Sr. No. 23

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
ATJAMMU

CRM(M) No. 592/2024

Date of pronouncement:- 16.11.2026.
Uploaded on:-. 19.11.2026.

Mohd. Qasim, age 61 years, ...Petitioner(s)
S/o Lt. Mohd. Bashir,
R/o Dodason Bala, Tehsil Thanamandi,
District Rajouri.

Through: - Mr. Waheed Choudhary, Advocate.

v/s

1. Mohd. Aslam, ...Respondent(s)
   S/o Badar Din,
   R/o Sunjwan, Near B.N College,
   Tehsil & District Jammu.
2. Shabnam Akhter @ Lelu Devi
   W/o Mohd. Aslam
   R/o Chak Bhalwal, Tehsil Bhalwal,
   District Jammu.

Through: - Mr. Sharukh Rashid, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

O R D E R

1. The petitioner, who figures as an accused in the complaint titled *"Mohd. Aslam v. Shabnam Akhtar and Others"*, instituted by respondent No. 1 for the commission of offences punishable under Sections 494, 496, 497 and 498 read with Section 109 of the Indian Penal Code (IPC), has invoked the inherent jurisdiction of this Court to assail the order dated 06.10.2023, passed by the learned Sub Registrar, Judicial Magistrate First Class, Jammu *(hereinafter referred to as the "trial Court"),* whereby cognizance of offences punishable under Sections 494 and 498 IPC was taken and

process was directed to be issued against the petitioner and respondent No. 2.

2. The principal grievance projected by the petitioner is that the impugned order has been passed mechanically, without due application of mind and without examining whether the allegations contained in the complaint, read with the preliminary statements recorded in support thereof, disclose the essential ingredients of the offences alleged. It is contended that the complaint has been instituted with an ulterior motive to harass the petitioner and tarnish his reputation and that the continuation of proceedings founded upon such an order would amount to an abuse of the process of law.

3. The factual background, insofar as it is relevant for the determination of the controversy, may be noticed at the outset.

4. Respondent No. 1 instituted a complaint, alleging therein that respondent No. 2 was his legally wedded wife and that their marriage had been solemnized in the year 2018. It was alleged that, during the subsistence of their matrimonial relationship, respondent No. 2 developed illicit relations with the petitioner and, despite repeated objections and persuasion by the complainant, continued the said relationship. The complainant further alleged that respondent No. 2 eventually deserted him and started residing with the petitioner as his wife. It was also alleged that the petitioner, despite being aware of the subsisting marriage between the complainant and respondent No. 2, contracted marriage with the latter. Certain other persons were also implicated on the allegation that they had instigated or facilitated the alleged acts. Upon examining the complainant and one

witness in terms of Section 200 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the trial Court proceeded to take cognizance of offences punishable under Sections 494 and 498 IPC against the petitioner and respondent No. 2. However, finding insufficient material to proceed against the remaining accused, the trial Court declined to issue process against them.

5. Learned counsel for the petitioner has assailed the impugned order primarily on the ground that neither the complaint nor the preliminary statements disclose the foundational facts necessary to constitute the offences under Sections 494 and 498 IPC. It is submitted that the allegations, even if accepted at their face value, essentially relate to an alleged adulterous relationship between the petitioner and respondent No. 2. Such allegations, according to learned counsel, cannot, by themselves, furnish a legal basis for taking cognizance of the offence of bigamy. It is further contended that there is no specific averment regarding the date, place, manner or essential ceremonies of the alleged second marriage. The mere assertion that the petitioner and respondent No. 2 were residing together as husband and wife, without any supporting material establishing the solemnization of a marriage, cannot attract the provisions of Section 494 IPC. Learned counsel has also questioned the invocation of Section 498 IPC, particularly against respondent No. 2, who is herself the married woman alleged to have been enticed or taken away.

6. *Per contra*, learned counsel for the respondents has supported the impugned order and submitted that the complaint, together with the material placed before the trial Court, disclosed sufficient grounds for

proceeding against the accused. It is urged that the proceedings have already advanced to the stage of framing of charges and that the petitioner ought to raise his defence before the trial Court rather than seek termination of the proceedings by invoking the inherent jurisdiction of this Court. It is further submitted that the disputed questions of fact, including the nature of the relationship between the petitioner and respondent No. 2 and the alleged solemnization of marriage, are matters requiring evidence and cannot appropriately be adjudicated in proceedings of the present nature.

