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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 06th September, 2024***+ **CRL.M.C. 1673/2020**

MANISHA

.....Petitioner

Through: Mr. M. Hasibuddin, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ORS.

.....Respondents

Through: Ms. Richa Dhawan, APP for State.
Mr. Rajesh Kumar Chaurasia, Adv for
Respondent No. 2**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Petition under Section 482 Cr.P.C has been filed against the impugned Order dated 22.06.2020 of the learned Sessions Judge who has upheld the order of the learned M.M dated 11.05.2017 dismissing the Complaint under Section 200 Cr.P.C seeking registration of FIR under Section 494 IPC against Respondent No.2.

2. Briefly stated, the case of the petitioner Ms. Manisha is that she was married to Respondent No. 2, Shri Rohit Matil, on 22.11.2008 according to Hindu customs and rites and one son was born from their wedlock on 05.12.2009. The Respondent No.2 at the time of his marriage was associated with Delhi Metro as an Engineer and continues to be so employed with Delhi Metro. He got transferred to Jaipur in the year 2013 and during the said period, the petitioner noticed certain objectionable communications



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on the mobile phone of Respondent No.2 between him and Respondent No.3, Ms. Durgesh Kumawat. When she confronted Respondent No.2 about the girl, he started avoiding her. The petitioner has claimed that while Respondent No.2 was posted at Jaipur, he mostly avoided her. She then went to Jaipur and noticed the relationship between Respondent No.2 and 3. She filed a complaint at Police Station Shyam Nagar at Jaipur against Respondent No.2 and the matter was compromised in the Police Station on 08.10.2015.

3. The Respondent No.2 got transferred to Delhi in the year 2015 and thereafter, both petitioner and Respondent No.2 started living happily in their own accommodation at Uttam Nagar, New Delhi. The Respondent No.2 had much affection towards her and their child.

4. On 01.05.2016 the Respondent No.2 as usual left the house for his office in the morning, but did not return thereafter and his mobile phone was also switched off. The petitioner became apprehensive and made enquiries at the office of Respondent No.2, but was unable to get any clue about him. She approached the in-laws and all relatives, but again was unable to trace him. Left with no option, she lodged a missing report about her husband on 02.05.2016 which was recorded vide DD No.36A P.S. Bindapur, Delhi.

5. The petitioner was having the records of Respondent No.3 and in search of Respondent No.2, she went to Udaipur, where Respondent No.3 was residing. On enquiry from the father of Respondent No.3, he expressed his inability to inform the petitioner about the whereabouts of Respondent No.3. She disclosed to the father of Respondent No.3 that she was the wife of Respondent No.2 and even produced her photographs to which the father of Respondent No.3 reacted sharply and told her that his daughter i.e.



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Respondent No.3 has got married to Respondent No.2. She requested him for documentary proof, but he refused to do so.

6. The petitioner then approached Police Station Amba Mata, Udaipur to ask the police officials to collect the documents of proof of marriage between Respondent No.2 and 3. An inquiry was held by the police officials and father of Respondent No.3 was called, where he admitted the fact of marriage between Respondent No.2 and 3, but was unable to produce any documentary proof. He then filed his duly notarized Affidavit with the Police.

7. The petitioner on return from Udaipur on 09.05.2016, received a Notice from Family Court, Tis Hazari, Delhi of Divorce petition under Section 13(1)(ia) HMA which had been filed by Respondent No.2 in April, 2016 while she and Respondent No.2 had been residing together. She realized that Respondent No.2 in a planned manner had left her company on 01.05.2016 and thereafter served her with the Notice on 09.05.2016.

8. The petitioner thus, filed an Application before the learned M.M with a request to direct the SHO, P.S. Bindapur to search her husband pursuant to DD No.36A. On the directions of learned M.M, Respondent No.2 appeared but he refused to even see the face of his child. On consistent intervention of learned M.M, Respondent No.2 agreed to meet his wife and child and handed over some petty amount to them. Since then he has been evading the company of the petitioner.

9. The petitioner being the housewife, had no option but to file the Complaint under Section 200 Cr.P.C. to prosecute Respondent No.2 under Section 494 IPC. The learned M.M after recording the evidence produced on behalf of the petitioner, observed that since the father of Respondent No.3



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denied the contents of the affidavit, there was no substance on record to summon the accused persons. The complaint was accordingly dismissed.

10. She thus, filed the Revision before the learned ASJ. During the pendency of the said Revision, she came to know that Shri Narayan Lal Kumawat, father of Respondent No.3, had registered FIR No.407/2016 dated 12.10.2016 under Section 420/406/494/120B IPC, P.S. Amba Mata, District Udaipur in which he had made allegations against petitioner and Respondent No.2 as accused persons. She then filed an Application under Section 391 Cr.P.C. before the learned ASJ with a request to prove the said FIR, but the Application was disallowed and the Revision Petition was also dismissed on the ground that the said FIR had been withdrawn by Shri Narayan Lal Kumawat and the Police had already filed the Closure Report before ACJM. The learned ASJ had observed that the contents of FIR sought to be produced by the petitioner, clearly mentions the date, place and the rituals and the ingredients of misrepresentation were present in the FIR which supported the allegations made by the petitioner.

11. The Order of the learned ASJ is challenged on the ground that a Police Enquiry should have been held to verify the contents of FIR No.407/2016 as it is improbable for the petitioner to bring on record the documents of *Saptpadi* to prove her allegations against Respondent No.2 and 3.

12. The petitioner has claimed that when Respondent No.2 came to know that the petitioner had approached the father of Respondent No.3 and had disclosed about her marriage with Respondent No.2, he threatened the father of Respondent No.3 that unless he withdrew his complaint on which the FIR No.407/2016 was registered, he would not continue to live with his



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daughter/Respondent No.3. It is in these circumstances that the complaint was withdrawn by the father of Respondent No.3.

13. The petitioner has claimed that she is a lady and a mother of a minor child who has been running from pillar to post to get back her husband but all her efforts have been in vain. She has been trying to collect written material against Respondent No.2 and 3, but the same has not been considered as sufficient for directing registration of FIR. Furthermore, refusal of father of Respondent No.3 about the contents of the affidavit that he had furnished to the Police at Udaipur confirms the allegations of the petitioner against Respondent No.2 and 3. It is submitted that the impugned Order rejecting her complaint under Section 200 Cr.P.C. be set aside.

14. The **Respondent No.2 in his reply**, stated that the address of Respondent No.3 has been given as that of the Respondent No.2 which is false and incorrect as he does not know her. The material facts have been concealed by the petitioner deliberately by giving a wrong address. The reason solely was to somehow serve the Notice upon Respondent No.3 to be able to establish the relationship between Respondent No.2 and 3, when there is none. The purpose was to implicate Respondent No.2 somehow. It is claimed that the petitioner has filed a false case on the basis of concocted story and her Complaint under Section 200 Cr.P.C. has been rightly dismissed by learned M.M. and the Order upheld by the learned ASJ.

15. It has been asserted that Shri Narayan Lal Kumawat was summoned as a witness by the petitioner, but he in his testimony he categorically stated that his daughter was unmarried. Though he had got the FIR registered against Respondent No.2 and 3, but he gave a statement to the Investigating Officer as well as to Addl. Chief Judicial Magistrate, Udaipur, and had



explained that the petitioner along with some Muslim youth had come to his house and threatened him with kidnapping of his daughter, if he would not give the affidavit of the marriage of Respondent No. 2 and 3, and thus he was compelled to give the affidavit which he had subsequently withdrawn. The Complaint made by him, being false, had been withdrawn by him. Even during the investigations by the Police in the said FIR, the averments made were found to be false and the Closure Report was submitted by the I.O. in the Court on 19.11.2016.

16. It is submitted that there is no proof of solemnization of second marriage of Respondent No.2 with Respondent No.3 and the Complaint has been rightly dismissed. It is asserted that the petition has been filed with *malafide* intention to fulfil the hidden agenda of extracting money and movable property from Respondent No.2. She wants to save herself from her illicit relationship with Mr. Abhishek which has been proved by Respondent No.2 in the Divorce petition.

17. The petitioner has placed reliance on Bhaurao Shankar Lokhande vs. State of Maharashtra AIR 1965 SC 1564; Kanwal Ram and Ors. vs. H.P Administration AIR (1966) SC 614; Smt. Priya Bala Ghosh vs. Suresh Chandra Ghosh (1971) 1 SCC 864; Santi Deb Berma vs. Kanchan Praya Devi (1991) Supp. 2 SCC 616; and Laxmi Devi vs. Satya Narayan and Ors. (1994) 5 SCC 545 to assert that in the absence of any proof of *Saptapadi*, no offence of bigamy is proved.

18. **On merits**, all the averments made in the petition are denied. It is submitted that the present petition is liable to be dismissed.

19. **Submissions heard.**

20. Essentially, the petitioner had filed a Complaint under Section 200 of



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Cr.P.C. for registration of an FIR on the allegations that her husband/Respondent No. 2 had committed second marriage during the subsistence of their marriage and the offence was committed under Section 494 of IPC.

21. Essentially, the reasons for her asserting these facts were that her husband had gone for a job at Jaipur and she on suspecting him of having relationship with a woman having accidentally found some messages and photographs on his phone, which arose her suspicion that he was involved with another woman. Subsequently, he got posted in Udaipur and was not very communicative and, therefore, she went to Udaipur to check on him and she came to know that he is residing with the Respondent No. 3 with whom he had got married. When she confronted the father of the Respondent No. 3, he confirmed that his daughter had got married to her husband and even showed her the photographs. When she approached the police, he even gave an affidavit confirming the factum of marriage of the Respondent No. 3 with the Respondent No. 2. An FIR No.407/2016 dated 12.10.2016 under Section 420/406/494/120B IPC, P.S. Amba Mata, District Udaipur, was registered.

22. The Respondent has explained that the said FIR was registered on the complaint of the father under a mistaken belief and he had withdrawn the complaint and the FIR was closed.

23. The petitioner had grave suspicion of the Respondent No. 2 being in a relationship with the Respondent No. 3 but she unfortunately has not been able to produce a single document or circumstance to prove that the Respondent No. 2 got married to the Respondent No. 3 without taking divorce from the petitioner.



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24. There is neither any document of marriage nor any other cogent evidence to show that the Respondent No. 2 has got married to the Respondent No. 3; in fact, even the date of alleged marriage has not been stated. The averments made by the petitioner are essentially conjectural and speculative. Even if her averment that the Respondent No. 2 has been living with the Respondent No. 3 in a relationship in the nature of marriage is accepted, no bigamy can be said to have been committed for which it is essential to prove that the Respondent No. 2 and Respondent No. 3 have got married according to the Hindu customs and rites in accordance with the Hindu Marriage Act, 1955. In the absence of any such evidence, the learned Metropolitan Magistrate was right in holding that no offence is *prima facie* established for summoning of the Respondent.

25. The learned Additional Sessions Judge has rightly upheld the Order of learned Metropolitan Magistrate.

26. There is no infirmity or illegality in the challenged orders.

27. Accordingly, the present petition is dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 6, 2024

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