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

DECIDED ON : JULY 21, 2017

+ **Crl.M.C.2063/2017**

MS NEETU SINGH

..... Petitioner

Through : Ms.Geeta Luthra, Sr.Advocate with
Mr.Kumar Sushabhan, Advocate.

VERSUS

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (OPEN COURT)

Crl.M.A.8489/2017 (Delay)

For the reasons mentioned in the application, the delay in re-filing the petition is condoned.

The application stands disposed of.

Crl.M.C.2063/2017 & Crl.M.A.8487/2017

1. Present petition under Section 482 Cr.P.C. has been filed by the petitioner to challenge the legality and correctness of an order dated 4.8.2016 of learned Additional Sessions Judge in Criminal Revision No.57420/2016 whereby the order dated 26.10.2015 of learned

Metropolitan Magistrate in Complaint Case No.55/1/2015 by which she was summoned to face proceedings under Section 494/495 IPC was upheld.

2. I have heard the learned Senior counsel for the petitioner and have examined the file.

3. Perusal of the file reveals that in the Complaint Case filed under Section 200 Cr.P.C. against the petitioner and others, the complainant Rajeev Saumitra averred that marriage between him and the petitioner took place on 12.03.2006. The marriage was consummated and a child was born out of the wedlock on 18.11.2008. It is further alleged that the petitioner had concealed the factum of her previous marriage with one Capt.Bacchan Singh Chauhan. At the time of petitioner's marriage with the complainant, her marriage with Capt.Bacchan Singh Chauhan was subsisting and she deliberately concealed the said fact claiming herself to be spinster. In November, 2014, he came to know that the petitioner was already married before marrying him. On 31.1.2015, when he was looking for some documents with regard to his company, he noticed a photocopy of a certified copy issued by the Court of Sh.Dinesh Dayal, ADJ, Delhi in personal file of the petitioner. Thereafter, he applied for certified copies and came to know about the factum of marriage of the petitioner with Capt. Bacchan Singh Chauhan.

4. In pre-summoning evidence, the complainant examined himself as CW-1. He proved various documents including marriage card in respect of his marriage with the petitioner (Ex.CW-1/A); copies of affidavits sworn in First Motion Petition (Ex.CW1/B and CW-1/C); certified copy of the said petition (Ex.CW-1/D); copy of marriage

certificate in respect of previous marriage of the petitioner with Capt.Bachhan Singh Chauhan (Ex.CW-1/E) and certified copy of the statement and order dated 9.10.2000 and photographs of previous marriage of the petitioner (Ex.CW1/F) collectively. On perusal of the material and after considering the submissions of the complainant, the trial court summoned the petitioner for commission of offences punishable under Sections 494/495 IPC by an order dated 26.10.2015. The said order was challenged in Criminal Revision No.57420/2016. By a detailed order dated 04.08.2016, the Revisional Court dismissed the revision.

5. Learned Senior counsel for the petitioner urged that the necessary ingredients regarding valid marriage between the petitioner and Capt.Bachhan Singh Chauhan have not been incorporated in the complaint and there was no evidence/proof if necessary ceremonies including 'Sapdapadi' as per Hindu rites and rituals had taken place that time. It was incumbent for the complainant to establish that both the marriages with him and with Capt.Bachhan Singh Chauhan were valid in law. She further urged that the complaint case was not maintainable as the complainant was not an 'aggrieved person'.

6. At the outset, it may be mentioned that there is no categorical denial if the petitioner had not performed marriage with the complainant on 12.03.2006. She did not deny if the child was not born out of this wedlock. There are specific and definite allegations in the complaint whereby the petitioner concealed the factum of her previous marriage with Capt.Bacchan Singh Chauhan. The complainant has produced various documents to prima facie infer that Capt.Bacchan

Singh Chauhan had married the petitioner on a specific date and the said marriage was subsisting at the time of her marriage with him. These allegations cannot be brushed aside or ignored at this stage. Reliability or veracity of allegations made in the complaint cannot be gone into in the exercise of powers under Section 482 Cr.P.C. Well-settled position is that at the stage of summoning, no roving inquiry is required to be made. Only *prima facie* view is to be taken by the court at that stage to make up the mind on the basis of material available before it as to whether there existed sufficient grounds to proceed against such accused or not.

7. Whether complaint under Sections 494/495 IPC is maintainable by the spouse of second marriage is no longer *res integra* as Apex Court in *A. Subash Babu vs. State of Andhra Pradesh* (2011) 7 SCC 616 has, on this aspect, observed as under:-

“If the woman with whom the second marriage is performed by concealment of the former marriage is entitled to file a complaint for commission of offence under Section 495 IPC, there is no reason why she would not be entitled to file a complaint under Section 494 IPC more particularly when Section 495 IPC is an extension and part and parcel of Section 494 IPC.

For all these reasons, it is held that the woman with whom a second marriage is contracted by suppressing the fact of former marriage would be entitled to maintain a complaint against her husband under Sections 494 and 495 IPC.

The argument that the learned Magistrate could not have taken cognizance of the offence punishable under Sections 494 and 495 IPC on the basis of the police report i.e. charge-sheet, as those offences are non-

cognizable and therefore, the relief claimed in the petition filed before the High Court under Section 482 of the Code should have been granted as devoid of merits.”

8. In the light of the above discussion, I find no merit in the present petition and the same is dismissed. All pending application(s) also stand disposed of.

9. Observations in the order shall have no impact on merits of the case.

JULY 21, 2017/sa

**S.P.GARG
(JUDGE)**

भारतमेव जयते