7. Heard learned counsel for the parties and perused the record of the trial Court.

8. The controversy arising for consideration is whether the allegations contained in the complaint, read with the preliminary statements and the material placed on record, furnished sufficient grounds for proceeding against the petitioner and respondent No. 2 for the commission of offences punishable under Sections 494 and 498 IPC. An ancillary, though equally significant, question is whether the procedure subsequently adopted by the trial Court in framing charges conforms to the mandatory provisions of the Code of Criminal Procedure. Before examining the factual allegations, it would be appropriate to advert to the statutory provisions governing the offences in question.

9. Section 494 IPC makes punishable the act of marrying again during the lifetime of a husband or wife in circumstances where such subsequent marriage is void by reason of it taking place during the subsistence of the earlier marriage. The essential foundation of the offence is, therefore, the

contracting of a subsequent marriage during the subsistence of a legally valid marriage, subject to the exceptions and legal requirements contemplated by the provision. Section 498 IPC, on the other hand, deals with enticing, taking away, concealing or detaining a married woman with the requisite criminal intent. The provision is directed against a person who, knowing or having reason to believe that the woman is the wife of another man, takes or entices her away, or conceals or detains her, with the intent that she may have illicit intercourse with any person.

10. The two provisions operate in distinct fields. Whereas Section 494 IPC concerns the contracting of a subsequent marriage during the subsistence of an earlier marriage, Section 498 IPC addresses specified acts of taking away, enticing, concealing or detaining a married woman with the criminal intent contemplated therein. The ingredients of these offences cannot be treated as interchangeable, nor can the mere allegation of an illicit relationship, without more, be regarded as sufficient to establish either offence.

11. Examined in the light of the aforesaid statutory requirements, the material placed before the trial Court reveals substantial deficiencies. A perusal of the complaint would show that its principal allegation is that respondent No. 2, despite being the legally wedded wife of the complainant, developed an illicit relationship with the petitioner and, notwithstanding repeated objections, continued the same. It is further alleged that she eventually deserted the complainant and started residing with the petitioner as his wife. Although the complaint contains an allegation suggestive of a subsequent marriage between the petitioner and

respondent No. 2, it does not disclose the material particulars of such marriage. There is no specific assertion regarding the date or place of solemnization, the manner in which the marriage was performed, or the circumstances demonstrating that a marriage, attracting the penal consequences contemplated under Section 494 IPC, had in fact been contracted.

12. It is true that a photocopy of a *Nikah Nama* was annexed to the complaint. However, the mere production of a document, without the relevant facts concerning its execution, contents and legal effect being brought on record through the complaint or supporting statements, cannot dispense with the requirement of examining whether the essential ingredients of the alleged offence are *prima facie* disclosed. The trial Court was required to consider the document in conjunction with the allegations and the applicable legal requirements before forming an opinion that sufficient grounds existed for proceeding.

13. The preliminary statement of the complainant, does not materially advance the allegation of bigamy. The complainant principally reiterated that respondent No. 2 had developed illicit relations with the petitioner, that he had repeatedly objected to such conduct, and that she had eventually started residing separately with the petitioner. He also referred to having found them in a compromising position and to the consequent injury allegedly caused to his reputation. Significantly, the statement does not furnish the necessary particulars of the alleged subsequent marriage. Likewise, the preliminary statement of the complainant's witness, Mohd. Shabir, is substantially confined to the assertion that the complainant and

respondent No. 2 were married in the year 2018 and that respondent No. 2 subsequently started residing with the petitioner. The witness also referred to the mental harassment and reputational injury allegedly suffered by the complainant. His statement, however, does not disclose any material fact concerning the actual solemnization of a subsequent marriage. Thus, the complaint and the preliminary statements, considered cumulatively, primarily disclose allegations concerning the relationship between the petitioner and respondent No. 2 and their alleged cohabitation. The material does not adequately disclose the factual foundation necessary for forming a *prima facie* opinion regarding the commission of the offence punishable under Section 494 IPC.

14. Mere cohabitation or the assertion that two persons are living as husband and wife cannot, by itself, be equated with proof of solemnization of a marriage for the purpose of attracting penal liability under Section 494 IPC. The existence of a subsequent marriage, satisfying the requirements of the applicable law, is an essential ingredient of the offence. The Magistrate, therefore, was required to examine whether the material placed before him disclosed facts sufficient to support that ingredient. The impugned order, however, does not reflect such consideration. It substantially proceeds on the allegations concerning the purported illicit relationship and cohabitation between the petitioner and respondent No. 2, without indicating the material upon which the trial Court formed the opinion that the offence of bigamy was *prima facie* made out.

