
(2001) 11 CAL CK 0009
In the Calcutta High Court
Case No : C.R.R. No. 344 of 1999

Bedabyas Basu

APPELLANT

Vs

Biswanath Biswas and Another

RESPONDENT

Date of Decision : 29-11-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216, 245(1), 482
Penal Code, 1860 (IPC) — Section 493, 494, 497

Citation : (2002) 1 CALLT 365 : (2002) 2 DMC 13

Hon'ble Judges : Debiprasad Sengupta, J

Bench : Single Bench

Advocate : Milon Mukherjee and Purnasish Gupta, for the Appellant; Sekhar Basu and Joymalya Bagchi, for the Respondent

Judgement

D.P. Sengupta, J.—In the present application the petitioner has prayed for quashing of a proceeding being complaint case No. C/S85 of 1991 (T-460 of 1991) under Sections 493/494 and 497 of the Indian Penal Code.

2. Present opposite party No. 1 filed a petition of complaint on 11.5.91 in the Court of learned S.D.J.M. Barrackpore against the petitioner and others alleging commission of offences under the aforesaid section. The gist of the allegations made in the petition of complaint is that the petitioner had allured Atreyee Biswas, the wife of the complainant, who left her matrimonial home and the petitioner in collusion with other accused persons by deceitful means, on the show of marriage before Goddess Kali at Dakshineswar on 1st April, 1991 abducted said Atreyee Biswas (complainant's wife) from the custody of her in-laws and keeping her in a secret place, had been staying as husband and wife till 8.5.91.

3. On receipt of such petition of complaint the learned S.D.J.M, Barrackpore took cognizance of the offence and issued process against the petitioner and said Atreyee Biswas u/s 494/497 of the Indian Penal Code and transferred the case to the Court of learned Judicial Magistrate, 3rd Court, Barrackpore for disposal.

4. Both the accused persons appeared before the learned Magistrate and filed an application u/s 245(1) Cr. PC praying for discharge on the ground of insufficient evidence. The said application was heard in presence of both the parties and the learned Magistrate by his order dated 18.6.97 rejected the said application and expressed his view that the complainant was able to make out a prima facie case against both the accused persons. Next date was fixed on 21.7.97 for framing charge.

6. Aggrieved by the order dated 18.6.97 a revisional application was preferred before the learned Sessions Judge. The revisional application was dismissed with cost of Rs. 300/- by the learned Additional Sessions Judge, 4th Court, North 24 Parganas at Barasat on 23.6.98. The said order dated 23.6.98 passed by the Revisional Court remained unchallenged.

6. Thereafter by an order dated 16.11.98 the learned Judicial Magistrate. 3rd Court, Barrackpore framed charge against the present petitioner under Sections 493/494 and 497 of the Indian Penal Code. A charge u/s 494 IPC was also framed against the other accused Smt. Atreyee Blswas. At this stage the petitioner came up before this Court challenging such framing of charge and for quashing of the proceeding,

7. The first contention of the petitioner's learned Advocate is that the charge u/s 493 IPC cannot be allowed to stand because the ingredients of the said offence are lacking in the present case. Even if the allegations are taken to be true, the same can only make the woman deceived to be the "aggrieved person" within the meaning of Section 198 of the Code of Criminal Procedure. According to the petitioner's learned Advocate it is only the woman who has been deceived, can lodge a complain. It is submitted by the petitioner's learned Advocate that the ingredients necessary to be established for offence of cohabitation caused by a man deceitfully inducing a belief of lawful marriage, are that the accused practised a deception and such deceit was to induce a woman to believe that she was lawfully married to him. In support of his contention the learned Advocate relies on a judgment of Orissa High Court reported in Saurava Barik Vs. Smt. Gouri Kandi alias Gouri, . On a perusal of the said judgment it appear that the learned single Judge quashed the order of taking cognizance of the offence u/s 493 IPC on the ground that there was no allegation in the complaint that the accused had falsely induced the complainant to believe that she was legally wedded to him. in absence of such material the learned Judge quashed the order of taking cognizance of the offence. But in the present case there are specific allegation of inducement and deceit in the petition of complaint. In my considered view the allegations made in the petition of complaint clearly make out an offence u/s 493 IPC which is sufficient for the purpose of proceeding further in the matter.

8. Next Judgment relied upon by the learned Advocate of the petitioner is reported in In Re: Abdul Khader, . On perusal of the said Judgment it appears that in a Criminal appeal against the judgment and order of conviction and

sentence u/s 493 I.P.C the learned single Judge of Madras High Court set aside the order of conviction and sentence and held that "the section is not intended to punish one for contraction a marriage which turns out to be illegal. But it only punishes a man for obtaining the body of the woman by deceitfully assuring her that he had acquired that right by JUS Mariti". There was no deceitful assurance or act on the part of the accused appellant so as to attract Section 493 IPC and as such the conviction was set aside. In my considered view the judgment referred to above is not applicable here as in the said case prosecution was given a full opportunity to prove its case. But the present case is still at the stage of framing of charge. Where the Court below on being satisfied regarding the prima facie case framed charge, it will not be proper for this Court to interfere with the trial.

