

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

% Reserved on: 10th December, 2018
Decided on: 7th January, 2019

+ **W.P.(CRL) 1237/2016 & CrI.M.A.No.49283/2018**

JAYA PRAKASH DABRAL

..... Petitioner

Through: Mr.Soumitra Chatterjee, Advocate

versus

SHIKHA DABRAL

..... Respondent

Through: Respondent in person

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Petitioner filed a complaint before the learned Trial Court along with an application under Section 156(3) Cr.P.C. alleging that an advertisement was issued by the petitioner in Times of India, Delhi Edition on 27th October, 1991 looking for a suitable alliance for himself. Thereafter the brother and father of the respondent approached the father of the petitioner and besides other discussions also supplied the horoscope. After the horoscope matching was done and the astrologer informed that it would be a good match free from any major matrimonial dispute/problem, the marriage was finalized. However, after the marriage relations between the petitioner and respondent got strained and the respondent continued living in the house of the petitioner's father unauthorizedly. She also filed false cases compelling the petitioner and his family members to leave the house.

2. On the petitioner seeking verification he came to know that the time of birth of the respondent was changed from 5:55 A.M. to 8:15 A.M. It is thus alleged that in order to materialize the marriage between the petitioner and respondent forged, fabricated and false horoscope was given by the respondent and her family members and hence they be prosecuted.
3. On this complaint of the petitioner, the learned Metropolitan Magistrate directed registration of FIR pursuant where to FIR under Sections 426/427/428/468/471 read with Section 120B IPC was registered. However, after investigation the police filed a cancellation report which was accepted by the Learned Metropolitan Magistrate after notice to the petitioner.
4. The petitioner challenged the said order of acceptance of cancellation report before the learned Additional Sessions Judge which allowed the petition of the petitioner and the Trial Court was directed to record evidence. Thus the complaint of the petitioner proceeded as a complaint case.
5. In the pre-summoning evidence, petitioner examined eight witnesses including himself as CW-8. After hearing arguments the learned Trial Court summoned the respondent and her family members for offence punishable under Section 420 IPC read with Section 120B IPC vide the order dated 19th September, 2014 which was challenged by the respondent before the learned Additional Sessions Judge resulting in the passing of the impugned order dated 19th November, 2015. By the impugned order the learned Additional Sessions Judge held that no case for summoning the respondent under Section 420 IPC read with Section 120B IPC was made out as there was no evidence on record that she entered into conspiracy with her father and brother to forge and fabricate the horoscope.

6. The two grounds urged by the petitioner before this Court are that the revision petition filed by the respondent was beyond the period of limitation as the period of limitation got over on 16th June, 2015 where as the revision petition was filed on 2nd July, 2015 with a delay of 15 days and there being no application for condonation of delay nor any oral submission made, the revision petition could not be entertained.

7. The second contention of the petitioner is that the respondent raised no substantial question of law in revision petition, thus the Revisional Court could not have set aside the order of learned Trial Court summoning the respondent for offence punishable under Section 420/120B IPC.

8. A perusal of the impugned order shows that the petitioner in the revision petition took no objection that the revision petition was beyond the period of limitation. Even as per the pleadings of the petitioner, the revision petition was required to be filed by 16th June, 2015 when admittedly it were court holidays and the revision petition was filed on 2nd July, 2015 i.e. immediately when the Courts reopened. Hence the said period is required to be excluded while counting the period of limitation.

9. As regards the merits of the case are concerned, by the impugned order learned Additional Sessions Judge has only set aside the order summoning the respondent for offence punishable under Sections 420/120B IPC and not the other family members. Learned Additional Sessions Judge noted the evidence of Satish Chander Chamoli, CW-4 who stated that S.P. Trivedi and Sandeep Trivedi i.e. the father and brother of respondent handed over the horoscope to K.P. Dabral, father of the petitioner in his presence, however, he did not see the contents of the horoscope and at that time the petitioner was not present at home. It is thus evident that there is

neither any direct nor circumstantial evidence to show that the respondent participated in preparation or handing over the forged horoscope. Moreover the petitioner has not been able to prove the horoscope handed over by the brother and the father of the respondent so as to establish that it was a forged and fabricated horoscope. The contents of the horoscope were admittedly not seen by CW-4. Hence, he could not prove that the copy of the horoscope produced in Court was the same which was handed over in his presence.

10. The petitioner admittedly did not prove the original horoscope handed over and tried to prove the said document by the advertisement in Times of India Delhi Edition dated 27th October, 1991. Thus the learned Additional Sessions Judge rightly held that the petitioner has not been able to prove his case of forgery and cheating and assuming what he says is truth even then no evidence has been brought on record to show the involvement of the respondent. Hence the learned Additional Sessions Judge set aside the summoning order passed by the learned Trial Court qua the respondent.

11. This Court having gone through the evidence of the witnesses of the complainant and in the absence of original horoscope having been proved and there being no material to show the connivance of the respondent finds no error in the impugned judgment.

12. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 07, 2019
‘yo’