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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 4572/2015 and CrI. M.A. 16324/2015 and 32485-32487/2018

RITU DHANKHAR

..... Petitioner

Through: Petitioner in person

versus

THE STATE & ORS

..... Respondents

Through: Mr. Ravi Nayak, APP for the State
Mr. Sanjay Kumar & Mr. Nitin Sharma,
Advts. for R-2 to 5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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10.10.2018

The petitioner is the complainant of the first information report (no.81/09) by police station Greater Kailash-I, the conclusion of investigation into which resulted in a charge-sheet being presented seeking the trial, *inter alia*, of the second respondent, she (complainant) claiming to be the lawfully wedded wife of the latter. She has levelled allegations against him so as to seek his prosecution on the charge for offences under Section 498A and 495 of the Indian Penal Code, 1860 (IPC), the latter charge having been brought on the accusations that he had entered into ceremonies in the nature of marriage even while he was already a married person, such marriage with the previous wife being subsisting at the relevant point of time.

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The Metropolitan Magistrate considered the question of charge and, by order dated 03.09.2014, found sufficient grounds to frame charge against the said respondent for offences under Section 495 IPC but discharged the accused for offences under Section 498A IPC, referring to the material showing the subsistence of the first marriage and concluding that since there was no valid marriage between the complainant and the second respondent the accusations could not lead to the prosecution for offence under Section 498A IPC for which the relationship of the husband and wife is an essential ingredient.

The State had challenged the said order in the court of Sessions by criminal revision petition (no.44/14) which, however, was dismissed by the said court by its order dated 18.05.2015, reliance being placed in that context, *inter alia*, on the decisions of the Supreme Court in *Shivcharan Lal Verma and Anr. Vs. State of Madhya Pradesh, I* (2007) DMC 120 and ruling of a learned single Judge of this court reported as *Mohit Gupta and Ors. Vs. State Govt. of NCT of Delhi & Anr.* 2007 (93) DRJ 606. It is noted that the petitioner had placed reliance primarily on the decision of the Supreme Court reported as *Reema Aggarwal vs. Anupam*, (2004) 3 SCC 199 which, per the ruling in *Mohit Gupta* (supra), was *per incuriam* in as much as the higher authority in *Shivcharan Lal Verma* (supra) had not been noted.

The counsel for the petitioner places reliance not only on

Reema Aggarwal (supra) but also *A. Subash Babu Vs. State of A.P. & Anr., Crl. Appeal 1428/2011 (arising out of SLP (Crl.) No.6349/2010)*, decided on 21.07.2011 and *U. Suvetha vs. State by Inspector of Police and Anr., (2009) 6 SCC 757*.

It does appear that in *Reema Aggarwal* (supra), the Supreme Court had taken the view that “*there can be no impediment in law to liberally construe the words and expressions relating to persons committing such an offence so as to rope in not only those validly married but also anyone who has undergone some or other form of marriage and thereby assumed for himself the position of husband to live, cohabit and exercise authority as such husband over another woman*”. But in *Shivcharan Lal Verma* (supra), a bench of three Hon’ble Judges of the Supreme Court had accepted submission to the contrary and set aside conviction under Section 498A IPC for the reason the alleged marriage with the complainant of that case during the subsistence of a previous valid marriage of the accused was null and void.

In *U. Suvetha* (supra), certain submissions on the same lines were raised. But then, the court observed (in para 16) that it was not necessary to go into the controversy as to whether *Reema Aggarwal* (supra) had been correctly decided or not for the reason a different situation had arisen in the said case.

In *Mohit Gupta* (supra), while examining similar questions, a learned single Judge of this court after going

through the decisions in *Reema Aggarwal* (supra) and *Shivcharan Gupta* (supra) held that the latter would take precedence over the former decision. This view commends itself to be followed.

In the above facts and circumstances, the view taken by the revisional court, as indeed by the court of the Magistrate cannot be faulted. The petition and the applications filed therewith are dismissed.

R.K.GAUBA, J.

OCTOBER 10, 2018

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