9. As regards the maintainability of the complaint by the husband of the woman committing the offence I am of the view that the husband is "person aggrieved" within the meaning of Section 198 Cr.PC.

10. As regards the charges u/s 494 of the Indian Penal Code it is submitted by the learned Advocate of the petitioner that the complain-ant/OPNo. 1 is not competent to initiate a proceeding u/s 494 IPC against the petitioner in view of the specific bar provided in Section 198 Cr.PC. In view of the provision of Section 198,Cr.PC in an offence u/s 494 IPC. wife of Bedabyas Basu is the only "person aggrieved" who can lodge a complaint. In support of his contention the learned Advocate relies on a judgment reported in 1992 CrLJ 2946 (Raxaben and Ors. v. State of Gujarat and Ors.),

11. It is the further submission of the petitioner's learned Advocate that charge u/s 493/494 IPC must fall because the alleged second marriage is a deceptive one as contended in the petition of complaint. Such a marriage being no marriage at all is void and accordingly a charge u/s 494 IPC cannot be sustained. In support of his contention the learned Advocate relies on a number of decisions of the Hon"ble Supreme Court reported in Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another, ; Kanwal Ram and Others Vs. The Himachal Pradesh Admn., Gopal Lal Vs. State of Rajasthan, and Lingari Obulamma Vs. L. Venkata Reddy and Others, . Relying upon the aforesaid decisions of the Hon"ble Supreme Court it is submitted by the petitioners learned Advocate that the ratio of all the above Judgment is that where a spouse contracts second marriage while the first marriage is subsisting, the spouse would be guilty of bigamy u/s 494 IPC if it is proved that the second marriage is a valid one in the sense that the necessary ceremonies required by law or by custom have been actually performed.

12. I have gone through the aforesaid judgments of the Hon"ble Apex Court, which were decided by the apex Court at the appellate stage. But since the present case is at the stage of framing of charge, in my view, the prosecution should be given opportunity to prove its case in the trial Court.

13. Regarding charge u/s 497 IPC it is submitted by the learned Advocate of the petitioner that in the petition of complaint there is no ingredient of the offence u/s 497 IPC. But I am unable to accept such contention. The allegations made in the petition of complaint clearly make out an offence u/s 497 IPC which is sufficient for the purpose of framing of charge u/s 497 IPC.

14. Mr. Sekhar Bose learned Advocate appearing for the complainant opposite party draws the attention of the Court to the provision of Section 216 of the Code of Criminal Procedure and submits that even assuming that the charge u/s 494 IPC has been erroneously framed, it can be rectified by the trial Court. Mr. Bose submits that Criminal Procedure Code gives ample power to the Court to alter or amend a charge provided the accused is not prejudiced either by keeping him in dark about the charge or in not giving him a full opportunity of meeting it and putting forward any defence open to him. Mr. Bose submits that a charge can be amended at any stage before the Judgment is pronounced. The question of causing any prejudice to the accused does not arise because the accused is very, much aware of the offence he is going to be tried for. So, according to the learned Advocate of the complainant/ OP No. 1, even if there is any defect in the framing of charge that cannot be a ground for quashing of proceeding.

15. So far as the charges u/s 493 and 497 is concerned. It is submitted by Mr. Bose that the allegations made in the petition of complaint as also the evidence before charge clearly make out a prima facie case which is sufficient for the purpose of framing charge.

16. I have heard the learned Advocate of the respective parties. I have also perused the connected papers. I find sufficient merit in the submissions made by Mr. Bose. In the present case if it is found at any subsequent stage that there is any error in framing of charge u/s 494 of the IPC, it can be rectified amended as per the provision of the Code. In the present case the accused knew from the very beginning what he was being tried for. The main facts sought to be established against the accused, were explained to him and he was given a hearing at the stage of framing of charge. No objection to the nature of the charge was raised by the accused at the stage of framing of charge. This is sufficient to indicate that the accused person knew from the very beginning what he was being tried for and what was alleged against him.

17. It is also made clear that if there is any error in framing charge u/s 494 IPC the trial Magistrate will be at liberty to rectify/amend the charge in accordance with law.

18. As regards the charge u/s 493 and 497 IPC I am of the view that the allegations clearly make out an offence under the said sections which are sufficient for the purpose of framing charge. Reliance is placed on the Judgment of the Hon'ble Supreme Court reported in 2000 SCC 1486 (State of Delhi v. Gyan Devi and Ors.). In the said Judgment it was held by the Hon'ble apex Court as follows:-

"The legal position is well settled that at the stage of framing of charge the trial Court is not to examine and asses in detail the materials placed on record by the prosecution nor is it for the Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the Court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused u/s 482 Cr.P.C seeking for the quashing of charge framed against them the Court should not interfere with the order unless there are strong reasons to hold that in the interest of Justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial Court has framed a charge against an accused the trial must proceed without unnecessary interference by a Superior Court and the entire evidence from the prosecution sided should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases."

19. In view of the discussions made above I am of the opinion that it will not be proper for this Court to interfere with the proceeding at this stage. Accordingly I dispose of the present revisional application and direct the learned trial Magistrate to proceed with the trial, expedite and conclude the same with utmost expedition.

The lower Court records may be sent down to the Court below immediately.