

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CRM No.M-17691 of 2018

Date of decision:30.4.2018

Rajo Devi

... Petitioner

versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.D.P.S.Bajwa, Advocate,
for the petitioner

...

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner seeks a direction to the State of Haryana and various police authorities as have been impleaded as respondents no.2 to 6, to take appropriate action against respondent no.7, as per law and the facts of the case. It is stated that he has enticed away the petitioners' daughter, Manjeet Kaur, and has married her on 25.01.2018, even though, as per the petitioner, respondent no.7, Ajay, is already married to a lady (whose particulars are given in paragraph 6 of the petition), from whom he is stated to have a 4 year old daughter.

As per the petitioner, the second marriage, with the petitioners' daughter, has been performed by respondent no.7 without obtaining a decree of divorce from his first wife. Hence, the allegation is that he has committed an offence punishable under Section 494 of the IPC, and consequently, respondents no.2 to 6, being the DGP and other police officials/officers, should take action against respondent no.7.

In this context, it is necessary to notice that Section 494 of the IPC reads as follows:-

“Section 494. Marrying again during lifetime of husband or wife.-

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception- This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

Admittedly, it is a non-cognizable offence, which is also compoundable by the husband or the wife of the person marrying for the second time.

Other than that, it would be necessary to refer to the relevant part of Section 198 of the Cr.P.C. which reads as follows:-

“198.Prosecution for offences against marriage.-

(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code(45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that-

xxx	xxx	xxxx
xxx	xxx	xxxx

(c) where the person aggrieved by an offence punishable under section 494 of the Indian Penal Code(45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister.

(2) For the purposes of sub-section (1), no person other than the

husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

xxx	xxx	xxxx
xxx	xxx	xxxx
xxx	xxx	xxxx

(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code, (45 of 1860) where such offence consists of sexual inter-course by a man with his own wife, the wife being under fifteen years of age, if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.”

[It may be noticed that provisos (a) and (b) to sub-section 1; and sub-sections 3, 4 and 5, pertain to minors or persons of ill health, and a person serving in the Armed Forces, neither of which is applicable to the present case, the petitioners' daughter being of the age of majority.]

After arguing for some time, upon a query put by this Court to learned counsel for the petitioner, with regard to the competent person to initiate proceedings under Section 494 IPC (bigamy), he could not deny the fact that it is a non-cognizable offence and as such cognizance thereof could only be taken up on a complaint instituted by the aggrieved person.

Therefore, as described in Section 198 Cr.P.C., though undoubtedly the mother is one of such persons who can be said to be aggrieved, in terms of proviso (c) of sub-section 1 of Section 198, however, it is not the police that would be competent to take any action against respondent no.7, but only a competent court, upon any such complaint being brought before it, by a person competent to do so.

It is also to be noticed that, as recorded in the order of this Court dated 1.2.2018, passed in CRM-M-4076 of 2018, by which petition the daughter of the petitioner, Manjeet Kaur, had sought protection of life and liberty along with respondent no.7 herein, whom she contended that she had married, it had been noticed by this Court that the said daughter (Manjeet Kaur) was well above the age of majority, she being anything between 23 to 28 years of age.

That being so, even presuming that respondent no.7 has entered into a second marriage with the petitioners' daughter without having the first marriage annulled as per law, without actually making any comment on that contention of learned counsel, it would first be the petitioners' daughter, Manjeet Kaur, who would be competent to institute any proceedings for having been duped by respondent no.7, though of course the petitioner being the mother of Manjeet Kaur may be competent to institute a criminal complaint before the competent court, which would go into it and would decide wholly upon merits, as to its maintainability; and if it is found to be maintainable, as to whether any offence is made out against respondent no.7 or not.

Therefore, the question of any investigation by the respondent-State or respondents no.2 to 6, in the opinion of this Court, would not arise, especially when there is no allegation by the petitioners' daughter that she has been duped by respondent no.7.

In the aforesaid circumstances, when this Court was not inclined to entertain this petition, learned counsel submits that he may be permitted to withdraw it.

Dismissed as withdrawn.

30.4.2018
pk/vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes