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

+ CRL.M.C. 208/2020

BABITA BHATT

.....Petitioner

Through: Ms. Sunita Arora,
Advocate from DHCLSC.

versus

STATE & ORS.

.....Respondents

Through: Ms. Richa Dhawan, APP
for the State. with ASI
Sunita, PS CAW Cell.
Mr. Anil, Advocate for
Respondent No.3 (through
VC).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **07.07.2025**

1. The present petition is filed against the order dated 03.12.2019 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Saket Courts, New Delhi in Cr. Rev. 345/2019.
2. By the impugned order, the learned ASJ set aside the summoning order dated 16.05.2019 passed by the learned Magistrate whereby Respondent Nos. 2-3 were summoned for the offence under Section 494 of the Indian Penal Code, 1860 ('**IPC**').
3. Briefly stated, the marriage between the petitioner and Respondent No. 2 was solemnised on 30.11.2015. It is alleged that Respondent No. 2 obtained an *ex-parte* decree of divorce against the petitioner by forging her signature and without the petitioner's knowledge. It is alleged that the petitioner only learnt



about the *ex-parte* decree of divorce on 03.04.2018 when Respondent No. 2 visited her residence at Bangalore with some associates. It is alleged that upon enquiry, the petitioner learnt that the *ex-parte* decree of divorce was passed by the learned Family Court on 23.08.2017. Thereafter, the petitioner preferred an application for setting aside the *ex-parte* decree of divorce and the same was allowed by the learned Family Court *vide* order dated 19.09.2018.

4. It is the case of the petitioner that despite the *ex parte* decree of divorce, Respondent No. 2 continued to cohabit with her. The subject complaint was filed by the petitioner before the learned Trial Court alleging that Respondent No. 2 committed an offence under Section 494 of the IPC by marrying Respondent No. 3 during the valid marriage with the petitioner. It is claimed that the marriage of Respondent Nos. 2-3 was solemnised on 25.03.2018.

5. By order dated 16.05.2019, the learned Magistrate summoned Respondent Nos. 2-3 for the offence under Section 494 of the IPC.

6. By the impugned order, the learned ASJ set aside the summoning order dated 16.05.2019 passed by the learned Magistrate while specifically noting that Respondent No. 2 married Respondent No. 3 when the *ex-parte* decree of divorce was in force. It was consequently noted that the offence under Section 494 of the IPC was not made out against Respondent Nos. 2-3. Aggrieved by the same, the petitioner has filed the present petition.

7. The learned counsel for the petitioner submits that the impugned order is erroneous and is liable to be set aside. She submits that the marriage between Respondent No. 2 and



Respondent No. 3 was solemnised in October 2018 after the *ex parte* decree of divorce had been set aside. She submits that Respondent No. 2 had obtained the *ex parte* decree of divorce by playing fraud upon the Court. She submits that Respondent No. 2 could not have married Respondent No. 3 during the subsistence of his marriage with the petitioner. She consequently submits that the impugned order is perverse and is liable to be set aside.

8. The short point for determination by this Court is whether the learned ASJ rightly set aside the summoning order dated 16.05.2019 passed by the learned Magistrate whereby Respondent Nos. 2-3 were summoned for the offence under Section 494 of the IPC.

9. Before delving into the correctness of the impugned order, it is pertinent to take note of Section 494 of the IPC. The same reads as under:

“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.”

10. Section 494 of the IPC criminalises the offence of bigamy. In order to sustain a conviction under Section 494 of the IPC, it is imperative for the accused to enter into a second marriage during



the subsistence of the first marriage. The Hon'ble Apex Court in the case of ***Krishna Gopal Divedi v. Prabha Divedi : (2002) 10 SCC 216***, quashed criminal proceedings against the husband under Section 494 of the IPC where the husband entered into a second marriage after obtaining an *ex parte* decree of divorce from his first wife, where the first wife subsequently secured an order setting aside the *ex-parte* decree of divorce. The Hon'ble Apex Court noted that the husband had entered into the second marriage when the *ex-parte* decree of divorce was in force, and that the same cannot attract the offence under Section 494 of the IPC.

11. In the present case, the petitioner has pleaded that the marriage between Respondent Nos. 2 and 3 was solemnised in October 2018, and that the *ex-parte* decree of divorce was set aside by the learned Family Court *vide* order dated 19.09.2018. From a perusal of the material on record, it is evident that it is the petitioner's own case that Respondent Nos. 2 and 3 had solemnised their marriage on 25.03.2018. The same has been pleaded by the petitioner in her complaint preferred before the learned Trial Court and has been recorded by the learned Magistrate and the learned ASJ. On being pointedly asked, nothing substantial has been pleaded by the petitioner to substantiate that Respondent Nos. 2 and 3 had solemnised their marriage in the month of October 2018, that is, after setting aside of the *ex-parte* decree of divorce.

12. From a perusal of the material on record including the complaint preferred by the petitioner before the learned Trial Court, it is borne out that as per the petitioner's own case, the marriage between Respondent Nos. 2 and 3 was solemnised on 25.03.2018. The *ex-parte* decree of divorce was set aside by the



learned Family Court much later on 19.09.2018. In line with the dictum of the Hon'ble Apex Court in the case of **Krishna Gopal Divedi v. Prabha Divedi** (*supra*) and as rightly appreciated by the learned ASJ, considering that Respondent No. 2 entered into a second marriage with Respondent No. 3 while the *ex-parte* decree of divorce was in force, the ingredients of the offence under Section 494 of the IPC are not attracted.

13. Upon a perusal of the facts and circumstances of the present case, this Court does not find any infirmity in the impugned order and the same cannot be faulted with.

14. The present petition is accordingly dismissed.

AMIT MAHAJAN, J

JULY 7, 2025