



2025:DHC:1861



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

% *Date of Decision: 20th March, 2025*

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+ CRL.M.C. 886/2020 & CRL.M.A. 34305/2023

YASH DEV SINGH SEJWAL

.....Petitioner

Through: Ms. Richa Kapoor, Mr. Kunal Anand, Ms. Atika Singh, Mr. Harsh Gautam and Ms. Udipti Chopra, Advocates along with petitioner in person.

versus

STATE & ORS.

.....Respondents

Through: Ms. Kiran Bairwa, APP for the State with Insp. Satish Kumar and SI Uday, PS DIU/North Dist. Mr. Raj Kumar, Advocate for R-2.

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+ CRL.M.C. 910/2020 & CRL.M.A. 1982/2021, CRL.M.A. 34287/2023

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Signing Date: 25.03.2025
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Ms. Monika Arora, CGSC
with Mr. Subrodeep Saha
and Mr. Prabhat Kumar,
Advocates for UOI.
Mr. Raj Kumar, Advocate
for R-4.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN
AMIT MAHAJAN, J. (Oral)

CRL.M.C. 886/2020

1. The present petition is filed challenging the order dated 26.06.2018 (hereafter '**the impugned order**') passed by the learned Metropolitan Magistrate ('**MM**'), Mahila Court, Central, Tis Hazari Courts, Delhi, pursuant to which Respondent No.2 was discharged in complaint case being CC No. 14/3/2009.

2. The complaint was filed by the petitioner under Sections 417/494/495 read with Section 120 of Indian Penal Code, 1860 ('**IPC**'), alleging that Respondent No.2 misrepresented her marital status at the time of marriage.

3. It is alleged that the petitioner married Respondent No.2 based on a false representation by her and her family that she was unmarried. Subsequently, the petitioner discovered that Respondent No.2 had previously been married to one Ravi Chaudhary and had separated from him through an agreement without obtaining a legal divorce. Upon confronting Respondent No.2, she allegedly threatened the petitioner and his family with false legal cases, prompting the petitioner's father to file the present complaint.

4. The Learned Trial Court noted that the complaint was filed by the father of the petitioner in his capacity as power of



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attorney. In his deposition, he stated that Respondent No.2 and her relatives had approached the petitioner's family in response to a matrimonial advertisement and misrepresented her marital status, leading to the marriage being solemnized on 23.10.2000.

5. The petitioner allegedly discovered the previous marriage when attending a family wedding, where an acquaintance informed him that Respondent No.2 had been married to Ravi Chaudhary. Upon further inquiry, the petitioner reportedly obtained documents, including a marriage agreement and a marriage registration certificate, allegedly proving Respondent No.2's previous marriage. However, the petitioner's father admitted in his deposition that the petitioner himself had previously been married and had children from that marriage.

6. The Learned Trial Court dismissed the complaint and discharged Respondent No.2, holding that the deposition of the petitioner's father was hearsay regarding the claim that he learned of Respondent No.2's previous marriage at a wedding. Additionally, the court observed that the documents submitted as proof of Respondent No.2's alleged prior marriage were not legally binding and did not bear her signature. Furthermore, no witnesses named in the documents had been examined.

7. Based on these findings, the Trial Court concluded that a *prima facie* case regarding Respondent No.2's alleged first marriage with Ravi Chaudhary was not established.

8. The complaint was filed under Sections 494/495 of the IPC, which fall under Chapter XX of the IPC. It is relevant to note that Section 198 of the CrPC relates to the prosecution for



offences against marriage and the same reads as under:

“198. Prosecution for offences against marriage.—(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that—

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under 1 [section 494 or section 495] of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister 2 [, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption].

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a person who has not been appointed or declared by a competent authority to be the guardian of the person of the minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.



(4) The authorisation referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding Officer, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(5) Any document purporting to be such an authorisation and complying with the provisions of sub-section (4), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence.

(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code (45 of 1860), where such offence consists of sexual intercourse by a man with his own wife, the wife being under 3 [eighteen years of age], if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence."

9. Section 198 of the CrPC categorically provides that only an aggrieved person can file a complaint for offences under Chapter XX of the IPC. The provision makes an exception where the aggrieved husband is serving in the armed forces and is unable to file a complaint personally, in which case an authorized person is permitted to do so on his behalf.

10. In the present case, the petitioner is not serving in the armed forces, and it is undisputed that the complaint was filed by the petitioner's father. Consequently, no cognizance could have been taken of the complaint as it was not filed by a legally recognized aggrieved person under Section 198 of the CrPC.

11. The learned counsel for the petitioner argues that the petitioner was deceived into marriage through false



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representations by Respondent No.2 and that she had subsequently filed frivolous cases against him with the intent to harass and extort money. The petitioner, being a non-resident of India, claims to be unduly harassed by these complaints. He primarily seeks an investigation into Respondent No.2's alleged previous marriage.

12. The learned counsel submits that the petitioner only wants the investigation to be carried out in regard to the alleged first marriage of Respondent No.2.

