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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 39/2018**

AKSHAY SARIN & ORS

..... Petitioners

Represented by: Ms.Priyanka Kapoor and Ms.Sum
Anand, Advocates

versus

THE STATE GOVT OF NCT OF DELHI & ORS Respondents

Represented by: Ms.Richa Kapoor, ASC for the State
with Ms.Amita Sachdeva, Advocate
and SI Narasi Prasad Meena, PS
Hazrat Nizamuddin
Mr.Ankit Mishra, Advocate for R-2

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

05.09.2018

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1. By this petition, the petitioner seeks quashing of FIR No.420/2016 under Sections 420/494/34 IPC registered at PS Hazrat Nizamuddin on the complaint of respondent No.2. Learned counsel for the petitioner contends that the inference of the complainant from the document she has placed to show that the petitioner was already married at the time of marriage with the respondent No.2 is incorrect.

2. Learned Additional Standing Counsel for the State submitted that after registration of FIR verifications are continuing and the document submitted by the petitioner to show that he was not married at the time when he married respondent No.2, are in the process of verification. She thus

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sought time to file a Status Report after verification of the documents.

3. However, learned counsel for the petitioner insists that even on the face of it, the FIR does not disclose the commission of a cognizable offence and is thus liable to be quashed.

4. In the FIR registered on the complaint of respondent No.2 besides giving the earlier history of criminal breach of trust and harassment on which FIR No.123/2014 under Section 498A/406/34 IPC was registered the complainant in relation to the present FIR alleges as under:-

“Sir, with the help of respectable police I have been able to fight my case till now but in last week I have got shock of my life when I found some USA court orders by SUPERIOR COURT, IN AND FOR THE COUNTY OF KING, STATE OF WASHINGTON for the case 44986-4 SEA dated 28th December 2009 showing that my husband Akshay Sarin was already married in the year 2009, this very crucial fact he and his parents has hidden from me and my family. He has left me nowhere. At the time of court marriage with me and he filled some forms also and declared himself UNMARRIED/BACHELOR/SINGLE/NEVER MARRIED but now the court papers which I received last week clearly shows that he was already married in the year 2009. Thus, he was married at the time of marriage with me. I do not even know if he still continues to remain married to this lady. This is a typical case of fraudulent NRI marriage.”

5. In support of the claim of respondent No.2 that petitioner was married at the time when he performed marriage with respondent No.2, respondent No.2 has handed over the following document to the Investigating Officer which reads as under:-

*“SUPERIOR COURT, IN AND FOR THE COUNTRY OF
KING, STATE OF WASHINGTON*

AMERICAN EXPRESS CENTURION BANK <i>Plaintiff/Petitioner</i> vs. AKSHAY SARIN AND DOE I, AND THEIR MARITAL COMMUNITY COMPOSED THEREOF <i>Defendant/Respondent</i>	Cause # 09-2-44986 SEA Declaration of Service of : SAMSUNG AND COMPLAINT FOR MONEY DUE Hearing Date:
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Declaration:

The undersigned hereby declares that s(he) is now and at all time herein mentioned, a citizen of the United States and a resident of the State of Washington, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the date and time of Dec 20 2009 10:47 AM at the address of 159 DENNYWY APT 411 SEATTLE, within the county of KING, State of Washington, the declarant duly served the above described documents upon AKSHAY SARIN and DOE I by then and there personally delivering 2 true and correct copy(ies) thereof by then presenting to an leaving the same with AKSHAY SARIN, A NAMED DEFENDANT A Middle Eastern Male of approx 30-35 years of age, 5'8", 150-170#, short black hair, a person of suitable age and discretion residing at the defendant's/respondent's usual place of abode listed above.

No information was provided that indicate that the subjects served are members of the U.S. military.

I hereby declared under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: December 24, 2009"

6. From the allegations in the FIR, it is the case of respondent No.2 that her husband Akshay Sareen married in the year 2009 thus when he performed marriage with the complainant on 23rd August, 2013 he was already married. A perusal of the FIR raises a reasonable suspicion about the marital status of the petitioner at the time when marriage was performed between petitioner and respondent No.2 and whether there is any substance in the FIR in question and a charge sheet is required to be filed or not can only be determined after a proper investigation is carried out about the marital status of the petitioner on the date of marriage with the respondent No.2. From the perusal of the FIR and the document given by the complainant, it cannot be held that no allegations of a cognizable offence is made out warranting quashing of the FIR in question and the proceedings pursuant thereto.

7. Petition is dismissed.

MUKTA GUPTA, J.

SEPTEMBER 05, 2018

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