15. The position is no different insofar as Section 498 IPC is concerned. For attracting the said provision, the complaint must disclose the requisite act

of taking away, enticing, concealing or detaining a married woman, coupled with the knowledge and criminal intent contemplated by the section. Mere allegations of an illicit relationship or voluntary cohabitation do not, without the necessary factual foundation, automatically satisfy these ingredients. There is yet another aspect which appears to have escaped the attention of the trial Court. Cognizance of the offence under Section 498 IPC has also been taken against respondent No. 2. The provision, by its very nature, is directed against the person who takes away, entices, conceals or detains a married woman with the requisite intent. The married woman who is the subject of such alleged conduct cannot, merely on that account, be proceeded against as the principal offender under the said provision. The order taking cognizance against respondent No. 2 for the offence under Section 498 IPC, therefore, suffers from a fundamental legal infirmity.

16. It is well settled that the examination of the complainant and his witnesses under Section 200 Cr.P.C. is intended to enable the Magistrate to ascertain whether sufficient grounds exist for proceeding against the persons named as accused. The object of the preliminary inquiry is not to conduct a full-fledged trial or determine the guilt of the accused, but to ensure that criminal process is not issued in the absence of a *prima facie* foundation. While taking cognizance and considering the issuance of process, the Magistrate is not required to undertake a meticulous appreciation of evidence or record findings as would be expected after trial. Nevertheless, the order must reflect due application of mind to the allegations and the material placed on record. The existence of sufficient grounds for

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

proceeding cannot be presumed merely because a complaint has been instituted and certain penal provisions have been invoked.

17. The issuance of criminal process is a matter of serious consequence. It subjects the person summoned to the rigours of criminal proceedings and, therefore, requires the Magistrate to satisfy himself that the allegations, taken at their face value and considered with the supporting material, *prima facie* disclose the commission of the offence for which process is proposed to be issued. In the case at hand, the impugned order does not disclose adequate consideration of the essential ingredients of Sections 494 and 498 IPC. The trial Court appears to have proceeded principally on the allegations of an illicit relationship without examining whether those allegations, in law, constituted the offences for which cognizance was taken. The order, therefore, suffers from non-application of mind and cannot be sustained.

18. The matter does not, however, rest there. The record further reveals a serious procedural irregularity in the manner in which the trial Court proceeded after taking cognizance. It is borne out from the record that the trial Court initially resorted to Section 251 Cr.P.C. and thereafter, by order dated 08.11.2025, proceeded to frame formal charges against the petitioner and respondent No. 2. The complainant was directed to produce evidence only after the charges had been framed.

19. The legality of the aforesaid course must be examined with reference to the procedure prescribed by the Code of Criminal Procedure for the trial of warrant cases instituted otherwise than on a police report. Section 494 IPC prescribes punishment of imprisonment which may extend to seven

years, besides fine, whereas Section 498 IPC prescribes imprisonment which may extend to two years, or fine, or both. In terms of Section 2(x) Cr.P.C., a warrant case means a case relating to an offence punishable with death, imprisonment for life, or imprisonment for a term exceeding two years. Since the complaint includes an offence punishable under Section 494 IPC, the case is governed by the procedure applicable to warrant cases. Chapter XIX of the Code of Criminal Procedure prescribes the procedure for the trial of warrant cases by Magistrates. Part B thereof, comprising Sections 244 to 247, specifically governs cases instituted otherwise than on a police report.

20. Section 244 Cr.P.C. mandates that, when the accused appears or is brought before the Magistrate in a warrant case instituted otherwise than on a police report, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. Section 245 Cr.P.C. provides for discharge of the accused where, upon taking the evidence referred to in Section 244, the Magistrate considers that no case has been made out which, if unrebutted, would warrant conviction. The provision also empowers the Magistrate to discharge the accused at an earlier stage if, for reasons to be recorded, he considers the charge to be groundless. Where the accused is not discharged and the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under the said Chapter, Section 246 Cr.P.C. contemplates the framing of a written charge. The charge is thereafter required to be read over and explained to

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

the accused, and the proceedings are to continue in the manner prescribed by law.

21. The statutory scheme, therefore, draws a clear distinction between the procedure applicable to summons cases and that governing warrant cases instituted otherwise than on a police report. The stage of recording evidence under Section 244 Cr.P.C. assumes significance in the latter category, as the decision regarding discharge or framing of charge is required to be taken in accordance with Sections 245 and 246 Cr.P.C.

