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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 1248/2019**

SMT. SUSHILA SHARMA Petitioner
Through Mr. Sunil Sharma, Mr. Tushar
Sharma, S. Sharma and Achal
Kaushik, Advs.

versus

ANIL KUMAR SHARMA Respondent
Through Mr. Sagar Hajelay and Mr. Amit
Dhankar, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **13.03.2020**

1. The petitioner has filed the present petition impugning a judgment dated 03.10.2018, whereby the learned ASJ has rejected the petitioner's appeal against an order dated 25.05.2018. By the order dated 25.05.2018, the learned MM had acquitted the respondent (hereafter "the accused husband") of committing an offence under Section 494 of the IPC.
2. There are disputes pending between the petitioner and the accused husband. The petitioner has also filed proceedings under Section 125 of the Cr.PC as well as a complaint under Section 406/498-A of the IPC and the said matters are stated to be pending. The petitioner alleges that during the proceedings, she came to know through her mother-in-law that her son (accused husband), had married one Smt. Neeta Devi.
3. In view of the aforesaid, the petitioner filed the complaint arraying the

accused husband as respondent no.1 and Smt. Neeta Devi as accused No.2. However, the learned MM had declined to issue any summons to her and the matter proceeded only against the accused husband.

4. The petitioner recorded pre summoning evidence and had produce a photocopy of the Ration Card of the accused husband, which reflected Smt. Neeta Devi as his wife. The respondent was summoned and he pleaded not guilty to the charge under Section 494 of the IPC. Thereafter, the petitioner examined herself and during her cross examination, she stated that on 04.012.1998 – the date on which the accused husband is stated to have solemnized his second marriage with Smt. Neeta Devi – she was present at her parental house. Admittedly, she had not witnessed the accused husband participating in any ceremony or ritual for solemnization of his second marriage. In this view, several opportunities were granted to the complainant to examine further witnesses, who could establish that the accused husband had solemnized a second marriage on 04.12.1998. However, the petitioner failed to examine any other witness.

5. After the petitioner's evidence was closed, the statement of the accused husband was recorded under Section 281 of the Cr.P.C. and he denied that he had remarried.

6. The learned MM had examined the evidence obtaining in the case and concluded that the petitioner had failed to establish, beyond reasonable doubt, that the accused husband had solemnized another marriage during the subsistence of his first marriage. The Trial Court noted that no evidence had been produced to establish that any marriage ceremony had been performed as per the prevalent customs or Hindu rites. The Trial Court also concluded that there was insufficient evidence to establish that the marriage had been

solemnized in terms of the Hindu Marriage Act, 1955.

7. Aggrieved by the aforesaid decision, the petitioner preferred an appeal. The same was dismissed by the learned ASJ by an order dated 03.10.2018, which is impugned in the present petition.

8. The learned ASJ examined the record and found that sufficient opportunities had been granted to the petitioner to produce further witnesses during the post charge evidence. However, she had failed to avail of such opportunities. The Trial Court noted that even after four years of framing of the charge, the petitioner had examined only herself and had failed to produce any other evidence. Considering that the complaint was pending before the Trial Court for nineteen years, the Trial Court observed that it could not be stated that the petitioner was not granted sufficient opportunity to lead the necessary evidence.

9. Paragraph nos. 7, 8 and 9 of the impugned judgment are set out below:

“7.) The case was taken up for cross examination of the appellant on 01.12.2016 on which date she appeared in the morning when the case was called and sought passover but did not appear thereafter at all. In these circumstances, the case was adjourned for cross examination of the complainant/appellant on 05.04.2017. The appellant was cross examined on 05.04.2017 and was directed to summon her remaining witnesses on 17.07.2017. Since the petitioner had not taken steps for summoning of the witnesses for 17.07.2017, cost of Rs. 1,000/- was imposed upon her and she was directed to summon all the witnesses for the next date of hearing i.e 08.09.2017 failing which her evidence would be closed. The appellant again did not take steps for summoning the witnesses for 08.09.2017 despite strict directions issued to her by the court on the last date of hearing. Accordingly, noting that several opportunities have

been granted to the appellant to conclude her post charge evidence which she did not avail, the trial court observed that she does not deserve any opportunity. The court dismissed her application of waiver of cost of Rs. 1,000/- and also closed her post charge evidence.

8.) It is thus evident that sufficient opportunity was granted to the appellant by the trial court to produce her witnesses during post charge evidence which she failed to avail. Ld. MM had cautioned her on 17.07.2017, while imposing cost of Rs. 1,000/- on her, that if she fails to summon her witness on the next date of hearing i.e 08.07.2017, her evidence would be closed. The appellant appears to have ignored the caution sounded to her by the court and did not take any step to summon the witnesses for 08.07.2017. Even the imposition of cost of Rs. 1,000/- upon the appellant did not have any desired effect upon her and she again chose not to summon her witnesses for 08.07.2017.

9.) Be it noted here that the complaint was filed in the year, 1999 i.e 19 years ago. The. pre-charge evidence of the appellant was concluded after 15 years i.e in the beginning of the year, 2014. During 4 years subsequent to framing of charge on 19.03.2014, the appellant could examine only herself in post charge evidence. In view of the pendency of the complaint before the trial court for 19 long years, it cannot be said that no sufficient opportunity was granted to the appellant to examine her witnesses during post charge evidence or that her post charge evidence was closed by the trial court in undue haste. The conduct of the appellant before the trial court clearly shows that she herself was not vigilant and chose not to summon her witnesses despite opportunities given to her in this regard.”

10. The learned counsel appearing for the petitioner submits that the petitioner now be permitted to produce evidence to establish her case.
11. This Court finds no infirmity with the impugned judgment. Further,

the petitioner's contention that the impugned order be set aside and she now be provided an opportunity to produce additional evidence, is unpersuasive.

12. First of all, the complaint was instituted more than two decades ago. Thus, this Court is of the view that providing further opportunity would not be in the interest of justice. Secondly, this Court finds no infirmity in the reasoning of the learned MM and the ASJ that the petitioner had failed to establish that the accused husband had committed the alleged offence beyond reasonable doubt.

13. It is also noticed that the present petition has also been filed belatedly after a delay of more than nine months (285 days). The petitioner has sought to explain the inordinate delay to be on account of paucity of funds and lack of awareness. Both aforesaid reasons are unpersuasive. Admittedly, the petitioner was provided legal aid promptly on her seeking the same. Further, the petitioner has been pursuing proceedings against the accused husband and thus, had access to all legal assistance. Therefore, she cannot claim that she was not aware of her remedies. The application seeking condonation of delay (Crl. M. A. No.41437/2019) is, therefore, dismissed.

14. In view of the aforesaid, this Court finds no merit in the present petition. Accordingly, the same is dismissed on limitation as well as on merits.

VIBHU BAKHRU, J

MARCH 13, 2020

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