

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-31186-2011 (O&M)

Date of decision: 09.02.2018

Rukmani

... Petitioner

Vs.

Mehar Chand and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sandeep Kotla, Advocate
for the petitioner.

Mr. R.S. Mamli, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of the order dated 27.08.2011 passed by the Additional Sessions Judge, Fatehabad, vide which the revision petition filed by respondent No.1 Mehar Chand against the order dated 23.08.2010 passed by the trial Court framing charge against respondent No.1 under Section 494 of the Indian Penal Code (for short 'IPC'), was allowed and charge under Section 494 IPC was dropped against the respondent-accused.

Brief facts of the case are that the petitioner filed a criminal complaint under Section 494/34 IPC against the respondents Mehar Chand and Bimla Devi alleging her to be wife of Mehar Chand. She alleged that the marriage of the complainant was solemnized with accused Mehar Chand on 22.03.1976. Similarly, the marriage of younger sister of the complainant namely Saraswati Devi was solemnized with younger brother of accused Mehar

Chand i.e. one Rameshwar Dass. It is further alleged in the complaint that no child was born out of this wedlock and the accused No.1 Mehar Chand after some time started residing in a different village and did not come to the place of residence of the complainant. On inquiry, complainant came to know that accused No.1 Mehar Chand has solemnized second marriage with accused No.2 Bimla Devi, during subsistence of marriage of the complainant with Mehar Chand.

After recording the preliminary evidence, the trial Court summoned only accused No.1 Mehar Chand. Thereafter, in the pre-charge evidence, complainant appeared as PW1 and deposed on the lines of the complaint. Her sister Saraswati Devi appeared as PW2 and she also deposed on the same lines. Similarly, husband of Saraswati Devi namely Rameshwar Dass who is brother of accused No.1 Mehar Chand, appeared as PW3 and stated that on their verification, it came to know that Mehar Chand has solemnized second marriage. Thereafter, the trial Court vide order dated 23.08.2010 framed charge against Mehar Chand under Section 494 IPC.

Respondent No.1 Mehar Chand filed a revision petition before the Additional Sessions Judge challenging the order dated 23.08.2010 passed by the trial Court. The revisional Court, after issuing notice to the petitioner, vide its order dated 27.08.2011, allowed the revision petition and set aside the charge under Section 494 IPC framed by the trial Court.

Counsel for the petitioner has submitted that respondent Mehar Chand has filed a revision petition thereby challenging the order dated 23.08.2010 framing charge against him and since the summoning order was never challenged, therefore, the revision petition was not maintainable. Counsel

for the petitioner has relied upon **Daljit Singh Narula Vs. State and others, 2005 (4) RCR (Crl.) 241**, wherein the Delhi High Court has held that without challenging the summoning order, the revision petition filed against the order of framing charge is not maintainable. Counsel for the petitioner further submits that the impugned order passed by the revisional Court is erroneous, as it is proved from the statements of PW1, PW2 and two officials of Food and Supplies Department namely Rajdeep Singh who appeared as PW5 and Ajit Singh as PW6 to prove the ration card of Mehar Chand that the marriage between Mehar Chand and Bimla Devi was performed during the subsistence of his marriage with the complainant.

Counsel for the petitioner has further submitted that the order framing charge even if is not a speaking order, assigning reasons, the same is passed by the trial Court and the Court has recorded a finding that a prima face case under Section 494 IPC is made out against the accused Mehar Chand and he had been charge-sheeted accordingly. It is thus submitted that the question whether the evidence adduced was sufficient to convict the accused persons, need not be considered at the stage of framing of charge.

In reply, learned counsel for the respondents has argued that from the evidence of the complainant, it is nowhere proved that second marriage was solemnized between Mehar Chand and Bimla Devi and on a scrutiny of the evidence, it is only proved that both of them were living together, but there is no proof that they had performed a legal marriage after completing the marriage ceremonies conferring the status of husband and wife in the eyes of law. Counsel for the respondents has relied upon a judgment of this Court in **Hari Singh Vs. Chander Parkash and others, 2006 (4) RCR (Crl.) 686**, wherein it

has been held that the prosecution is duty bound to prove that the second marriage was performed in accordance with all the essential religious rites as applicable to the parties. No presumption could be drawn that a man and woman were living together as husband and wife even if the society treats them as such.

