
(2011) 09 MP CK 0039

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 857 of 2008

Praveen Choube (Dr.) and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 198, 198(1), 397, 401
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 11, 16, 4, 5
Penal Code, 1860 (IPC) — Section 304B, 34, 417, 420, 494

Citation : (2011) ILR (MP) 3214 : (2012) 1 MPHT 270

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—The applicants/ accused have preferred this revision u/s 397/401 of Cr. P. C. being aggrieved by the order dated 3.4.2008 passed by Chief Judicial Magistrate, Hoshangabad in Criminal Case No. 15/2008, framing the charge against each of them for the offence u/s 420/34, 498-A of Indian Penal Code (for short "the Code") and Section 3/4 of Dowry Prohibition Act (for short "the Act").

2. The facts giving rise to this revision in short are that on a written report of respondent No.2 Ku. Archana Shukla at Police Station Hoshangabad a crime No.879/07 for the offence of Sections 498-A, 420 of the Code and 3/4 of the Act was registered against the applicants. According to such FIR the respondent No.2 complainant got married before six years with the applicant No. 1 Dr. Praveen Choube in accordance with Hindu rite and rituals. Subsequent to marriage the applicant No. 1, his family members the parents and brother used to make the demand and insisted her to bring rupees five lacs and one Ford Car in dowry from her father saying that nothing had been given to them by her father on marriage in the dowry. In response of it on asking by complainant that her father had already given the articles and cash amount to them and now he being

retired person does not have any capacity to fulfill their demand, on which the applicants by treating her to be a servant of the family, also administered the poisons substance in March, 2007, however she could save herself by taking the medical treatment at Jabalpur Hospital. During such treatment in the hospital she came to know that the applicants by practicing a fraud and giving false information to her that applicant No.1 had taken divorce from his first wife got her married with him while no such divorce had taken place. The applicants also told her that whatsoever had done by them with the first wife of the applicant No. 1, they will repeat the same with her and thereafter they will carry out his third marriage. After the aforesaid incident under compulsion she is residing with the family of her father at Hoshangabad. On 30.9.2007 applicant No.1 along with his parents the applicant No.3 and 4 came to Hoshangabad and demanded rupees five lacs from her parents to open the clinic for applicant No. 1 saying that if he being doctor will not open the clinic then what he will do, also made the demand of vehicle saying that the same is a necessity of a doctor. They also gave a threat that on non-fulfilling their such demand the marital relation of the respondent No.2 with the applicant No. 1 shall not survive. On which her father and the brother asked them to fulfill their demand according to their capacity, on which the applicants said that they will not further talk with them unless their demand is fulfilled. It is also stated that the applicant No.2 the brother of applicant No. 1 also gave her a criminal threat on telephone that on non fulfilling their demand they will search a bride and got married the applicant No.1 third time, in which, the applicant No.1 being doctor, they may get dowry of rupees ten to twenty lacs.

3. After holding investigation the applicants were charge sheeted for the offence of Section 498-A and 420 of the Code and Section 3/4 of the Act. Considering the papers of charge sheet on framing the charge of such offence against the applicants, they abjured the guilt, on which the trial was directed against them. Being dissatisfied with such order the applicants came to this court with this revision for setting aside the same and discharging them from the case.

4. Shri A. K. Pathak, learned appearing counsel of the applicants" after taking me through copy of the charge sheet and other papers placed on record said that even on taking into consideration the face value of the charge sheet the ingredients of alleged offence of Section 420, 498-A of the Code and 3/4 of the Act are not made out to frame such charge against any of the applicants. In continuation he said that as per FIR itself the applicant No. 1 was already got married with some other long before from the date of the alleged marriage of respondent No.2 with him, therefore in the lack of any decree of divorce between the applicant No. 1 and his first wife in her life time in view of the provision of Section 5(i) r/w 11 of Hindu Marriage Act the applicant No. 1 could not be deemed or treated to be the husband of respondent No.2. In such factual matrix of FIR the charge of Section 498-A of the Code and Section 3/4 of the Act which are available only to the legally wedded wife could not be upheld against any of the applicants. He also argued that in the light of aforesaid argument on

