crl. Revn. No. 2118 of 2016

MukeshPetitioner

versus

State of Haryana ...Respondent

Date of decision : 17.03.2017

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Parveen K. Kataria, Advocate
for the petitioner in CRR No. 2025 of 2016

Ms. Mahima Yashpal, AAG, Haryana

Mr. Vinod S. Bhardwaj, Advocate
for respondent No. 2 and 3 in CRR No. 2025 of 2016
and for the petitioner in CRR No. 2118 of 2016

RITU BAHRI, J.

This order shall dispose of the above two petitions as common question of law and facts are involved in these petitions wherein prayer is for quashing of order dated 18.05.2016.

In 1st petition filed by wife of Mukesh (petitioner in CRR No. 2025 of 2016), the prayer is that the prosecution has not properly framed the charges against Ashok Kumar and Raj Devi.

In 2nd petition filed by Mukesh, prayer is that the Court below has wrongly framed the charge under Sections 493/494/495/376 (2) IPC against the petitioner.

Brief facts of the case are that petitioner-Mamta Sharma got married with Mukesh on 14.07.2013. After marriage, her husband and her in-laws started harassing her and started demanding dowry and started taunting her. In the meantime, on 03.05.2014, petitioner-Mamta Sharma gave birth to a daughter and the in-laws got annoyed on the birth of daughter as they wanted a male child.

Later on petitioner -Mamta Sharma came to know that her husband-Mukesh earlier got married with Preeti Sharma on 08.10.2012 at Arya Samaj Mandir, Delhi but her husband and her in-laws concealed this fact at the time of marriage of Mukesh with the petitioner. Petitioner's husband i.e Mukesh though already married continued to rape-Mamta Sharma despite the fact that her husband's first marriage was not dissolved till date.

In this regard, Mamta Sharma filed complaint with the police and F.I.R No. 63 dated 10.12.2015 was registered under Section 34/376/406/417/493/494/495/498-A/506 IPC in Police Station Women, Bhiwani.

Even the anticipatory bails filed by parents-in-law of petitioner-Mamta Sharma was dismissed by the Court below on 20.01.2016 and by this Court on 08.02.2016 with the observations that petitioners were well aware about the earlier marriage of their son and this fact was not told to the

complainant (P-1). Even SLP filed by respondent Nos. 2 and 3 was dismissed as withdrawn on 18.04.2016.

Thereafter, respondent No. 3-Smt. Raj Devi was granted bail by the police authorities even though she was declined bail uptill Hon'ble the Supreme Court. Thereafter, case was committed to the Court of Sessions Judge, Bhiwani. Copy of challan is Annexure P-2. Thereafter, the Court framed charges under Section 34/406/498-A/506 IPC against all the accused and under Section 493/494/495 and 376(2) IPC against Mukesh Kumar only and the present revision petition has been filed by Mamta Sharma challenging the non-framing of charges under Sections 493/494/495 and 376(2) IPC against respondent Nos. 2 and 3.

On the other hand, in the 2nd petition filed by Mukesh, challenge is to the impugned order dated 18.05.2016 on the ground that the Court below has wrongly charge-sheeted him for the offence punishable under Sections 493/494/495/376(2) IPC without appreciating the nature of allegations levelled.

Mr. Vinod S. Bhardwaj, learned counsel for the petitioner-Mukesh has relied upon judgment of Hon'ble the Supreme Court in a case of ***Yamuna Bai Anantrao Adhav v. Aantrao Shivram Adhav and another, 1988(1) SCC 530*** to contend that no offence under Section 376 IPC is made out against Mukesh, as Hon'ble the Supreme Court while dealing with a case wherein Hindu Woman married after coming into force of Hindu Marriage Act, 1955 in accordance with Hindu Rites with a Hindu Male having a wife living, she was held not entitled to maintenance under Section 125 Cr.P.C as

such marriage is void ipso jure under Section 11 of Hindu Marriage Act. It was held that A marriage which is void under Section 11 can be held to be so without a formal declaration by a Court in a proceedings.

Mr. Parveen K. Kataria, learned counsel for the petitioner-Mamta Sharma on the other hand has argued that even if the first marriage of Mukesh was void, but he cannot avoid his responsibility towards second wife i.e present petitioner Mamta Sharma, Mukesh has to get decree of divorce from the Competent Court.

