

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Misc. M 42608 of 2017 (O&M)
Date of decision: September 25, 2018

Chanchal Singh and others

...Petitioners

Versus

Rajwant Kaur

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vipin Mahajan, Advocate,
for the petitioners.

Mr. Ritesh Pandey, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The petitioners herein seek to quash Criminal Complaint No. 26/7.5.2013/RBT No. 58 dated 10.2.2015 titled 'Rajwant Kaur and versus Joga Singh and others' along with the summoning order dated 05.11.2016, pending before Judicial Magistrate Ist Class, Gurdaspur, qua the petitioners by which they have been summoned under Sections 494 read with 120-B IPC.

2. A complaint was filed by respondent Rajwant Kaur alleging she was married to Joga Singh son of Chanchal Singh as per Sikh rites and ceremonies on 29.3.1998. Out of this wedlock, one male child was born on 04.04.2000. She was turned out of her matrimonial home in 2006. In the complaint, it was stated that her husband Joga Singh solemnised a 2nd

marriage on 09.10.2006 with one Kulwinder Kaur daughter of Balbir Singh. On the basis of preliminary evidence led by the complainant, the petitioners have been summoned to face trial for an offence under Section 494 read with 120-B IPC. Aggrieved against the said summoning order, the instant petition has been filed under Section 482 Cr.P.C for quashing of the same.

3. Mr. Vipin Mahajan, learned counsel appearing on behalf of the petitioners, would contend, that petitioner No. 1 is father-in-law of complainant, and petitioner No. 2 is mother-in-law of complainant, petitioner No. 3 is brother-in-law of complainant, petitioner No. 4. Manjit Kaur is wife of petitioner No. 3, whereas petitioners No. 5 and 6 are married sisters-in-law of complainant. It is contended that offence under Section 494 read with Section 120-B IPC would not be made out against the petitioners herein and the summoning order suffers from illegality and it is an abuse of the process of law.

4. Per contra, Mr. Ritesh Pandey, learned counsel appearing on behalf of the complainant, urges that the summoning order has rightly been issued after appreciating the statement and evidence recorded in preliminary evidence. It is also argued that the accused can raise the defences at the time of framing charges and it is that Court which will consider the material if the law permits.

5. Section 494 Indian penal code reads as under:-

“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 in prison meant 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, not 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 7 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.”

A reading of section 494 IPC would clearly reflect that the offence thereunder has to be committed by 'a spouse' who remarries during the subsistence of a legal and valid marriage. The petitioners herein are related to Joga Singh, the husband of the complainant and it is only he who could have been summoned under Section 494 IPC. At best they could have been summoned for abetting the crime under section 109 Indian Penal Code.

6. The ratio as laid down in judgments rendered in **Sham Singh vs Sarabjit Kaur 1998(3) RCR (Criminal) 78** and subsequently followed in **Om Parkash Sharma and others Versus Jagjit Singh Ahluwalia 2009 (2) R.C.R (Criminal) 496** is fully applicable to the facts of the present case, wherein it has been held that it is only the husband/wife, who could be summoned for offence of bigamy and not the relatives.

7. Further, in **State of Haryana and others Vs. Ch. Bhajan Lal and others AIR 1992 604**, the Supreme Court had laid down specific guidelines and an exhaustive list of various kinds of cases wherein the

power under [Section 482](#) Cr.P.C. can be exercised:-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised."

8. Therefore, in view of the above, the summoning order is not sustainable. The petitioners herein are only the relatives of the husband of the complainant and summoning qua them is liable to be set-aside. Allowing the complaint to continue would tantamount to an abuse of the process of court. The petition stands allowed and the complaint and the summoning order against the petitioners herein is hereby quashed.

September 25, 2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No