examining the evidence collected by the investigating agency, then there is no prima-facie evidence showing that the applicants or any of them at any point of time by practicing fraud concealing the fact of first and subsisting marriage of the applicant No. 1 after taking the respondent No.2 in their confidence got her married with applicant No. 1 and by placing his reliance on the decided cases of the Apex Court in the matters of M. Krishnan Vs. Vijay Singh and Another, , Koppiseti Subbharao @ Subramaniam Vs. State of A. P. { 2010 (1) ANJ (Supp) 80 (SC)}, Preeti Gupta & another Vs. State of Jharkhand and another 2010 (6) ST 312, unreported case of the Apex Court in the matters of Sunita Jha Vs. State of Jharkhand & another decided vide dated 13.9.2010 in Cr. Appeal No. 1745/2010, State of A. P. Vs. M. Madhusudhan Rao decided on 24.10.2008 in Cr. Appeal No.2008/07 and in the matter of Priya Vrat Singh Vs. Shyamji Sahai, 2008 (III) MPWN 89, prayed for setting aside the impugned order and discharge the applicants by admitting and allowing this revision.

5. On the other hand Smt. Nirmala Nayak, learned GA by justifying the impugned order framing the charge against the applicants, said the same being in consonance with the evidence collected by the investigation agency, and placed with the police report u/s 173 of Cr. R. C. showing the prima-facie ingredients of such offence, does not require any interference at this stage and prayed for dismissal of this revision.

6. While supporting the argument of said State counsel Shri S. S. Tiwari, learned counsel of respondent No.2, additionally said that whatsoever arguments advanced by the applicants' counsel that may be the defence for the applicants and could be taken by them at appropriate stage of the trial but at this stage on such arguments the applicants could not be discharged contrary to the prima-facie evidence available in the charge sheet and prayed for dismissal of this revision.

7. Having heard the counsel at length, I have carefully gone through the papers of the charge sheet, impugned order along with the charge framed and also other papers placed on record, which are not the part of the charge sheet.

8. In view of law laid down by the Constitutional Bench of Apex Court in the matter of State of Orissa Vs. Debendra Nath Padhi, the papers placed on behalf of the applicant which are not the part of the charge sheet could not be taken into consideration at the stage of framing the charge, the same may be used by the accused at the appropriate stage of the trial in their defence. Besides this as per settled proposition at the stage of framing the charge the evaluation of the charge sheet could not be carried out keeping in view whether the case will be culminated in the conviction of the accused or not, if the prima-facie ingredients of the alleged offence are made out from such papers then there is no option with the Court except to frame the charge of such offence and proceed with the trial.

9. From the aforesaid factual matrix of the charge sheet it has been prima-facie

established that respondent No.2 believing bonafide on the applicants fraudulent statements that applicant No. 1 had taken divorce from his first wife gave her consent and got married with the applicant No. 1 in accordance with the rite and rituals of Hindu Community and thereafter being his legally wedded wife also resided with him in his family along with the other applicants for years together and also suffered their alleged cruel treatment on account of aforesaid demand of dowry, in continuation of the same she was administered the poisonous substance by the applicants on which for treatment she remained admitted in the Jabalpur Hospital, where she came to know that the applicants by giving false information to her that applicant No. 1 is a divorcee from his first wife and thereby practicing the fraud got her married with applicant No. 1. Therefore, under compulsion she is residing with her parents at Hoshangabad, where also she was subjected to cruelty on account of demand of dowry by the applicant No. 1, 3 and 4, as stated above. In such premises the Court has to examine the sustainability of the impugned charges of Section 498-A and 420 of IPC framed against the applicants.

