



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

+ **CRL.M.C. No. 4883/2019**

Judgment reserved on : 26.8.2020

Date of decision : 07.09.2022

ANITA RAI

..... Petitioner

Through: **Mr.Yash Mishra, Mr.Pronoy
Chatterjee and Ms.Srishti
Mishra, Advocates**

Versus

STATE & ORS

..... Respondents

Through: **Mr.Kamal Kumar Ghei , APP
for State
Mr.Piyush Chhabra, Adv for R-
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CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition seeks the setting aside of the order dated 16.8.2019 of the Court of the District & Sessions Judge, Dwarka, in Crl.Rev.P. No. 27/2019, vide which order the Crl.Rev.P. 27/2019 filed by the petitioner herein against the order dated 13.2.2019 of the Court of the learned Trial Court dismissing the application under Section 156 (3) of the Cr.P.C., 1973, filed by the petitioner as complainant in Ct.Cases No. 28285/2018 was declined.



2. Vide order dated 13.2.2019, the learned Trial Court in CT No. 28285/2019 observed to the effect:

“The facts in brief are that on complainant and accused no.1 got married on 02.10.2006 as per Sikh rites at Gurudwara and out of the wedlock, two daughters were born aged 7 years and 11 years. It is stated that accused no.1 met accused no.2 in the company Paras Buildtech where both were working together and on 12.10.2015, accused no.1 joined Elan Ltd. Company in Gurgaon and represented to the complainant that his company had offered him company accommodation in Gurgaon and therefore, accused no.1 has to shift in the said accommodation. Accused no.1 conveyed to the complainant clearly that he would now come home only once a week. It is further stated that complainant did not agree to the above peculiar arrangement but accused nos.1 did not pay any heed to it and shifted to the said accommodation and thereafter, on one day, the Complainant saw some questionable and objectionable photographs and messages on mobile of accused no.1 with accused no.2 and found that accused no.1 was having extra marital affair with accused no.2. It is further stated that on 19.12.2015, Complainant lodged a complaint with 1091 and caught accused persons red handed and accused no.1 confessed that he was in fact having an extra marital affair with accused no.2 but at that moment, accused no.1 and 2 pretended to be apologetic for his actions and tendered apology in writing. It is further stated that despite above stated assurances, accused persons resumed cohabiting together and threatened the Complainant with dire consequences in case in case she approaches the police again. The accused persons threatened to intimidating the complainant in order to force her to give divorce to accused no.1. Thereafter, Complainant received a legal notice from accused no.1 in January 2016 and accused no.1 filed a divorce petition before District court, Tis



Hazari. That on 16.02.2016, accused no.1 visited the Complainant with his mother and both of them assaulted the Complainant physically and dragged their daughters in between and hurled abuses at them. Thereafter, Complainant filed a complaint against accused no.1 u/s 12 of Protection of Women from Domestic Violence Act, 2005 at District court, Dwarka. It is further stated that soon thereafter, accused no.1 again approached Complainant and begged her to forgive him and started visiting Complainant and their daughters twice and thrice a week in order to play fraud so that Complainant get convinced that everything is fine and withdrew the above complaint filed against accused no.1 and thereafter, in October 2016, Complainant withdrew the Domestic Violence complaint. It is further stated that since accused no.1 had started cohabiting with Complainant, accused no.2 filed a complaint against accused no.1 on 27.11.2016 at PS Sector 56 Gurgaon and an FIR was registered against accused no.1 bearing FIR no.362/16. It is further stated that accused no.1 confessed on 27.11.2016 that accused no.1 had got married to accused nos.2 on 18.10.2015 itself and marriage had been solemnised as per Sikh Rites at Gururdwara at Sector-35, Faridabad. It is further stated that on 28.11.2016, accused no.1 was released on bail and after being released, under the pretext of convincing accused no.1 to withdraw her case, accused no.1 started visiting accused no.2 again; it is further stated that accused no.1 again deceived Complainant to believe that if accused no.1 does not start living with accused no.2, she would make life hell for Complainant and their daughters. It is further stated that in the false hope that accused no.1 would come back to Complainant after accused no.2 withdraws the case, Complainant bore humiliation and kept quiet despite knowing that accused nos.1 was staying with accused no.2. that accused no.1 would come back to Complainant and this lasted for almost an year. Thereafter, accused no.2 Filed a



