

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 769 of 2023

With

CRAN 2 of 2024

CRAN 3 of 2024

Mr. Bishwambhar Mukherjee & Anr.

Vs.

Mrs. Sarbamangala Mukherjee & Anr.

For the Petitioners : Mr. Pallab Mohan Chakraborty.

For the Opposite Party No.1 : Mr. Debabrata Acharyya,
Mr. Sital Samanta,
Ms. Debjani Sahu.

Heard Concluded on : 18.11.2024

Judgment on : 26.11.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred against an order dated 22.04.2022 and all subsequent orders passed by the learned Chief Judicial Magistrate at Suri, District-Birbhum, in complaint case no.315 of 2022.
2. Vide the said order under revision the learned Magistrate has been pleased to take cognizance for offence punishable under Section 494/109 of the Indian Penal Code against the petitioners herein.
3. Being aggrieved the accuseds/petitioners have approached the court praying for setting aside of the said order.
4. Affidavit of service filed be kept with the record.
5. Learned counsel for the petitioners has relied upon the Judgment of Supreme Court in ***B.L. Sreedhar and Ors. Vs. K.M.Munireddy (Dead) and Ors., (2003) 2 SCC 355, dated 5th December, 2002*** and has submitted that the **complainant /opposite party is estopped** from filing the present complaint as she was well aware of the marriage between the petitioners and failed to act upon the said knowledge at the earliest.
6. Learned counsel for the opposite party has filed a copy of information received from the office of the Registrar General of Marriages, West Bengal vide memo No.807 RGM dated 25.03.2022 under the Right to Information Act, 2005 wherein the opposite party has been informed that **her husband/petitioner no.1 has conducted second marriage with the petitioner no.2 on 23.07.2019 under Section 16 of the Special Marriage Act.**

7. **Section 468 of the Code of Criminal Procedure, lays down :-**

“468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be –

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]”

8. **The complaint in the present case has been filed before the trial court on 22.04.2022 and as such question of limitation does not arise.**

9. The present proceeding has been initiated under Sections 494/109 of the Indian Penal Code against the petitioners.

10. **Section 494 of the Indian Penal Code, lays down:-**

“Section 494: Marrying again during life-time 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.

Ingredients of offence. -The essential ingredients of the offence under sec. 494 are as follows:

(1) The accused had already been married to some other person;

(2) The marriage was a valid one;

(3) The spouse was alive;

(4) The accused married again;

(5) The marriage was void under the law.”

11. The said provision and the language used therein clearly implicates that the offence alleged under Section 494 of IPC is applicable to the person who has married for the second time, during the life time of his/her spouse in a valid marriage.

12. The Supreme Court in ***S. Nitheen & Ors Vs. State of Kerala and Anr, Criminal Appeal NO(S). OF 2024, arising out of SLP (Criminal) No(s). 8529 of 2019, on 15th May, 2024,*** it was held:-

“16. A bare perusal of the penal provision would indicate that the order framing charge is erroneous on the face of the record because no person other than the spouse to the second marriage could have been charged for the offence punishable under Section 494 IPC simplicitor. However, this is a curable defect, and the charge can be altered at any stage as per the provisions of Section 216 CrPC.”

13. The said conduct of second marriage in the present case is prima facie applicable in respect of the husband of the complainant the petitioner no. 1 herein and the ingredients of the offence alleged under Section 494 IPC is prima facie not applicable in respect of the petitioner no. 2 herein.

14. **Section 109 of Indian Penal Code, lays down:-**

“Section 109- Punishment of abetment if the act abetted is committed in consequence and when no express provision is made for its punishment.

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Ingredients of offence.- The essential ingredients of the offences under Sec. 109 are as follows:

(1) Abetment either by instigation, conspiracy or aiding;

(2) The principal act abetted must have been committed.

There is, however, no express provision in the code for punishment under the section.”

15. In **S. Nitheen & Ors Vs. State of Kerala and Anr. (Supra)**, the Court further held:-

“17. It is a peculiar case wherein, the complainant has not sought prosecution of the appellants for the charge of abetting the second marriage by Ms. Lumina(A-1) under Section 109 IPC. The appellants herein are being roped in by virtue of Section 34 IPC with the allegation that they had the common intention to commit the offence under Section 494 IPC. In order to bring home the said charge, the complainant would be required to prima facie prove not only

the presence of the accused persons, but the overt act or omission of the accused persons in the second marriage ceremony and also establish that such accused were aware about the subsisting marriage of Ms. Lumina(A-1) with the complainant.”

16. The petitioner no. 2, Samapti Mukherjee married the petitioner no. 1, prima facie knowing that the petitioner no. 1 was **still** married to the complainant/private opposite party and inspite of that, the petitioner no. 2 and petitioner no.1 got their marriage registered under Section 16 of the Special Marriage Act, thus prima facie aiding the offence under Section 494 IPC.
17. Thus the ingredients required to constitute the offences alleged are prima facie present in respect of the petitioners herein.
18. **Criminal revision being CRR 769 of 2023 is dismissed.**
19. Trial Court to proceed with the trial expeditiously.
20. All connected applications, if any, stands disposed of.
21. Interim order, if any, stands vacated.
22. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
23. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)