

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR 4314 of 2015 (O&M)

Date of Decision: January 12, 2021

Asha Thakur

.....Petitioner

Versus

Tejvir Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Ranjan Lakhanpal, Advocate
for the petitioner.

Mr. S.S. Narula, Advocate
for respondent No.1.

None for respondent No.2.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through
video-conferencing on account of outbreak of pandemic COVID-
19.

Two separate criminal revisions No. 299 of 2014 and
No. 03 of 2015 were separately filed by then petitioners Tejvir

Singh and Anupama respectively before the Court of Id. Addl. Sessions Judge Chandigarh whereby they had challenged the order dated 20th October 2014 of the Court of learned Judicial Magistrate 1st Class Chandigarh whereby both these petitioners then accused were summoned to face trial under Section 494 IPC.

Upon hearing Mr. Ranjan Lakhanpal, Advocate for the petitioner and Mr. S.S. Narula, Advocate for respondent No.1 and perusal of the records in detail.

The present petitioner Asha Thakur filed a complaint against then 12 persons under Section 494 IPC on the allegations that she got married with Tejvir Singh on 23.07.1996 at Delhi in Luxmi Narayan Temple which was got registered with the Registrar of Marriages at Tis Hazari Courts, Delhi. It is alleged that Tejvir Singh assaulted the complainant at the instance of his parents as a consequence of which Asha Thakur filed a criminal case under Section 376 IPC by way of FIR 127 dated 04.07.2004 and upon compromise between the parties

the case was withdrawn. Revisionist Asha Thakur alleged that Tejvir Singh thereafter performed marriage with complainant at a public function and both of them thereafter resided together for six months. As story goes Asha Thakur states that on 23.02.2006 Tejvir Singh on the pretext of attending a meeting had gone out of station but thereafter did not return and instead she came to know that he has deserted her. It is thereafter a notice was received from Court of learned District Judge, Chandigarh as to the pendency of a divorce petition filed by Tejvir Singh and during the course of which it transpired that Tejvir Singh had married Anupama out of which they had two children. As is there highlighted in the arguments of the two sides the parties had between themselves multiple litigations civil as well as criminal. In the case in hand, the complainant Asha Thakur alleged that Tejvir Singh and Anupama married during the subsistence of her marriage. Upon challenge as to the summoning order by the Judicial Magistrate 1st Class Chandigarh, the Additional Sessions Judge Chandigarh vide

order dated 24.01.2014 set aside the summoning order dated 09.05.2013 directing the trial Court to ascertain through facts as to the lawfulness of the first marriage, its subsistence and prohibition of second marriage during subsistence. It is alleged that the orders were mechanically passed.

Appreciating the arguments in the light of the evidence on the records, which is by no means differed that FIR No. 127 dated 04.07.2004 was filed by the petitioner under Sections 417, 420, 376, 342, 506, 493, 494 and 496 Police Station Kurukshetra and which is on the same facts and allegations including occurrence as complaint under Section 494 IPC was filed on 06.08.10 after 6 years at Chandigarh. Not only belatedly a stale matter has been raked up. Admittedly as per her own stand Asha Thakur admits having connived to this alleged arrangement throughout this period when Anupama and Tejvir Singh were living together even otherwise barred by the “principle of double jeopardy” and acquiescence. As is reflected from the evidence and the records, there is not an iota of

semblance of legal and valid marriage between Asha Thakur and Tejvir Singh. Even assuming that an admission was made by the husband of second marriage, a heavy onus and burden lies upon the complainant to prima facie show and prove her allegations of a legal valid and subsisting marriage of Tejvir Singh with the complainant Asha Thakur and during which he has entered into a wedlock with another lady. The essential ingredients of either section 493 IPC of cohabitation deceitfully by inducing the complainant to believe of a lawful marriage or marrying again during lifetime of husband or during the lifetime of a previous wife are totally amiss. The fact of second marriage being void is a *sine qua non* for the applicability of Section 494 IPC and, therefore, in order to prove charge of bigamy it was incumbent upon the complainant to first having proved that she was the first wife and was legally and lawfully wedded to the respondent/accused and further that it was during the subsistence of that first marriage the accused had again married for the second time and once the factum of second marriage is

not proved charge of bigamy certainly fails for which this Court seeks reliance on **AIR 1979 Supreme Court 848 Lingari Obulamma Vs. L. Venkata Reddy and others.** To the specific query of this Court to Mr. Lakhanpal counsel for the petitioner where and how this Court can assume motive of these necessary ingredients, the learned counsel clearly was at loss of words. A close perusal of the entire records rather are suggestive that in some of the matters/cases filed by Asha Thakur, she claims her marriage with Tejvir Singh on 23.07.1996 and in similar other cases she claimed that this marriage was solemnized on 30.08.05, though accepts the fact that marriage between Tejvir Singh and Anupama took place on 04.11.2006 and, therefore, further puts to doubt the veracity of this stand of Asha Thakur and in her criminal case by way of FIR she accepts the fact that from 23.07.1996 to 30.09.2001 she knowingly carried on to perform physical relations with Tejvir Singh apparently establishing beyond any doubt that at that time Tejvir Singh was having a legal and valid marriage with

Anupama and that Asha Thakur had till 30.09.2001 remained with him as his consort. Rather as has been remarked and observed in the impugned order of learned Additional Sessions Judge, the complainant Asha Thakur claims that it was during the proceedings of divorce case in the year 2007 she came to know of this marriage between Tejvir Singh and Anupama further belies solemnity of her stand and its truthfulness.

No doubt morality and fidelity in a marriage are important constituents but the same cannot over run the legal propositions basing the proof of commission of a crime. It is claimed principle of criminal jurisprudence that the burden to prove of commission of crime always rests upon the prosecution. The onus on complainant in the present case cannot be waived off by any means by mere emotional stance. The history of the litigation between two sides span over a long period of time whereby every conceivable efforts have come about by Asha Thakur to rope in Tejvir Singh one way or the other. It has been rightly remarked and observed in the

impugned order that it is after almost delay of 14 years, the complaint of bigamy has come about certainly is a distressing feature for the complainant and it was further observed in **Minu Kumari Vs. The State of Bihar (2006) VOL. IV SCC 359** that a Magistrate is not bound by the report of the police sought by the aid of Section 202 of the Cr.P.C. No doubt what one can fairly and irrefutably conclude that some sort of relationship had existed between Asha Thakur and Tejvir Singh and it was after some time it went sour. Then parties have fallen into this multifarious litigation more out of revengeness and vengeance than of any legal necessity. It has been pointed out and questioned the counsel for the two sides what tangible evidence was there to show marriage between Asha Thakur and Tejvir Singh to be a legal and valid marriage but none of them could pin point as such. Even the so called papers carrying signatures of Tejvir Singh and Asha Thakur have not been proved on the records and, thus, cannot be termed to be within the fore corners of legal permissible evidence. The learned Court in

impugned findings has rightly, correctly and categorically examined each and every stand of Asha Thakur reflected from her litigations and has certainly come to a justifying conclusion especially in the light of her dithering stand throughout in the various litigations. The powers of revisional court are very restricted and are to be sparingly used to bring about the very legality and validity of a finding and in the present impugned order nothing could be brought to the notice of this Court necessitating intervention. The revision petition being wholly devoid of any merit stands dismissed.

January 12, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No