10. In the life time of spouse if any of them either husband or wife got married with other then by virtue of Section 5(i) r/w Section 11 of Hindu Marriage Act 1955 such marriage could be declared to be void by the competent Court in a petition filed in this regard. But unless obtaining such decree from the competent Court in appropriate petition in this regard mere relying on the oral submission of any of the party at the stage of framing the charge the alleged marriage could not be held to be a void marriage. It is apparent from the facts of the case at hand that neither the applicant No. 1 nor the respondent No.2 had filed any such petition and got such decree of divorce till today, thus in such premises, at this stage it shall be assumed that the aforesaid alleged marriage of respondent No.2 with applicant No. 1 is still subsisting and could not be treated to be void. At the stage of the framing the charge the court has not to decide the validity of the alleged marriage of respondent No.2 with applicant No. 1 but in view of their marital relation as husband and wife and available situation of the case according to which the applicant No. 1 by getting married with respondent No.2 in accordance with the rite and ritual of Hindu Community placed the stigma on her life. Thus, before recording the evidence and adjudication of the case on merits at the stage of framing the charge it could not be said that she being illegally wedded wife on her report the applicants could not be prosecuted for the offence of 498-A of the Code and Section 3/4 of the Act. As such till declaration of their alleged marriage void by the competent Court they should be treated to be husband and wife.

11. So far the charge of Section 420 of the Code is concerned, I have found prima-facie evidence in the charge sheet showing that at the time of alleged marriage of applicant No. 1 with respondent No.2 the applicants had concealed the fact of subsisting the earlier marriage of applicant No. 1 by supplying her wrong information that applicant No. 1 had already taken divorce from his first wife and thereby taking her into confidence by practicing fraud got her married

with applicant No. 1. She came to know such fraudulent acts of the applicants at subsequent stage, after consuming the marital relationship with applicant No. 1. Accordingly, prima-facie evidence for framing the charge of Section 417 r/w 420 of the Code against the applicants are made out from the charge sheet. In such premises, under the revisional jurisdiction such charge could neither be quashed nor set aside.

12. Under the revisional jurisdiction of this Court in the available scenario of the case, I would like to examine the same with some other angle also keeping in view provisions of Section 494 and 495 of IPC. Thus as ready reference such sections are being reproduced here. The same are read as under :-

494. Marrying again during lifetime of husband or wife :

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted :

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

13. In view of the aforesaid. Sections of the IPC on examining the case at hand then in the light of the above mentioned factual matrix in which the applicants under their conspiracy during subsisting the first marriage of the applicant No. 1 fraudulently by supplying wrong information of divorce got married the applicant No. 1 with respondent No.2 and thereby placed her life in untold hardship and miseries with several legal disabilities. Say for example, she would not be entitled to claim maintenance from her husband even if she is inhumanly treated, subjected to mental and physical cruelty of variety of kinds, etc. and is not able to maintain herself. The law of inheritance would prejudicially operate against her. She herself would suffer outrageous, wrong and absurd social stigma of being another woman in the life of the male who contracts second marriage with her. The members of the cruel society including her kith and kin like parents, brother, sister, etc. would look down upon her and she would be left in the lurch by one and all. In such premises the applicant No. 1 besides the alleged offence also committed the offence of Section 494 and 495 of the IPC also, for which prima-facie evidence is available in the charge sheet. Although neither the charge sheet has been filed by the prosecution by mentioning these sections nor the charge of such offence have been framed by the trial Court against the applicants and in this regard no proceeding has been initiated by any of the respondents in this Court.

14. My aforesaid approach is fully fortified by the decision of the Apex Court in the matter of A. Subash Babu Vs. State of A.P. and Another, the relevant paras of the same are as under:

18. As far as Section 494 IPC is concerned, the criminality attaches to the act of second marriage either by a husband or by a wife who has a living wife or husband, in a case in which the second marriage is void by reason of its taking place during the life of such husband or wife. When a law, such as Section 11 of the Hindu Marriage Act, 1955 declares that a second marriage by a husband, who has a living wife, with another woman is void, for breach of Section 5(i) of the said Act, it brings/attaches several legal disabilities to the woman with whom the second marriage is performed. Say for example, she would not be entitled to claim maintenance from her husband even if she is inhumanly treated, subjected to mental and physical cruelty of variety of kinds, etc. and is not able to maintain herself. The law of inheritance would prejudicially operate against her. She herself would suffer outrageous, wrong and absurd social stigma of being another woman in the life of the male who contracts second marriage with her. The members of the cruel society including her kith and kin like parents, brother, sister, etc. would look down upon her and she would be left in the lurch by one and all.

