

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No. 25432 of 2014 (O&M)
Date of Decision: January 23, 2018

Renu Maulay Sehgal

..Petitioner(s)

Versus

Rajesh Singh Sehgal and another

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.R. Takkar, Advocate
for the petitioner.

Mr. Rajbir Singh, Advocate
for respondent no.1.

Mr. Rajbirinder Singh Chahal, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

The petitioner has challenged the order passed by the Chief Judicial Magistrate, Gurgaon, vide which the complaint filed by her under Section 494 of the Indian Penal Code has been dismissed. The accused were not summoned. She has also challenged the order passed by the Additional Sessions Judge, dismissing the revision against the order of the Chief Judicial Magistrate.

The petitioner is a Pilot with Air India. Her husband is also a Pilot with another airways. They were married in February 1997. A complaint was filed by the wife seeking to summon the husband and respondent no.2. The allegations were that during the subsistence of her marriage respondent no.1 had married respondent no.2.

By way of preliminary evidence, the complainant examined herself and produced documents Annexure P-1 to Annexure P-3 to show that a show cause notice had been issued by Jet Airways to respondent no.1 as he had availed Station Travel Request for respondent no.2 and had mentioned his relationship with respondent no.2 as a wife whereas only a spouse could travel and in the personal record respondent no.1 had given the name of his wife which was different.

The trial Court on examination of the evidence referred to the provisions of Section 494 Cr.P.C. and held that the complainant had failed to lead evidence to show that there was any valid ceremony under the customs which were applicable to the parties. It extensively referred to a number of judgments rendered by the Apex Court and it was held that the factum of second marriage was not proved, therefore, the accused could not be summoned and the complaint was dismissed.

Aggrieved by the order, the complainant filed a revision, which was dismissed for the same reasons. The Revisional Court also refused to exercise the revisory powers under Section 397 Cr.P.C.

I have heard the counsel for the parties at length and I am unable to agree with the submissions made here.

The counsel had referred extensively to Annexures P-1 to P-3 and it was urged that a show cause notice had been issued to the accused. He has also referred to the reply to the show cause notice and it was sought to be urged that there was an admission by him that he

had travelled with respondent no.2 and those documents were enough to *prima facie* arrive at a finding that the accused had married another woman during the subsistence of the first marriage.

A reading of the complaint shows that the complainant has nowhere alleged that respondent no.1 has solemnized marriage with respondent no.2. The only assertion therein is that both the respondents were living together. In order to succeed and to attract culpability under Section 494 Cr.P.C., the complaining spouse has to prove *prima facie* that the other person has married during the subsistence of their marriage. Meaning thereby that solemnization of the second marriage is a *sine qua non* to attract the punishment. The complainant has not asserted in her complaint that respondent no.1 had married respondent no.2, however, she asserted that they were living together as husband and wife. The ingredients of Section 494 Cr.P.C. are not attracted and were rightly not considered enough to *prima facie* summon the accused to face trial for the offence of *bigamy*. There is no merit in the petition and is dismissed.

(ANITA CHAUDHRY)
JUDGE

January 23, 2018
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No