

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.REV.P. 625/2014 & Crl. M.A. No.15745/2014

Versus

STATE Respondent
Through: Mr. Tarang Srivastava, Additional
Public Prosecutor for State with Inspector
Kashmiri Lal and ASI Badlu Ram, P.S.
Janakpuri.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
14.08.2018

This petition impugns an order dated 21.08.2014, whereby the charges have been framed against the petitioner under sections 496/376/323 of the Indian Penal Code, 1860 (IPC) as well as under section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act). The petitioner is aggrieved by the charges framed under section 496/376 IPC.

The learned counsel for the petitioner insists that the petitioner and the complainant were married in a temple in Janakpuri, Delhi in the presence of two witnesses of the complainant. The petitioner accepts the marriage as a 'valid marriage'. He submits that the chargesheet filed by the police against the petitioner, on the ground that it was not a valid marriage, is of no

consequence because the petitioner accepts the complainant as his lawful wedded wife. Hence, charge under section 376 IPC would not be maintainable against the petitioner because the physical relationship with the complainant was not fraudulent, but in the nature of husband and wife.

Be that as it may, the other accusations against the petitioner are under section 323 IPC and the aforesaid section of SC/ST Act. These issues would have to be examined in the trial, hence, the charges framed against the petitioner under those sections do not call for any intervention at this stage. At worst, the prosecution case against him would fall under section 376 IPC, in view of the aforesaid admission of the petitioner that it was a valid marriage.

The learned counsel for the petitioner submits that although according to the petitioner, the marriage between the parties is valid, but the complainant has stated that it is not a valid marriage and as a consequence thereof the petitioner is being prosecuted under sections 376 and 496 IPC. The learned counsel for the State submits that the petitioner be directed to file an affidavit to this effect. Accordingly, let the petitioner file an affidavit in terms of the aforesaid submissions, accepting the marriage to be valid and accepting the complainant as his wife.

However, at this stage, the learned counsel for the petitioner submits that no such affidavit can be filed.

In view of the above, the Court is of the opinion that the petitioner's stand is unclear and prevaricating. He cannot in the same breath accept and deny his marriage with the complainant. If he accepts the marriage, he may have a different nature of defence to come out of the charge under section 376 IPC but when he is asked to file an affidavit, he resiles from doing so.

In any way the proceedings under the other sections would continue, irrespective of his admission of the marriage. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

AUGUST 14, 2018

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