19. When a court of law declares second marriage to be void on a petition presented by husband who contracts the second marriage on the ground that he has a spouse living at the time of marriage, it only brings untold hardships and miseries in the life of the woman with whom the second marriage is performed apart from shattering her ambition to live a comfortable life after marriage.

21. Section 494 introduces monogamy which is essentially voluntary union of life of one man with one woman to the exclusion of all others. It enacts that neither party must have a spouse living at the time of marriage. Polygamy was practiced in many sections of Hindu society in ancient times. It is not a matter of long past that in India, hypergamy brought forth wholesale polygamy and along with it misery, plight and ignominy to woman having no parallel in the world. In post-Vedic India a king could take and generally used to have more than one wife. Section 4 of the Hindu Marriage Act nullifies and supersedes such practice all over India among the Hindus. Section 494 IPC is intended to achieve the laudable object of monogamy. This object can be achieved only by expanding the meaning of the phrase "aggrieved person".

22. For a variety of reasons the first wife may not choose to file a complaint against her husband e.g. when she is assured of reunion by her husband, when the husband assures to snap the tie of second marriage, etc. Non-filing of the complaint u/s 494 IPC by the first wife does not mean that the offence is wiped out and monogamy sought to be achieved by means of Section 494 IPC merely remains in statute book. Having regard to the scope, purpose, context and object of enacting Section 494 IPC and also the prevailing practices in the society sought to be curbed by Section 494 IPC, there is no manner of doubt that the

complainant should be an aggrieved person. Section 198(1)(c) of the Criminal Procedure Code, amongst other things, provides that where the person aggrieved by an offence u/s 494 or Section 495 IPC is the wife, complaint on her behalf may also be filed by her father, mother, sister, son, daughter, etc. or with the leave of the court, by any other person related to her by blood, marriage or adoption.

23. In *Gopal Lal v. State of Rajasthan* this Court has ruled that in order to attract the provisions of Section 494 IPC both the marriages of the accused must be valid in the sense that the necessary ceremonies required by the personal law governing the parties must have been duly performed.

24. Though Section 11 of the Hindu Marriage Act provides that any marriage solemnised, if it contravenes the conditions specified in clause (i) of Section 5 of the said Act, shall be null and void, it also provides that such marriage may on a petition presented by either party thereto, be so declared. Though the law specifically does not cast an obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent court, the woman with whom second marriage is solemnised continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband.

25. Even otherwise, as explained earlier, the second wife suffers several legal wrongs and/or legal injuries when the second marriage is treated as a nullity by the husband arbitrarily, without recourse to the court or where a declaration sought is granted by a competent court. The expression "aggrieved person" denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. Section 494 does not restrict the right of filing complaint to the first wife and there is no reason to read the said section in a restricted manner as is suggested by the learned counsel for the appellant. Section 494 does not say that the complaint for commission of offence under the said section can be filed only by the wife living and not by the woman with whom the subsequent marriage takes place during the lifetime of the wife living and which marriage is void by reason of its taking place during the life of such wife. The complaint can also be filed by the person with whom the second marriage takes place which is void by reason of its taking place during the life of the first wife.

26. A bare reading of the complaint together with the statutory provisions makes

it abundantly clear that the appellant having a wife living, married with Respondent 2 herein by concealing from her the fact of former marriage and therefore her complaint against the appellant for commission of offence punishable under Sections 494 and 495 IPC is maintainable and cannot be quashed on this ground. To hold that a woman with whom second marriage is performed is not entitled to maintain a complaint u/s 494 IPC though she suffers legal injuries would be the height of perversity.

27. Section 495 IPC provides that if a person committing the offence defined in Section 494 IPC conceals from the person with whom the subsequent marriage is contracted, the fact of the former marriage, the said person is liable to be punished as provided therein.

