

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 683 of 2018**

- Smt. Sharda Sharma W/o Shri Santosh Sharma Aged About 48 Years R/o Badhaipara Nawapara Razim, District- Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Department Of Home Mantralaya, Mahanadi Bhawan, Raipur, Chhattisgarh.
2. Inspector General Of Police Raipur, Range, Raipur, Chhattisgarh.
3. Superintendent Of Police District- Raipur, Chhattisgarh.
4. Station House Officer Police Station Gobra Nawapara, District- Raipur, Chhattisgarh.
5. Santosh Sharma S/o Shri Waleter Sharma Aged About 50 Years R/o Bdhai Para, Vishwakarma Chowk, Rampur, District- Raipur, Chhattisgarh

---- Respondents

For Petitioner : Ms. Renu Kochar, Adv.

For the State : Mr. Aditya Tiwari, P. L.

Hon'ble Shri Justice Narendra Kumar Vyas**Order On Board****16.09.2021**

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India for registration of FIR against respondent No.5.
2. The facts as projected in the petition is that respondent No.5 has filed a petition under Section 13 of Hindu Marriage Act, 1955 of dissolution of marriage. An ex-parte judgment and decree for dissolution of marriage was passed in his favour on 17.07.2002 in Civil Suit No.95A of 2001 passed by 5th Additional District Judge, Raipur.
3. Being aggrieved by judgment and decree dated 17.02.2002 petitioner preferred F.A. No.178/2003 before this Court, this Court has allowed the appeal by this judgment and decree dated 16.04.2007 and remanded the matter to the Family Court for further adjudication.

4. Against that order respondent No.5 has preferred Civil Appeal No.334/2009 before the Hon'ble Supreme Court the same was dismissed by the Court vide order dated 12.10.2017, thereafter the petitioner lodged complaint against respondent No.5, alleging that he has performed second marriage committing offence under Section 494 of IPC. The petitioner has filed written report on 05.02.2018 before Police Station Gobra Navapara, District Raipur, but no action has been taken by Police. It is also contended by the learned counsel for the petitioner that during conciliation proceeding before the Family Court, it has been revealed that respondent No.5 has already done second marriage 29 years back and one son has been born out from their wed lock. As such, he has committed offence under Section 494 of IPC.
5. On the above factual matrix the complainant has prays for following relief(s):-
 - 10.1 That this Hon'ble Court may kindly be pleased to issue writ in mandamus directing respondent police authorities to register FIR against respondent No.5 under Section 494 and 497 of IPC for performing second marriage during the pendency of first marriage.
 - 10.2 That this Hon'ble Court may be further pleased to pass any other consequential and other orders/ writs which this Hon'ble Court deems just and proper in the facts and circumstances of the case.
6. From perusal of reliefs sought, it is quite clear that the petitioner wants that on the basis of complaint, FIR should be registered against respondent No.5.
7. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others**¹, has examined the issue holding that the petitioner has remedy of filing of complaint before the concerned Judicial Magistrate First Class under Section 200 of the Cr.P.C. The Supreme Court has again considered and decided the issue in **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage**² and **M. Subramaniam & another Vs. S. Janaki & another**³.

¹(2008) 2 SCC 409

²(2016) 6 SCC 277

³(2020) 16 SCC 728

8. Considering the facts and materials on record and in light of the law laid down by Hon'ble the Supreme Court in the above referred judgments, the present writ petition filed under Article 226 of the Constitution of India, is disposed of with liberty to the petitioner to file complaint under Section 200 or 156 (3) of the Cr.P.C. before the court of Judicial Magistrate First Class having jurisdiction over the place of offence and in-turn Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C.
9. It is made clear that this Court has not expressed any opinion on merits of the case whether the complaint discloses any criminal offence or not.
10. In view of the above, the instant writ petition is disposed of with the aforesaid liberty granted in favour of the petitioner.

Sd/-

(Narendra Kumar Vyas)
Judge