22. In the present case, the trial Court initially invoked Section 251 Cr.P.C., which forms part of the procedure applicable to summons cases. Such recourse was plainly misconceived, having regard to the nature of the offence under Section 494 IPC and the procedure governing the complaint. More importantly, the trial Court proceeded to frame charges on 08.11.2025 without first recording the prosecution evidence contemplated under Section 244 Cr.P.C. The direction requiring the complainant to produce evidence was issued only after the charges had already been framed. This course of action is contrary to the statutory procedure. In a warrant case instituted otherwise than on a police report, the Magistrate cannot ordinarily bypass the stage contemplated under Section 244 Cr.P.C. and proceed directly to the framing of charge. The right of the accused to seek discharge in accordance with Section 245 Cr.P.C., upon consideration of the material required by law, is an integral part of the prescribed procedure.

23. The failure to follow the statutory sequence has deprived the petitioner and the co-accused of the procedural safeguards available to them at the

pre-charge stage. The irregularity is not merely technical or inconsequential; it goes to the manner in which the trial Court exercised its jurisdiction and has resulted in prejudice to the accused. The charges framed on 08.11.2025 also suffer from the absence of adequate particulars regarding the alleged commission of the offences. The trial Court was required to ensure that the charges conveyed the necessary particulars of the acts constituting the alleged offences, so as to enable the accused to understand the precise accusations and effectively meet them in defence. The mere fact that the proceedings have advanced to the stage of framing of charges does not cure the defects inherent in the order taking cognizance, nor does it validate a procedure adopted in disregard of the mandatory provisions of the Code. Subsequent proceedings cannot derive legitimacy merely from their continuation when the foundational order itself is legally unsustainable and the procedure followed thereafter is contrary to law.

24. This Court is conscious of the limitations governing the exercise of inherent jurisdiction. Ordinarily, disputed questions of fact and matters requiring appreciation of evidence are to be left for determination by the trial Court. Equally, the inherent jurisdiction is not intended to be exercised as a substitute for the ordinary remedies available under the criminal law. However, where the material placed before the Magistrate fails to disclose the essential ingredients of the offences alleged, or where the criminal process has been issued without due application of mind, interference becomes necessary to prevent abuse of the process of the Court and to secure the ends of justice. The same principle applies where

the subsequent proceedings are shown to have been conducted in disregard of the procedure expressly prescribed by law, resulting in prejudice to the accused.

25. In the present case, the infirmities are two-fold. First, the order taking cognizance does not disclose proper consideration of the essential ingredients of the offences punishable under Sections 494 and 498 IPC. Secondly, the trial Court has proceeded to frame charges without adhering to the procedure prescribed under Sections 244 to 246 Cr.P.C. for warrant cases instituted otherwise than on a police report. The cumulative effect of these infirmities renders the impugned order and the proceedings undertaken pursuant thereto legally unsustainable.

26. For the foregoing reasons, this Court is of the considered opinion that the impugned order suffers from non-application of mind and that the subsequent proceedings, including the framing of charges, stand vitiated on account of non-compliance with the procedure prescribed by law. The continuation of such proceedings, in their present form, would amount to an abuse of the process of the Court.

27. Accordingly, this petition is ***allowed***. The impugned order of taking cognizance of offences punishable under Sections 494 and 498 IPC, together with the proceedings undertaken pursuant thereto, including the order dated 08.11.2025 framing charges against the petitioner and respondent No. 2, are hereby ***quashed***. The matter is remanded to the trial Court for fresh consideration of the complaint in accordance with law. The trial Court shall afford the complainant an opportunity to place such legally permissible preliminary material on record as may be necessary

HIGH COURT OF JAMMU & KASHMIR AND LADAKH सत्यमेव जयते

and shall thereafter independently examine whether sufficient grounds exist for taking cognizance by following due process of law.

28. It is made clear that this Court has not expressed any final opinion on the truth or otherwise of the allegations contained in the complaint. The trial Court shall consider the matter afresh, uninfluenced by any observations made herein except insofar as they relate to the legal requirements governing the offences alleged and the procedure prescribed by the Code. In the event the trial Court finds sufficient grounds for proceeding, it shall adopt the procedure applicable to the case and ensure strict compliance with the relevant provisions of the Code of Criminal Procedure. The petition stands disposed of in the aforesaid terms. A copy of this judgment, along with the trial Court record, be transmitted to the Court concerned for information and compliance.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

(Sanjay Parihar)
Judge

JAMMU
16.11.2026
Diksha

Whether the order is speaking: Yes
Whether the order is reportable: Yes