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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 2013/2016 & CrI. M.A. No.10486/2016**
SHABANA ALI & ANR

..... Petitioners

Through Mr. Azam Ansari, Adv with
Petitioner No. 1 in person.

versus

STATE & ANR

..... Respondents

Through Ms. Nandita Rao and Mr. R.S.
Kundu, ASC for the State with Mr.
Bhagat Singh, Adv. along with SI
Mukesh Kumar.
R-2 with his counsel Mr. Rohit
Kumar Yadav and Mr. Prashant, Adv

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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22.01.2018

The petitioners are seeking quashing of FIR No.1470/2015 registered at Police Station Bindapur under Sections 380/494 of the IPC. This FIR was registered on the complaint of respondent No. 2 (Farman Ali). Record shows that petitioner No.1 and respondent No. 2 had got married on 23.10.2014. They have a son born out of this wedlock who is presently in the custody of petitioner No.1. The version of respondent No. 2 is that petitioner No.1 is his legally wedded wife; petitioner No.1 without taking a divorce from respondent No. 2 has got married to petitioner No. 2 and is thus guilty

of offence under Section 494 of the IPC. She had also stolen articles which were belonged to respondent No. 2 and thus she has also committed an offence under Section 380 of the IPC. FIR was registered on the aforementioned two sections.

Learned counsel for the petitioners pleads that this litigation is actually a revenge which respondent No. 2 seeks to vent out against petitioner No.1. His submission is that petitioner No.1 and respondent No. 2 had live-in relationship for about 6-7 years; they admittedly living together but had never got married. The parties had agreed to get their marriage solemnized but due to differences, respondent No. 2 withdrew from this compromise; petitioner No.1 had little choice in the matter. She thereafter married to petitioner No. 2. She was living with him since 4-5 years and a son was also born out of their wedlock. It is stated that because of the embroilment and the involvement of petitioner No.1 in the present litigation, petitioner No. 2 is no longer residing with her. She is suffering not only at the hands of respondent No. 2 but also petitioner No. 2 who also does not want to live with her because of this litigation.

Respondent No. 2 has filed a reply. His submission is that petitioner No.1 is his legally wedded wife. Investigation should be permitted to be progressed. Unless and until a fair investigation is carried out and the status of the parties is revealed, the present prayer cannot be granted.

Record shows that on the first date of hearing noting the submissions and counter submissions of the parties, this Court had

directed that the investigation should not be proceeded with and the proceedings before this the Trial Court had been stayed. Record also shows that in a status report which has been filed by the State before the Trial Court (25.05.2015 by HC Satyawar, P.S. Bindapur) it had been noted that the family of petitioner No.1 had made a proposal for marriage with respondent No. 2 but because of demand of a car by respondent No. 2 and his family members, this proposal of marriage could not be proceeded with. Thereafter petitioner No.1 was married to petitioner No. 2. This report further states that in the course of investigation, the submission of respondent No. 2 that he was married to petitioner No.1 was not substantiated as he has failed to produce any document evidencing his marriage; he has also not produced any witness present at the time of marriage as required by muslim law and its custom and ceremonies. Further investigation did not reveal any of the articles belonging to respondent No. 2 to be in possession of petitioner No.1.

Learned counsel for respondent No. 2 reiterated that unless and until a thorough investigation is conducted in the matter, the truth cannot come out.

Record further shows that the civil litigation is also pending inter-se the parties. Respondent No. 2 has filed a petition seeking restitution of conjugal rights qua petitioner No.1. The matter went in appeal before the Division Bench. The Division Bench in Mat. Appeal (FC) 90/2015 (decided on 15.03.2016-Annexure P-4) had

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noted that the only aspect which required examination by the Division Bench was the material to show that petitioner No.1 and respondent No. 2 were married. The grievance of respondent No. 2 that he was married to petitioner No.1 had been noted. The Division Bench while disposing of this appeal on 29.04.2016 had noted that no nikahnama or a copy thereof has been produced by respondent No. 2 before any Court or authority. If this document existed, nothing could have prevented him from producing the same. The Family Court was however directed to expedite the hearing in the matter. This matter had reached the Supreme Court. The Supreme Court had stayed the proceedings before the Family Court, Dwarka.

The status as on date is that the investigation in the present FIR is stayed and the matrimonial proceedings before the Family Court are also stayed.

Petitioner No.1 and respondent No. 2 are present in Court today. This Court has queried respondent No. 2 as to what would be the outcome of this litigation; he has no answer. Petitioner No.1 is clear in her approach. She clearly states that she does not wish to live with respondent No. 2. She admits that she was living with respondent No. 2 but it was a live-in relationship. She had got legally wedded to petitioner No. 2. Submission being that respondent No. 2 is trying to seek a revenge against petitioner No.1 for her having got married to petitioner No. 2. Respondent No. 2 has little answer on these submissions which have been made by petitioner No. 1. All

efforts for reconciliation to bring this dispute to an end have failed.