Counsel for the respondents has further submitted that as per the provisions of Section 245 Cr.P.C., since the evidence led by the complainant, even if taken as correct or unrebutted, does not prove that respondent Mehar Chand has performed a legal and valid marriage with Bimla Devi according to the rites and ceremonies, therefore, the revisional Court has rightly discharged him in exercise of powers under Section 245 Cr.P.C. Counsel for the respondents has further drawn attention to the statements of PW1 to PW3 attached as Annexures P-2 to P-4 with this petition, wherein it is nowhere mentioned that Mehar Chand and Bimla Devi have contracted a marriage by performing the ceremonies. In the cross-examination, the witnesses pleaded ignorance regarding the date, place and time when the accused Mehar Chand had contracted second marriage with Bimla Devi. It is also argued that the complainant has not examined any Priest who performed the marriage ceremony or any other independent person who allegedly attended the second marriage, therefore, the complainant's evidence do not warrant conviction of the accused for the offence punishable under Section 494 IPC and the revisional Court has rightly set aside the order framing charge against respondent Mehar Chand.

After hearing learned counsel for the parties, I find no merit in the present petition.

The complaint has been filed for the offence punishable under Section 494 IPC, for which the punishment provided is imprisonment upto 07 years and therefore, it was tried as a warrant case. As per provisions of Section 244 Cr.P.C., a Magistrate is required to record all the evidence of the complainant and then on appreciation of the evidence, the Magistrate has to decide the question whether an accused be charged for the offence or to be discharged. Section 245 Cr.P.C. further provides that if upon taking all evidences referred to in Section 244 Cr.P.C., the Magistrate, considered for reasons to be recorded that no case against the accused has been made out, which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. Sub-Section 2 of Section 245 Cr.P.C. provides that nothing in these Section be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for the reasons to be recorded by the Magistrate, he considered the charge to be groundless. As such, a Magistrate must scrutinize the evidence under Section 245 Cr.P.C. and record reasons whether the evidence, even if it goes unrebutted, is sufficient to convict the accused person.

It has been held by this Court in **Mohinder Kumar Vs. Piara Singh and others, 2003 (1) CLJ (Criminal) 385** that in a warrant case if the witnesses examined by the complainant do not make a prima face case so as to proceed against the respondents in terms of Section 246 Cr.P.C., the Court under Section 245 Cr.P.C. can discharge the accused person.

It is well settled principle of law that in order to prove an offence under Section 494 IPC, the marriage must be a valid marriage according to the law applicable to the parties and the onus to prove that the accused has

performed a second marriage, is on the complainant.

On re-appreciation of the statements of PW1 complainant-Rukmani, PW2 her sister Saraswati Devi and PW3 Rameshwar Dass, it is not proved that they have stated in unequivocal voice that Mehar Chand has performed second marriage with Bimla Devi by performing the rites and ceremonies, as in the cross-examination, all the three witnesses have stated that they have not seen the marriage ceremonies and did not know when and where the second marriage was contracted. The entries in the ration card showing Bimla Devi as wife of Mehar Chand do not partake the evidence of a legal and valid marriage between them. The complainant has failed to prove any witness of the marriage, much less the Priest who had performed the marriage or any independent witness who attended the marriage.

So far as the judgment of Delhi High Court in **Daljit Singh Narula**'s case (supra) relied upon by counsel for the petitioner is concerned, in the said judgment, the powers and duties cast on the trial Court under Sections 244 and 245 Cr.P.C. after summoning, at the time of framing of charge, were not in issue and therefore, the said judgment is distinguishable on facts of the case.

In view of the above, I find no illegality in the impugned order dated 27.08.2011 passed by the lower appellate Court.

With the abovesaid observations, present petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

09.02.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No