
(2016) 09 DEL CK 0074
In the Delhi High Court
Case No : CRL.M.C. 3005 of 2016

Deepak

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 494, Section 495

Citation : (2016) 234 DLT 15

Hon'ble Judges : Mr. P.S. Teji, J.

Bench : Single Bench

Advocate : Mr. Harsh Jaidka, Advocate, for the Petitioner; Ms. Meenakshi Chauhan, APP with SI Amarpreet, PS Bawana, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Teji, J. - The present petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter shall be referred as Cr.P.C.) for quashing of complaint bearing CC No.4/B/14, titled "Kavita v. Deepak and ors." under Section 494/495 IPC pending before the learned Metropolitan Magistrate-05 (North), Rohini, Delhi and the proceedings emanating therefrom.

2. Facts, in brief, are that the respondent no.2-Kavita had filed a criminal complaint under Section 190 and 200 Cr.P.C. against the petitioner and others for offences under Section 494 IPC. It was alleged in the complaint that the marriage of the respondent no.2 was solemnized with the petitioner-Deepak Kumar on 17.01.2013 according to Hindu rites and ceremonies. In the marriage, family of the respondent no.2 spent an amount of approx Rs. 35-40 lacs. The petitioner was working in Delhi Fire Service at STO. As per his service requirement, he was allowed to take rest after days duty. Whenever he returned back from work, he used to abuse the respondent no.2/complainant on the issue of nonfulfilment of their dowry demands. On one day, the respondent no.2/complainant saw the petitioner-husband with a lady i.e. accused no.2-Mamta in

the market and they went away in a car. Thereafter also, the complainant saw her husband in the company of that lady and later on it was revealed that he was previously married and the said fact was concealed by him at the time of their marriage. The complainant gave a written complaint to the police but since they did not register the case, the complaint was filed in the Court.

3. Pre-summoning evidence was adduced by the complainant. After going through the pre-summoning evidence, the learned Magistrate summoned the petitioner under Section 494/495 IPC vide order dated 04.06.2016. Feeling aggrieved by the continuance of criminal complaint, the present petition has been preferred by the petitioner.

4. Arguments advanced by the counsel for the petitioner were heard.

5. Grounds taken in support of the present petition and the arguments advanced are that the marriage between the petitioner and Mamta was performed but when the parents of the petitioner came to know about it, they did not accept the said marriage. A panchayat was conveyed wherein a settlement deed was executed and it was agreed that the said marriage was not valid. A settlement dated 05.08.2012 was arrived at between them and even the said marriage was not consummated. At the time of marriage of the petitioner with respondent no.2/complainant, the family members of the complainant were intimated about the matrimonial history of the petitioner. After marriage, the petitioner and respondent no.2/complainant started living as husband and wife. Due to duty hours of the petitioner, the respondent no.2 started pressuring the petitioner to live separately. On 05.07.2013, a false FIR was lodged by the respondent no.2 against the petitioner and his family members. It was further argued that Ms. Mamta was real maternal aunt of the petitioner and as per Section 5 of the Hindu Marriage Act, such relationship was not valid and legal. Petitioner filed a case against Ms.Mamta seeking annulment of their marriage and the marriage was declared null and void by the Court vide order dated 07.08.2015.

6. Counsel for the petitioner relied upon the judgments in the case of M.M. Malhotra v. Union of India and others AIR 2006 SC 80, Harish Uppal v. Neera Dixit 1989 (17) DRJ 100 and M.C.D. v. State of Delhi and another AIR 2005 SC 2658 to press the contention that the marriage covered by Section 11 of the Hindu Marriage Act void from the very inception has to be ignored and that once the earlier marriage has been declared null and void by the competent court, even if there is concealment of said marriage it is not sufficient to hold the marriage invalid.

7. In the present case, it is an admitted case of the petitioner himself that he had performed marriage ceremony with Ms. Mamta on 19.10.2010 which was registered with the Registrar of Marriage on 21.10.2010. Admittedly, the marriage of the petitioner with the respondent no.2-Kavita was solemnized on 17.01.2013. The petitioner filed a petition under Section 11 of the Hindu Marriage Act against Ms.Mamta for declaring their marriage null and void and the

decree of nullity was passed on 07.08.2015.

8. It is apparent from the record and as per the own admission of the petitioner himself, at the time of his marriage with the respondent no.2-Kavita i.e. on 17.01.2013, his earlier marriage with Ms.Mamta was still subsisting. Admittedly, the decree of nullity of the marriage of the petitioner and Mamta was passed on 07.08.2015 that is too after performing second marriage by the petitioner with the respondent no.2-Kavita. The judgments relied upon by the petitions are of no assistance to him as the same are distinguishable from the facts of the present case inasmuch as it is apparent from the record that at the time of marriage of the petitioner with the respondent no.2-Kavita his earlier marriage with Ms.Mamta was still subsisting and had not been declared null and void by any competent Court. So, there is no basis in the contention of the petitioner that since his earlier marriage with Ms. Mamta was not valid one, there was no question to get it declared null and void.

9. In view of the above discussion, this Court is of the considered opinion that there is sufficient material on record in the form of evidence adduced by the complainant/respondent no.2- Kavita to summon the petitioner as an accused under Section 494/495 IPC.

10. In view of the above mentioned facts and circumstances, there is no merit in the present petition. Same is accordingly dismissed. Application, if any, is also disposed of.