Vehement submission of learned counsel for respondent No. 2 is that although admittedly no nikahnama has been filed by respondent No. 2 yet this is for the reason that this nikahnama had been stolen by petitioner No.1 and it is lying with her. The fact that no FIR has been registered pursuant to this theft is an admitted fact. It had never been brought to the notice of any higher authority that petitioner No.1 had stolen his nikahnama upon which respondent No. 2 is relying. His submission that there are other documents which have been filed along with reply which would evidence his submission that petitioner No.1 was his wife and for this proposition, reliance has been placed upon Annexure R-5 as also a Life Insurance Policy (Annexure R-6). Qua Annexure R-6, the original document has been produced by petitioner No.1 in Court. This shows that petitioner No.1 had made a Life Insurance Policy on 08.12.2015 wherein her nominee was her brother. The original document clearly shows that the nominee is her brother. The document relied upon by respondent No. 2 shows that the name of respondent No. 2 as the nominee. This Court, having perused the original which clearly shows that the brother of petitioner No.1 is her nominee, is of the view that respondent No. 2 having relied upon prima-facie a forged document is guilty of a criminality for which appropriate action should be taken against him by the Investigating Officer and he is directed to do the needful.

The submissions of learned ASC for the State have also been examined and appreciated.

Admittedly, a marriage between two mohamdans is in the nature of a ‘contract’; this contract has to be proved by way of a legal document and upon which respondent No. 2 is relying; submission being a “nikahnama” was duly executed by petitioner No.1 and respondent No. 2 but it has now been stolen by petitioner no. 1. The fact that this nikahnama is not available with respondent No. 2 is admitted. His submission that this nikahnama has been stolen by petitioner No.1 was never brought to the notice of any competent authority is also an admitted fact. The present FIR had been registered in the year 2015. The nikahnama has not seen the light of the day till date. There is nothing on record which can substantiate the submission of respondent No. 2 that he is the legally wedded husband of petitioner No.1. In the status report filed by State, it is further reflected that respondent No. 2 also could not recall the date of marriage with petitioner No.1 or the name of the Quazi but had simply stated that the marriage had taken place at Hazrat Nizamuddin Dargah; inquiries were made about the Quazi but no name has been surfaced and no record of any nikah was available. Even in the written statement filed before the matrimonial Court, the submission of petitioner No.1 was that she was never legally wedded with respondent No. 2. She had in live-in relationship with him. The charge under Section 494 of the IPC is not made out. There being

nothing on record to substantiate this submission of respondent No. 2, it would be an exercise in futility to continue with such a FIR under Section 494 of the IPC.

FIR has also been registered under Section 380 of the IPC. The contents of the FIR disclose that one fridge (of which the receipt was in the name of respondent No. 2) was recovered from the possession of petitioner No.1. This is not a big deal for the reason that admittedly petitioner No.1 and respondent No. 2 were living together and had a live-in relationship. Whatever was in their joint possession cannot be the subject matter of investigation for an offence under Section 380 of the IPC.

The Apex Court while delivering judgment in Crl. Appeal No.908/2009 Harmanpreet Singh Ahluwalia & Others Vs. State of Punjab and Others (dated 05.05.2009) had noted that for articles which are in joint possession of parties, the offence of theft would not be made out. A single Judge of this Court in 1988 (1) Crimes 545 Neelam & Others vs. State had noted that to constitute an offence of theft as defined under Section 378 of the IPC, there must be removal of moveable articles from somebody's possession and that removal must be with a dis-honest intention. This is not even the case of respondent No. 2. It is not his case that petitioner No.1 had removed this fridge from his possession with a dishonest intent; this fridge was found to be in her possession when the parties were living in a live-in relationship together; dishonest intent on the part of petitioner No.1 to

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make out an offence under Section 378 of the IPC which is punishable under Section 380 of the IPC is clearly not made out.

The prima-facie ingredient of Sections 494 & 380 of the IPC not having been made, no useful purpose would be served in continuing with the present FIR which would be an exercise in futility. This also appears to be a case where respondent No. 2 is unnecessarily harassing petitioner No.1; it is more of a case of vengeance and a vendetta litigation than a fair litigation.

Noting this background as also the oral and documentary evidence which has been adduced, this Court is of the view that the present FIR needs to be quashed.

Accordingly, FIR No.1470/2015 registered at Police Station Bindapur under Sections 380/494 of the IPC and all proceedings emanating thereto are quashed.

Petition allowed and disposed of in the above terms.

INDERMEET KAUR, J

JANUARY 22, 2018

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