collusive petition for quashing of the FIR no.362/16 before Hon'ble High Court of Punjab and Haryana at Chandigarh and same was allowed vide order dated 08.11.2017. It is further stated that Complainant made another complaint against accused no.1 at Sector-9, PS Dwarka on 11.03.2018 and when accused no.1 got to know of the same, he physically assaulted Complainant very badly in the presence of their daughters due to which she got three stitches on her head and threatened to harm the daughters if the Complainant does not withdraw the complaint and Complainant was forced to withdraw the same on 11.03.2018 itself. It is further stated that accused no.1 stopped talking with Complainant and even though Complainant and accused no.1 were living together under one roof but there was no communication or relation between them. Thereafter, on 05.06.2018, accused no.1 moved out of the house permanently and living with accused no.2 since then and has not returned to the Complainant even once. It is further stated that accused no.1 is not providing maintenance to the Complainant and their daughters and accused no.2 has threatened the Complainant that she will never get her husband back even if Complainant goes to any court. It is further stated that during the period of 2015 to 2018, accused no.1 on several occasions, forced himself upon Complainant to have sex while being in a completely inebriated state. It is Further stated that accused no.1 did forcible sexual intercourse despite repeated requests and pleadings of Complainant. Accused no.1 has also mentally harassed Complainant by coming home late regularly, drinking heavily, resorting to taking medicines like Viagra etc. it is further stated that accused no.1 has also continuously threatened Complainant with injury to her and their daughters if she tried to object to the above harassment by accused no.1. it is further stated that accused persons are guilty of offence of cruelty and accused no.1 took a second wife during the lifetime of the first wife i.e., Complainant. It is



further stated that Complainant filed a criminal complaint dated 11.08.2018 to SHO PS Palam for registering the FIR against accused persons but no action has been taken by the police against them.

Action taken report filed.

Arguments heard. Entire material on record perused. After considering the entire material on record, this court is of the considered view that investigation by police in this case is not required as complainant is in reach of the evidence which he can very well prove in the court by leading Pre summoning evidence.”,

and thus the learned Trial Court renotified the matter for leading of pre-summoning evidence as the investigation by the police was not required as the complainant was in reach of the evidence which she could prove in the Court by leading pre-summoning evidence.

3. Vide order dated 16.8.2019 the learned Revisional Court dismissed the revision petition against the order dated 13.2.2019 in Ct.Cases No. 28285/2019 observing to the effect:

“

10.1 In the present case, complainant has lodged the complaint almost 12 years after the marriage. All facts pleaded are to her knowledge. There is no third person who has the knowledge to alleged cruelty towards her or harassments. Therefore, she is best witness.

10.2 As regards her allegations that the respondents have got married and the marriage certificate is to be seized by the IO. It may be noticed that the alleged date of marriage, the Gurudwara where the marriage took place has all been pleaded by the complainant in her complaint. She has even placed on record photographs of the alleged ceremony. Therefore, she has access to all the evidence. She has even placed on record photocopy of the marriage certificate.



10.3 In such circumstances, police machinery would not be required for any further investigation. The appropriate witnesses can be summoned by the complainant. The Ld. MM has rightly exercised the jurisdiction of not getting the FIR registered. The basic reason for the revisionist to insist registration of FIR seems to be to harass the respondents and to bring them to a situation where they are involved in a criminal case investigated by the state. The reasons of the revisionist do not seem to be bonafide.

11. Therefore, I find no merits in the revision petition. The order passed by the Ld. MM is upheld. There being no illegality/irregularity in the same. Order is upheld. Revision petition is accordingly dismissed.”

