

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.945 of 2015

Order Reserved on : 14.9.2018

Order Passed on : 27.11.2018

Smt. Manti Sahu, W/o Mahesh Ganjir, aged about 42 years, (D/o Ram Dayal Sahu, mentioned in the impugned order), R/o Village and Post Belgaon, P.S. and Tahsil Dongargarh, Civil and Revenue District Rajnandgaon, Chhattisgarh

---- Applicant

versus

1. Mahesh Ganjir, S/o Dharmuram Ganjir, aged about 45 years, R/o Ward No.8, Sevatapara, Dongargaon, P.S. Dongargaon, District Rajnandgaon, Chhattisgarh
2. State of Chhattisgarh through District Magistrate, Rajnandgaon, District Rajnandgaon, Chhattisgarh

--- Respondents

Applicant	:	Smt. Manti Sahu in person
For Respondent No.1	:	Shri H.S. Ahluwalia, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The present revision is directed against the order dated 10.8.2015 passed by the Sessions Judge, Rajnandgaon in Criminal Revision No.15 of 2015, whereby the Learned Sessions Judge/Revisional Court has allowed the revision preferred by Respondent No.1/accused Mahesh Ganjir and set aside the order of the Trial Court framing charges under Sections 493 and 496 of the Indian Penal Code against Respondent No.1/accused.
2. Facts, in brief, are that Applicant Smt. Manti Sahu filed a private complaint against Respondent No.1 Mahesh Ganjir stating that

both of them belong to same community. Respondent No.1/accused expressed his love to her and thereafter on 8.5.2008 he performed marriage with her in Sankardahra Temple at Dongargaon. After the marriage, both of them lived together in a rented house at Dongargaon. Thereafter, he took her to different places on excursion and during that period he regularly made physical relationship with her. During the period of excursion, he spent her money. After return to Dongargaon, he again made demand for money from her and when she refused to give, he refused her to keep with him. As a result of which, she went to her paternal house and issued him a legal notice. Thereafter, he came back to her and assured that he will provide her all rights of a wife and he also executed an agreement. After sometime, he disclosed that he was already married and was also having a child from that wife. When she was going to lodge a report against him, his first wife and his other family members made her a request and assured that they will give her all rights of a wife. Thereafter, she was taken to Boramdeo Temple at Kawardha, where again marriage between her and Respondent No.1/accused was performed and she was allowed to live with Respondent No.1. After sometime, Respondent No.1 again started subjecting her to harassment. She made an attempt to lodge a report, but the same was not registered. Therefore, she filed the private complaint against Respondent No.1 before the Court of Judicial Magistrate First Class, Rajnandgaon for taking cognizance of offence punishable under Sections 294, 323, 493, 494, 495, 496 and 506B of the Indian Penal Code. After taking evidence under Sections 200 and 202 of the Code of Criminal Procedure, the Court of Judicial Magistrate First Class, Rajnandgaon took cognizance of

the offence and directed the Applicant/Complainant to adduce her evidence before framing of charge against Respondent No.1/accused. The Applicant examined herself and her other witnesses. The Judicial Magistrate First Class, Rajnandgaon, after perusal of the material available on record, framed charges under Sections 493 and 496 of the Indian Penal Code against Respondent No.1/accused vide order dated 7.1.2015 passed in Criminal Complaint Case No.43 of 2011. Challenging the order dated 7.1.2015, Respondent No.1/accused preferred a revision, being Criminal Revision No.15 of 2015 before the Court of Session at Rajnandgaon. The Sessions Judge/Revisional Court, after hearing the parties, allowed the revision vide the impugned order dated 10.8.2015 and set aside the order dated 7.1.2015 passed by the Judicial Magistrate First Class, Rajnandgaon. Being aggrieved by the order dated 10.8.2015 passed by the Sessions Judge, Applicant Smt. Manti Sahu has moved the present revision.

3. It was submitted by Applicant Smt. Manti Sahu herself that the Sessions Judge has held that according to the evidence led by her, it is clear that her marriage was performed with Respondent No.1 at Bhoramdeo Temple, Kawardha after her meeting with the first wife of Respondent No.1 and after knowing the fact that Respondent No.1 was already married. Thus, Respondent No.1 has not committed any fraud with her and, therefore, no charge under Sections 493 and 496 of the Indian Penal Code can be framed against Respondent No.1. While holding so, the Sessions Judge has failed to consider the entire evidence available on record that before performing of marriage between the parties at Bhoramdeo Temple, Kawardha, both had already performed

marriage at Sankardahra Temple, Dongargaon and at that time this fact was not disclosed by Respondent No.1 that he is already married with another woman nor was this fact was within the knowledge of the Applicant. The Sessions Judge has further erred in not considering the evidence adduced by the Applicant/Complainant that after the marriage at Sankardahra Temple, Dongargaon, they lived together at Dongargaon and also visited various other places as husband and wife. The Sessions Judge also failed to consider that on 21.1.2009, Respondent No.1/accused executed an agreement in which also he did not disclose about his first marriage and assured the Applicant/Complainant for keeping her with all grace giving her all rights of a wife. The Sessions Judge has also failed to consider that it is only after few days of execution of the agreement, Respondent No.1 disclosed her about his first marriage and when she was going to lodge a report, his first wife and his other family members asked her not to make a report. Thereafter, again her marriage was performed with Respondent No.1/accused in Bhoramdeo Temple. The Sessions Judge has committed an error in holding that prior to her marriage with Respondent No.1/accused, she was having knowledge of his first marriage and, therefore, the offence under Sections 493 and 496 of the Indian Penal Code is not made out against Respondent No.1.