This aspect has been considered by Hon'ble the Supreme Court in a case of ***Deoki Panjhiyara v. Shashi Bhushan Narayan Azad and another, 2013(2) SCC 137*** wherein petitioner allegedly contracted second marriage with respondent as per Hindu Rites during subsistence of her first marriage with another person. She had filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and her husband had produced the marriage certificated dated 18.04.2003 issued under Section 13 of the Special Marriage Act with regard to her first marriage. Thus, he had taken a stand that second marriage of appellant with him was void and he was not liable to make payment any interim maintenance. In para 22, 23 and 25, it has been observed as under:-

22. In the present case, if according to the respondent, the marriage between him and the appellant was void on account of the previous marriage between the appellant and Rohit Kumar Mishra the respondent ought to have obtained the necessary declaration from the competent court in view of the highly contentious questions raised by the appellant on the aforesaid score. It is only upon a

declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a “relationship in the nature of marriage” would be justified. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage

23. We would also like to emphasise that any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005.

25. We, accordingly, hold that the interference made by the High Court with the grant of maintenance in favour of the appellant was not at all justified. Accordingly, the order dated 09.04.2010 passed by the High Court is set aside and the present appeals, are allowed.

In the present case, it is not in dispute that Mukesh has performed marriage with one Preeti on 08.10.2012. Thus, he had to get decree of divorce from the first wife before performing the second marriage with Mamta Sharma. Thus, prima facie a case under Section 376(2) IPC has rightly been framed against him. On the oral deposition of Mukesh that his first marriage with Preeti was within relations, would not be sufficient to quash the impugned order, as at the time of framing of charges, the Court has to see only prima facie evidence.

Now, with regard to the petition filed by Mamta Sharma with regard to non-framing of charges under Sections 493/494/495 and 376(2) IPC against respondent Nos. 2 and 3, Mr. Parveen K. Kataria, learned counsel for the petitioner submits that once the fact that Mukesh has earlier been married to one Preeti Sharma was in the knowledge of respondent NO. 2 and 3, they are also liable to be charge sheeted under Sections 493/494/495 and 376(2) IPC, as respondent Nos. 2 and 3 and Mukesh were residing together. Preeti was daughter of real masi of Mukesh and their marriage had been solemnized on 08.10.2012 and thereafter, Preeti was married to some one else and Mukesh was married with the petitioner- Mamta Sharma without disclosing the fact that Mukesh was earlier married as well. Mukesh has not taken any divorce from the competent Court.

Reference has been made to the judgment of Hon'ble the Supreme Court of India in a case of ***Bhupinder Singh vs. U.T Chandigarh, 2008(3) RCR Crl 671*** wherein the petitioner without disclosing the fact that he is already a married man, performed second marriage with prosecutrix

and have sex with her. Thus, it was held to be rape and second marriage was *void ab initio*. He was convicted and sentenced to 03 years rigorous imprisonment and to pay a fine of Rs. 1 lac. His appeal was dismissed by Hon'ble the Supreme Court.

Reference can now be made to a judgment of Delhi High Court in a case of ***Divya Oram Kujur vs. State and another, passed in Crl. Revn. No. P193/2012, decided on 27.02.2013***, wherein the petitioner was married to respondent No. 2 in the year 2005 and after marriage petitioner had sexual relations with the respondent-husband. She even pressurized the respondent-husband to have a Court marriage and an affidavit in this regard was sworn by the parties. But in the year 2010, petitioner came to know that respondent-husband was already married. Hon'ble the Delhi High Court allowed the petitions and held that the approach of the learned ASJ in discharging the respondent-husband on the ground that there was no prima facie case against him for the offence under Section 376 IPC was illegal. The impugned order was set aside.

In ***Surekha Singh vs. State of Madhya Pradesh, 2014 CriLJ 1194***, Hon'ble Madhya Pradesh High Court allowed the petition filed by the wife wherein parents of accused were residing with the accused and the prosecutrix and they did not inform about the actual position with regard to the first marriage of her husband, it was held that they participated in the criminal conspiracy done by the accused and thus the charge under Section 376 IPC was held to be framed against the remaining accused persons with the help of Section 120-B and Section 34 of IPC .

In the present case as well, the parents i.e respondent Nos. 2 and 3 were well aware of the fact that Mukesh had earlier married to one Preeti and without giving divorce to her, he performed second marriage with the petitioner-Mamta Sharma.

Applying the ratio of the *Surekha Singh's case (supra)* to the facts of the present case, the revision petition i.e CRR No. 2025 of 2016 is allowed and the revision petition CRR No. 2118 of 2016 is dismissed.

The learned trial Court is directed to call the case file and after hearing the learned counsel for the parties, a fresh order be passed for framing of charges and thereafter, charges shall be framed according to law.

Parties are directed to appear before the Addl. Sessions Judge/Exclusive Court on 30.03.2017.

17.03.2017
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No