4. The status report filed by the State in the present petition dated 17.1.2020 under the signatures of the SHO Police Station Palam Village at Police Station Palam Village states that the petitioner lodged a complaint against her husband Paramvir Singh arrayed as respondent No.1 and Ms.Arati Sharma, arrayed as respondent No.2 at Police Station Palam Village in 2018 and on the complaint lodged on the same issue before the learned Trial Court under Section 156(3) of the Cr.P.C., 1973, an inquiry had been conducted which revealed that the petitioner was married with Paramvir Singh initially on 2.10.2006 but that the said Paramvir Singh was reportedly married with another woman, i.e., respondent No.2 on 18.10.2015 though during the course of inquiry the said Paramvir Singh on interrogation denied having married her.

5. Inter alia, as per the status report it is indicated that inquiries were also made from Ms.Arati Sharma at that time but she too refused



to provide any documentary evidence regarding the marriage and apart from the same an inquiry was conducted at Gurudwara, Sector-35, Faridabad, Haryana, where it was brought forth that Paramvir Singh Rai had married Aarti Sharma on 18.10.2015 which aspect was brought to the notice of the learned Trial Court and after perusal of the same, the application under Section 156(3) of the Cr.P.C., 1973, was dismissed by the learned Trial Court and the Revision Petition against the said order was also dismissed.

6. As per the status report, there is a case of domestic violence and another of maintenance between the petitioner herein and Paramvir Singh Rai, pending in the Dwarka Courts.

7. The petitioner has thus submitted vide the present petition that the impugned order dated 16.8.2019 of the Revisional Court did not take into consideration the status report dated 1.11.2018 of the Investigating Officer which clearly disclosed the fact that the respondent No.1 and the respondent no.2 to the present petition had got married at Gurudwara, Sector-35, Faridabad, Haryana and thus the respondent No.2 had committed the offence of bigamy and that thus the observations of the Revisional Court that there was no necessity for directions for registration of the FIR are wholly erroneous as all that the petitioner seeks is a legal recourse to the wrong done to her by her husband, i.e., the respondent No.2 to the present petition, by illegally marrying Aarti Sharma, i.e., the respondent No.3 to the present petition, committing an offence of bigamy under Section 494 of the Indian Penal Code, 1860.



8. The petitioner has also submitted that without a proper and comprehensive investigation by the police authorities, the petitioner would be unable to prove her case against the respondent No.2 and 3 and the respondent No.2 having married illegally committed the offence of bigamy by marrying the respondent No.3 during the subsistence of the marriage with the petitioner.

9. The petitioner also submits that she being the third party cannot get the marriage certificate from the Gurudwara, Sector-35, Gurgaon where the illegal marriage of the respondent No.2 took place.

10. The petitioner has further submitted that she does not have access to the evidence which only the police authorities can procure legally in relation to the various atrocities committed by the respondent No.2 which can be determined only after the investigation.

11. The prayers made vide the present petition were opposed on behalf of the respondent No.2 to the present petition. The respondent No.3 though served with the notice of the petition for the date 13.7.2020 as also for the date 26.8.2020 with the video link of the proceedings chose not to be present nor to join the proceedings.

12. The complaint that the petitioner had filed before the learned Trial Court, certified copy of which has been placed on record, indicates that it was averred in paragraph 16 thereof to the effect:

“16. It is submitted that the marriage between the complainant and the Accused No.1 was solemnised after due observance of Sikh rites and ceremonies in the year 2006 and two children were born out of the said wedlock. However, despite still being married to the complainant, the Accused No.1 got married to the Accused No.2 on 18.10.2015. The Accused No.1 did not even attempt to



perform the second marriage in secrecy and the marriage between the Accused No.2 and the Accused No.1 was solemnised as per Sikh rites and rituals at a Gurudwara situated in Sector 35, Faridabad to which he had admitted in his statements tendered at Police Station - Sector-56, Gurgaon in FIR bearing no. 362/ 2016. The second marriage of the Accused No.1 with the Accused No.2 is void by reason of subsistence/ validity of the first marriage that took place on 02.10.2006 i.e. much before the Accused no. 1 performed the second marriage and therefore, the subsequent marriage by the Accused No.1 constitutes the offence of bigamy.”