4. Learned Counsel appearing for Respondent No.1/accused supported the impugned order of the Sessions Judge and submitted that since at the time of performing of marriage at Bhoramdeo Temple, Kawardha, it was well within knowledge of the Applicant/Complainant that Respondent No.1/accused was already

married and even thereafter she performed marriage with him, therefore, no offence under Sections 493 and 496 of the Indian Penal Code is made out against Respondent No.1.

5. I have heard the arguments advanced and perused the records of the Courts below minutely.
6. The principles governing the quashing of charge are well settled. The Court, at the stage of framing charge, is not required to appreciate the evidence and arrive at a conclusion that the materials produced are sufficient for convicting the accused. If the Court is satisfied that a *prima facie* case is made out for proceeding further, then a charge has to be framed. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. It is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not that the relevant pleadings should be considered. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. The gist of circumstances to indicate as to what can lead to a conclusion for framing charge cannot be laid down. Everything will have to

depend upon the facts and circumstances of the case and the averments made.

7. Bearing in mind the principles aforementioned, the facts of the case may be analysed. I have perused the entire complaint filed by the Applicant and the evidence adduced by her before framing of charge. As deposed by the Applicant, on 8.5.2008, a marriage between the Applicant and Respondent No.1 was solemnised at Sankardahra Temple, Dongargaon. The Applicant has further stated that thereafter she resided with Respondent No.1 at Dongargaon and also visited various places on excursion. During that period, physical relationship developed between them as husband and wife. She has further deposed that when Respondent No.1 left her at Village Belgaon, she sent him a legal notice on 5.1.2009 (Ex.P1). Thereafter, he came to her and admitted before witnesses the fact that he had performed marriage with her on 8.5.2008. On 21.1.2009, he executed an agreement (Ex.P4) in which also he admitted that he had performed marriage with her at Sankardahra Temple, Dongargaon on 8.5.2008. As further deposed by this witness, thereafter, for the first time, Respondent No.1/accused introduced her with a woman and a child stating that they are his wife and child. A dispute took place between them. Thereafter, Respondent No.1 again performed marriage with her at Bhoramdeo Temple, Kawardha. On the basis of said, the Judicial Magistrate First Class, Rajnandgaon, vide order dated 7.1.2015, framed charges against Respondent No.1 under Sections 493 and 496 of the Indian Penal Code.
8. The Sessions Judge, vide the impugned order dated 10.8.2015,

set aside the charges only on the ground that at the time of performing marriage at Bhoramdeo Temple, Kawardha, it was in the knowledge of the Applicant that Respondent No.1 was already married with another woman and from that woman Respondent No.1 has a child also and despite knowing these facts, she performed marriage with Respondent No.1. Therefore, no fraud was committed by Respondent No.1 with the Applicant. Thus, no charges under Sections 493 and 496 of the Indian Penal Code are made out. From the evidence available on record itself, it is clear that the Sessions Judge ignored the evidence adduced by the Applicant that Respondent No.1 had first performed marriage with her at Sankardahra Temple, Dongargaon on 8.5.2008. Thereafter, both of them lived together as husband and wife for some period and also visited various places on excursion as husband and wife and during that period, physical relationship had also developed between them. An agreement was executed on 21.1.2009, wherein Respondent No.1 has categorically admitted the fact that he has performed marriage with the Applicant at Sankardahra Temple, Dongargaon on 8.5.2008. After execution of the said agreement, as stated by the Applicant, Respondent No.1, for the first time, disclosed her that he is already married with another woman and he also has a child from that woman. Thereafter, both of them again performed marriage at Bhoramdeo Temple, Kawardha. The Sessions Judge, while appreciating the evidence on record, totally ignored the aforesaid fact. The record shows that the marriages were performed between Respondent No.1 and the Applicant first at Sankardahra Temple, Dongargaon on 8.5.2008 and thereafter at Bhoramdeo Temple, Kawardha after execution of the agreement dated 21.1.2009. Thus, from the

record itself, *prima facie*, it is established that first marriage with the Applicant was performed at Sankardahra Temple, Dongargaon. At that time, Respondent No.1 did not disclose her the fact that he was already married nor this fact came to her knowledge. Thereafter, both resided together and visited various places as husband and wife and physical relationship also developed between them as husband and wife. In these circumstances, there are sufficient evidence on record on the basis of which *prima facie* charges under Sections 493 and 496 of the Indian Penal Code can be framed against Respondent No.1. Thus, the impugned order passed by the Sessions Judge is not in accordance with the evidence adduced by the parties and, therefore, the impugned order is held to be contrary to law. Hence, the impugned order dated 10.8.2015 passed by the Sessions Judge is set aside.

9. Consequently, the present revision filed by Smt. Manti Sahu is allowed. The Applicant and Respondent No.1/accused are directed to remain present before the Court of Judicial Magistrate First Class, Rajnandgaon on **4th January, 2019**. The Judicial Magistrate First Class/Trial Court is directed to expedite the hearing and decide the matter as early as possible.
10. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(**Arvind Singh Chandel**)
JUDGE