

\$~8

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

+ **CRL.M.C. 883/2017 & CrI.M.A. 3720/2017 (stay)**

POONAM & ORS.

..... Petitioner

Represented by: Mr. K.D. Saini, Adv.

versus

PANKAJ JOSHI

..... Respondent

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

11.04.2017

%

1. At the outset it may be noted that the present petition has been filed by three petitioners namely Poonam, Bhopal Saini and Smt. Bimla. Though in the complaint case filed by the respondent, Poonam, Bhopal Saini and Bimla were arrayed as accused, however the learned Metropolitan Magistrate issued summons only to the petitioner No.1 for offence punishable under Section 495 IPC vide order dated 9th November, 2016. Inadvertently, the summons were received by all the three petitioners and the learned Metropolitan Magistrate vide order dated 23rd January, 2017 clarified that summons were issued only against petitioner No.1 i.e. Poonam. Thus the present petition qua petitioner No.2 and 3 is dismissed.

2. In respect of summons issued to the petitioner No.1, it is the case of

CRL.M.C. 883/2017

page 1 of 3

the respondent that the petitioner No.1 was already married when she solemnized the marriage with respondent/ complainant and the factum of her previous marriage was concealed from him.

3. Learned counsel for the petitioner submits that since the respondent was present at the time of the first marriage of the petitioner and the father of the respondent was present at the time of the dissolution of the first marriage of the petitioner, the ingredients of offence under Section 495 IPC are not fulfilled and no summons could be issued to her.

4. It is well settled that at the stage of issuing summons the statement of the complainant and its witnesses recorded on oath and the material placed on record by the complainant has to be looked into. The respondent who appeared and examined himself as CW-1 deposed that he was married to the petitioner No.1 on 23rd February, 2015 as per Hindu rites and ceremonies at Arya Samaj Mandir. He further deposed that none of the accused disclosed that petitioner No.1 was previously married and believing the petitioner No.1 to be virgin he married her. He further deposed that on 10th November, 2015 the respondent/ complainant came to know that petitioner No.1 was already married and her marriage took place in the presence of one Shri Baldev Raj Halwai because he was engaged as a halwai at the time of the first marriage of the petitioner No.1 with Sandeep Kumar.

5. Learned counsel for the petitioner further submits that the statement of the petitioner recorded by the learned Family Judge vide Ex.CW-1/5 and CW-1/6 wherein she admitted that her earlier marriage was not dissolved by a Court of law could not be used by the learned Metropolitan Magistrate for summoning the petitioner in view of the order passed in appeal by this

Court.

6. Even ignoring the admission of the petitioner No.1 before the learned family Court, only on the basis of deposition of the respondent/ complainant stating that he got married to the petitioner No.1 and prior to that she was already married which marriage has not been dissolved, a prima facie case for commission of an offence under Section 495 IPC is made out. Whether the respondent had the knowledge of the earlier marriage of the petitioner No.1 or the divorce had taken place in accordance with law would be the defence of the petitioner No.1 and cannot be gone into at this stage.

7. Finding no error in the impugned order summoning the petitioner No.1, petition and application are dismissed.

MUKTA GUPTA, J.

APRIL 11, 2017
‘ga’