13. The copy of the order of the Hon’ble High Court of Punjab and Haryana in CRM-M- No. 30919/2017 dated 8.11.2017 titled ***Paramvir Singh V. State of Haryana & Anr.*** quashing FIR 362/2016 dated 28.11.2016 Police Station Sector-56, Gurgaon, District Gurgaon, under Sections 323/341/495/506 of the Indian Penal Code, 1860, based on the compromise between the respondent No.2 and the respondent No.3 to the present petition is placed on the record.

14. Prima facie, thus it is brought forth through the record placed on record as indicated through the status report filed by the State also in the present petition that the petitioner was married to the respondent No.2 on the date 2.10.2006; that there is nothing on the record to indicate that the marriage between the petitioner and the respondent No.2 Paramvir Singh has been dissolved with it also brought forth through the status report on record that respondent No.2 Paramvir Singh married Aarti Sharma, respondent No.3 on 18.10.2015 at Gurudwara, Sector-35, Faridabad, Haryana. Apparently, thus in view of the complaint filed by the petitioner, the wife of Paramvir Singh,



respondent No.2 to the present petition, the registration of an FIR qua the alleged commission of the offence punishable under Section 494 of the Indian Penal Code, 1860, which reads to the effect

“Section 494 in The Indian Penal Code

494. Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(Exception) —This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

on the complaint of the petitioner was incumbent in view of the verdict of the Hon’ble Supreme Court in ***Lalita Kumari V. Government of Uttar Pradesh and Ors.***; 2014 (2) SCC 1.

15. As regards the registration of the FIR under Sections 120B/354/420/498-A/503 of the Indian Penal Code, 1860, the observations in the impugned order of the learned Revisional Court vide order dated 16.8.2019 in CrI.Rev.P. 27/2019 to the effect that the



complaint has been lodged by the complainant almost 12 years after the marriage and all facts pleaded are to her knowledge, cannot be faulted.

16. However, in as much as, as it has been observed hereinabove that the registration of the FIR against the respondent No.1 qua the alleged commission of an offence punishable under Section 494 of the Indian Penal Code, 1860, is incumbent which the SHO Police Station Palam village is directed to register in accordance with law within a period of 5 days of the receipt of this order and to proceed with the investigation in accordance with law in relation thereto. However, in as much as, the complaint filed by the complainant relates to other alleged commission of offences in relation to which proceedings are pending before the Trial Court in Ct.Case No. 28285/2018 and vide the directions herein above an FIR has been directed to be registered against the respondent No.2 Paramvir Singh, under Section 494 of the Indian Penal Code, 1860, the proceedings in the complaint case under Sections 120B/354/420/498A/503 of the Indian Penal Code, 1860 on the basis of the complaint filed by the petitioner herein dated 17.8.2018 are directed to be stayed till the receipt of the police report in terms of Section 173 of the Cr.P.C., 1973 qua the alleged commission of the offence punishable under Section 494 of the Indian Penal Code, 1860 against the respondent No.2 Paramvir Singh. On receipt of the police report under Section 173 of the Cr.P.C., 1973 qua the investigation conducted in relation to the FIR directed to be registered against Paramvir Singh qua the alleged commission of the offence punishable under Section 494 of the Indian Penal Code, 1860,



the learned Metropolitan Magistrate shall continue with the proceedings qua the police report under Section 173 of the Cr.P.C., 1973 and the complaint case qua other offences pending before the learned Metropolitan Magistrate in accordance with law.

17. Nothing stated herein shall however amount to any expression on the merits or demerits of the FIR directed to be registered under Section 494 of the Indian Penal Code, 1860 against the respondent No.2 which proceedings have to follow the due course of law.

18. The petition is disposed of.

19. Copy of this order be sent to the Standing Counsel (Criminal) of the Govt. of NCT of Delhi for necessary action.

ANU MALHOTRA, J.

SEPTEMBER 07, 2022

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