28. The offence mentioned in Section 495 IPC is an aggravated form of bigamy provided in Section 494 IPC. The circumstance of aggravation is the concealment of the fact of the former marriage to the person with whom the second marriage is contracted. Since the offence u/s 495 IPC is in essence bigamy, it follows that all the elements necessary to constitute that offence must be present here also. A married man who by passing himself off as unmarried induces an innocent woman to become, as she thinks his wife, but in reality his mistress, commits one of the grossest forms of frauds known to law and therefore severe punishment is provided in Section 495 IPC.

29. Section 495 begins with the words "whoever commits the offence defined in the last preceding section...." The reference to Section 494 IPC in Section 495 makes it clear that Section 495 is an extension of Section 494 and part and parcel of it. The concealment spoken of in Section 495 would be from the woman with whom the subsequent marriage is performed. Therefore, the wife with whom the subsequent marriage is contracted after concealment of the former marriage, would also be entitled to lodge a complaint for commission of offence punishable u/s 495 IPC. Where the second wife alleges that the accused husband had married her according to Hindu rites despite the fact that he was already married to another lady and the factum of the first marriage was concealed from her, the second wife would be an aggrieved person within the meaning of Section 198 CrPC.

53. This Court finds that the High Court has quashed the proceedings pending before the learned Magistrate u/s 498-A IPC on the spacious ground that the marriage of the appellant with Respondent 2 is void and as Respondent 2 is not the wife, she was not entitled to lodge the first information report with the police for commission of offence u/s 498-A IPC and on the basis of the police report, cognizance of the said offence against the appellant could not have been taken by the learned Magistrate. Such reasoning is quite contrary to the law declared by this Court in *Reema Aggarwal v. Anupam*:-

54. After examining the scope of Section 498-A of the Penal Code and holding that a person who enters into marital arrangement cannot be allowed to take

shelter behind the smokescreen of contention that since there was no valid marriage the question of dowry does not arise, this Court speaking through Hon"ble Arijit Pasayat, J. has held as under: (Reema Aggarwal case ", SCC p. 210, para 18)

18.... Such legalistic niceties would destroy the purpose of the provisions. Such hair-splitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature "dowry" does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498-A. The legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that the legislature which was conscious of the social stigma attached to children of void and voidable marriages closed its eyes to the plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship? If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The First Exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction". It would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognised as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions.

55. In view of the firm and clear law laid down on the subject, this Court is of the confirmed view that the High Court was not justified at all in quashing the proceedings initiated against the appellant u/s 498-A of the Penal Code on the ground that Respondent 2 was not "wife" within the meaning of Section 498-A IPC and was not entitled to maintain a complaint under the said provision. The question therefore which arises for consideration of the Court is whether the said finding recorded by the High Court can and should be set aside in the present appeal which is filed by the husband.

58. There may be several reasons due to which the State might not have

challenged that part of the judgment of the learned Single Judge quashing the complaint filed by Respondent 2 u/s 498-A of the Penal Code. So also because of several reasons such as want of funds, distance, non-availability of legal advice, etc. the original complainant might not have approached this Court to challenge that part of the judgment of the learned Single Judge which is quite contrary to the law declared by this Court. However, this Court while entertaining an appeal by grant of special leave has the power to mould relief in favour of the respondents notwithstanding the fact that no appeal is filed by any of the respondents challenging that part of the order which is against them. To notice an obvious error of law committed by the High Court and thereafter not to do anything in the matter would be travesty of justice.

62. Though challenge was not made by any of the two respondents to the finding recorded by the learned Single Judge that the complaint lodged by Respondent 2 for alleged commission of offence punishable u/s 498-A of the Penal Code is not maintainable because she is not a wife, this Court feels that absence of challenge either by the State or by the original complainant should not persuade or prevent this Court from doing justice between the parties by restoring the complaint filed by Respondent 2 u/s 498-A of the Penal Code on the file of the learned Magistrate.

63. The conclusion arrived at by the High Court is such as to shake the conscience and sense of justice and therefore it is the duty of this Court to strike down the finding recorded with respect to the offence punishable u/s 498-A, irrespective of technicalities. The judgment of the High Court quashing the proceedings initiated by the learned Magistrate for commission -of the offence punishable u/s 498-A is tainted with serious legal infirmities and is founded on a legal construction which is wrong.

