

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2287 of 2023

With

CRAN 1 of 2023

Sagari Hembram

-vs-

State of West Bengal & another

For the Petitioner : Mr. Sourav Mondal,
Mr. Roni Mondal.

For the State : Mr. Tanmoy Kumar Ghosh,
Mr. M.F.A. Begg.

Hearing concluded on : 13.11.2024

Judgment on : 19.11.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the entire proceeding in connection with G.R. Case No. 30 of 2023 arising out of Raipur Police Station Case No. 37 of 2023 under Sections 498A/494/406/506 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, now pending before the learned Additional Chief Judicial Magistrate, Khatra, Bankura.
2. It is the case of the petitioner that the opposite party no. 2 has initiated the present proceedings being Raipur Police Station Case No. 37 of 2023 under Section **498A/494/406/506** of the Indian Penal Code and 3/4 of the Dowry Prohibition Act.
3. The fact of the case in the written complaint is that on 17.4.2023 One Urmila Saren lodged a written complaint before the Officer-in-Charge Raipur Police Station inter alia alleging that:-

“.....On 27.11.2020, the complainant was married to one Biswanath Murmu and as per their claim she gave dowry but they were not satisfied with the same and as such they compelled her to bring more dowry. Further she states that after going to her matrimonial home, the husband as well as his family started to inflict torture upon her both mentally and physically and as such she went to her parental house for some days and after returning back she came to know that her husband had married another woman and is living a conjugal life with her.

Thus, on a complaint by the opposite party no. 2 Raipur Police Station Case No. 37 of 2023 under section 498A/494/406/506 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act.....”

4. It is, thus, claimed by the complainant/opposite party no. 2 who has chosen not to appear in spite of due service that none of the offences alleged in the said complaint are applicable in respect of the petitioner who **admittedly is not the relative of the husband of the complainant.**

The prima facie allegation against the petitioner is that she is the second wife of the husband of the complainant.

5. **Section 494 of the Indian Penal Code is as follows:-**

“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.”*

6. 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 spouse in a valid marriage.

7. 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, it was held:-

“15. The essential ingredients of offence under Section 494 IPC, as explained by this Court in the case of **Gopal Lal v. State of Rajasthan, (1979) 2 SCC 170** are as follows:

“3. The essential ingredients of this offence are: (1) that the accused spouse must have contracted the first marriage (2) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and (3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed.”

20. This Court in the case of **Chand Dhawan(Smt) v. Jawahar Lal and Others, (1992) 3 SCC 317** while upholding the order passed by the High Court quashing the criminal proceedings under Section 494 IPC against the accused therein, observed as follows:-

9. “.....So far as other respondents are concerned, it may be said that they had been unnecessarily and vexatiously roped in. **The allegations in the complaint so far as these respondents are concerned are vague. It cannot be assumed that they had by their presence or otherwise facilitated the solemnisation of a second marriage with the knowledge that the earlier marriage was subsisting.** The explanation of the first respondent that the second respondent has been functioning as a governess to look after his children in the absence of the mother who had left them implies that respondents 1 and 2 are living together. In this background, the allegations made

against respondents 3 to 7 imputing them with guilty knowledge unsupported by other material would not justify the continuance of the proceedings against those respondents.”

(emphasis supplied)”

8. The said conduct of second marriage is prima facie applicable in respect of the husband of the complainant and the ingredients of the offences alleged are prima facie not applicable in respect of the petitioner herein.
9. The rest of the offences being under Section 498A/406/506 IPC also are thus prima facie not applicable in respect of the petitioner herein. The ingredients required to constitute the offence under Section 506 IPC are also not present in respect of the petitioner herein.
10. As such the proceedings against the present petitioner is bad in law and permitting such a proceeding to continue would be a clear abuse of process of law and in the interest of justice is liable to be quashed.
11. Criminal revision being **CRR 2287 of 2023 is thus allowed.**
12. The proceeding in connection with G.R. Case No. 30 of 2023 arising out of Raipur Police Station Case No. 37 of 2023 under Section 498A/494/406/506 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, now pending before the learned Additional Chief Judicial Magistrate, Khatra, Bankura, **is hereby quashed.**
13. Pending applications stand disposed of.
14. Interim order, if any, stands vacated.
15. Let a copy of the judgment be sent to the learned trial Court for compliance.

- 16.** Urgent Xerox certified copies of this judgment, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)