

(1983) 04 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 1735 of 1982 and Criminal Miscellaneous 6417 of 1982

Niranjan Singh Gupta (wrongly described in complaint as
Niranjan Lal) S/o Dhan Parkash of Yamuna Nagar

APPELLANT

Vs

Anand Parkash

RESPONDENT

Date of Decision : 28-04-1983

Acts Referred:

Citation : (1983) AICLR 686

Hon'ble Judges : M.M.Punchhi, J

Advocate : D.S. Bali, Surjit Singh, Advocates for appearing Parties

Judgement

M.M. Punchhi, J. (Oral)

1. Anand Parkash respondent filed a complaint under Sections 494, 403, 406 and 109, Indian Penal Code, against seven persons, one of whom happened to be his sons's wife, the principal accused. It was alleged that she had married a second time while her marriage with his son was subsisting. It was also alleged that at one point of time she had been given some ornaments and articles. It is not clear from the complaint as to who gave her the said articles. All the same, the learned Magistrate chose to summon the accused persons under Sections 494/403/406 of the Indian Code. Thereupon, one of the accused persons has filed the present petition for revision.

2. The first point of jurisdiction raised is that a complaint under Section 494 of the Indian Penal Code could only be filed by the husband of the alleged bigamist. Section 198 of the Code of Criminal Procedure was pleaded as the bar. The argument raised indeed is unexceptionable. The learned counsel for the respondent has no answer to it. Accordingly, the summoning order so far as it relates to Section 494 of the Indian Penal Code is totally without jurisdiction.

3. The second contention herein is that the learned Magistrate has not given any reasons of his own to summon the accused persons. The order reads as follows :

"Today the case was fixed for consideration, Report of the S.H.O. as well as the statement of the complaint and his only witness perused. There is a prima facie against the accused under Sections 494/403/406 of the IPC. They be summoned for 11101982 on filing of copy of complaint, P.F. and the list of witnesses."

Now it is plain that the said order had to reflect the application of the mind of the learned Magistrate with regard to the allegations in the complaint as also the preliminary evidence and the enquiry report, which seemingly was called for, on the basis of which process was required to be issued. The order, as it is, clearly cryptic. On that score, the remaining portion of the order too suffers from an inherent defect. Thus the order as such, in entirety, requires to be set aside.

4. For the foregoing reasons, this petition is allowed, the impugned order is set aside leaving it open to the learned Magistrate to pass appropriate order, as he thinks fit, to summon or not the accused respondents, whether all or some of them, for offences under Sections 403/406 of the Indian Penal Code. JUDGMENTed accordingly.

5. In view of the peculiar circumstances of the case, the delay in filing Criminal Revision is condoned.

JUDGMENT accordingly.