13. Lastly, she contends that the FIR No. 146/2002 under Sections 498A/420/406 IPC registered at PS Civil Lines, Delhi has been registered at the instance of Respondent No.2 and charges are yet to be framed in the said FIR.

14. In light of the above findings and legal provisions, it is clear that the complaint filed by the petitioner's father was not maintainable under Section 198 of the CrPC, and the learned Trial Court was correct in discharging Respondent No.2. There is no ground to interfere with the impugned order.

15. The petition stands dismissed with the aforesaid observations.

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16. The present petition is filed seeking quashing of the chargesheet dated 25.09.2004 arising out of FIR No. 146/2002 dated 27.05.2002 registered at police station Civil Lines for offences under Sections 498A/420/406 of the IPC.

17. The FIR was registered at the instance of Respondent No.2, who alleged that she was married to the petitioner on



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23.10.2000. She claimed that she was subjected to harassment by the petitioner and his family members for dowry. Further, she alleged that upon her and her father's inability to meet their demands, the petitioner and his family members issued threats of dire consequences.

18. The learned counsel for the petitioner claims that the Respondent No.2 had misrepresented and concealed the fact that she was already married at the time of her marriage with the petitioner. She submits that this crucial fact was brought to the attention of the Investigating Officer during the investigation but was not recorded or made part of the charge sheet. She argues that this omission is material and needs to be considered by the learned Trial Court at the time of hearing arguments on charge.

19. While it is undeniable that the petitioner's arguments pertain to his defense, at the same time, the allegations raised are serious in nature and directly impact the veracity of the claims made by Respondent No.2 in the FIR. Given that these allegations go to the root of the case, they are relevant and must be taken into account by the learned Trial Court at the appropriate stage.

20. It is well established that this Court, in exercise of its inherent powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') [erstwhile Section 482 of the Code of Criminal Procedure, 1973] can direct further investigation when cognizance has already been taken by the Magistrate and the charge sheet has been filed.

21. The scope of Section 528 of the BNSS has been expanded

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in several judgments, establishing that the High Court can intervene to ensure that an incomplete or flawed investigation does not result in the miscarriage of justice. In ***Devendra Nath Singh v. State of Bihar : (2023) 1 SCC 48***, the Hon'ble Apex Court summarised the precedents on the powers of the Trial Court and the High Court to order further investigation and laid down the following principles :

45. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:

45.1. The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

45.2. The powers of the Magistrate to ensure proper investigation in terms of Section 156CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8) CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

45.3. Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8)CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8)CrPC do not limit or affect such powers of the High Court to pass an order under Section 482CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.



45.4. Even when the wide powers of the High Court in terms of Section 482CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

45.5. The powers under Section 482CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.

(emphasis supplied)

22. Further, in the case of ***Vinubhai Haribhai Malaviya v. State of Gujarat : (2019) 17 SCC 1***, it was argued before the Hon'ble Apex Court that once cognizance had been taken, the Trial Court lacked the authority to order further investigation, either *suo motu* or upon an application by the accused. The Hon'ble Apex Court distinguished and overruled certain earlier judgments and rejected this argument, holding as under:

“42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] , Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365] , Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , and Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] ; Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3



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SCC 92 : (2014) 2 SCC (Cri) 86] having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603] . Therefore, to the extent that the judgments in Amrutbhai Shambhubhai Patel [Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331] , Athul Rao [Athul Rao v. State of Karnataka, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594] and Bikash Ranjan Rout [Bikash Ranjan Rout v. State (NCT of Delhi), (2019) 5 SCC 542 : (2019) 2 SCC (Cri) 613] have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] and Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also stand overruled.

(emphasis supplied)



23. In the present case, the learned counsel for the petitioner has specifically alleged that Respondent No.2 misrepresented and concealed her prior marriage, and despite bringing this fact to the notice of the Investigating Officer, it was not considered in the charge sheet. The omission of this crucial piece of evidence from the investigation raises concerns about the fairness and completeness of the investigation conducted.

24. The principles of fair trial and justice demand that the petitioner be afforded an opportunity to present this significant evidence before the trial progresses further. The exclusion of relevant exculpatory evidence could lead to an unfair trial and would be detrimental to the petitioner's defence.

25. Allowing the police to conduct further investigation will ensure that no relevant evidence is excluded from the case, thereby safeguarding the petitioner's right to a fair trial. Additionally, it ensures that the trial proceeds on the basis of all relevant and available evidence, allowing the Court to arrive at a just and informed decision.

26. It is pointed out the trial has not proceeded as yet and the matter is still at the stage of arguments on charge.

27. The learned counsel for the petitioner, on instructions, submits that he would be satisfied if directions for further investigation are given in the present case, and in that event, he does not wish to press the prayer for quashing of the chargesheet.

28. In view of the foregoing, this Court deems it appropriate to direct the police to conduct further investigation into the allegations raised by the petitioner regarding Respondent No.2's



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alleged prior marriage. The investigating agency is directed to thoroughly examine this aspect, collect all relevant evidence, and submit a supplementary charge sheet.

29. The present petition is disposed of in the aforesaid terms.

30. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

MARCH 20, 2025

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