64. So the technical plea advanced by the learned counsel for the appellant that in the absence of an appeal by any of the respondents, quashing of proceedings with respect to the offence punishable u/s 498-A IPC, cannot be set aside, is hereby rejected.

15. In the aforesaid cited case a private complaint was filed by the wife, stating that the appellant in the life time of his first wife by supplying her wrong and false information that he is not married got married with her by practicing fraud, for taking cognizance against the applicant for the offence of Section 498-A, 494, 495, 417 and 420 of the Code. In such complaint on taking the cognizance by the trial court against the applicant he came to the High Court with a petition u/s 482 of Cr. P. C. for quashment of entire proceeding of such complaint. On consideration taking into consideration the facts that in the life time of first wife of the appellant she is not a legally wedded wife of appellant the cognizance of the offence of Section 498-A of the Code taken by the trial Court was quashed while the order of the trial court taking cognizance for other offence was affirmed. Being dissatisfied with such order of the High Court the appellant approached to the Apex Court for quashment of the proceeding/ complaint with

respect of other offence of Section 494, 495, 417 and 420 of the Code also. On consideration, taking into consideration the identical scenario like the case at hand not only the appeal was dismissed but even in the lack of any appeal either by the State or the complainant herself the cognizance of 498-A of the Code, which was quashed by the High Court, was restored suo-moto by the Apex Court.

16. In view of the, principles laid down in the aforesaid cited case the impugned order of the trial Court framing charges against the applicants does not require any interference under the revisional jurisdiction of this Court. Pursuant to it, this revision deserves to be dismissed.

17. So for the case law cited on behalf of the applicants are concerned, the same are taken into consideration one by one.

(a) The case of M. Krishnan Vs. Vijay Singh and Another, speaks that Revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value of accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations wwmade in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

In view of the cited case on examining the case at hand there is sufficient prima-facie evidence in the charge sheet showing the ingredients of the alleged offence against the applicants, and considering the same in view of the dictum of the Apex Court announced in the matter of A Subash Babu (Supra), the trial Court has not committed error in framing the impugned charge. Thus, in such premises the cited case M. Krishnan (Supra), is not helping to the applicants.

(b) In the case of Koppiseti Subbharao @ Subramaniam Vs. State of A. P. (2010 (1) ANJ (Supp) 80 (SC), the appellant of this case approached to the High Court of Andhra Pradesh for quashment of charges of Section 498-A of the Code stating that he being already married man the complainant was not his legally wedded wife but on consideration such petition was dismissed by the High Court, against such order of the High Court the appellant went to the Apex Court. On consideration holding that the factual matrix being sub-judice is to be examined after recording the evidence by affirming the order of the High Court such appeal was dismissed. In the case at hand, also in which the story and allegations put forth by the prosecution against the applicants are yet to be examined and

appreciated after recording the evidence by the trial Court, therefore this cited case is not helping to the applicants.

(c) In the case of Preeti Gupta & another Vs. State of Jharkhand and another 2010 (6) ST 312, the Supreme Court while giving the interpretation of the inherent power of the Court enumerated u/s 482 of Cr. P. C. said the same should be exercised to prevent injustice and secure justice and some guidelines for exercising such power of Section 482 of Cr. P. C. has also been given in it. In view of aforesaid discussion and the law laid down by the Apex Court in the matter of A. Subash Babu (Supra), this citation is also not helping to the applicants.

On the cost of the repeatation again it is stated that in the case at hand prima-facie ingredients of the alleged offence for framing the charge are made out from the charge sheet against the applicants.

(d) The unreported case of the Apex Court in the matter of Sunita Jha Vs. State of Jharkhand & another, decided vide dated 13.9.2010 in Cr. Appeal No. 1745/2010, was decided taking into consideration the factual matrix that one Asha Rani Pal respondent No.2 of such appeal filed a private complaint against her husband Mukund Chandra Pandit and the appellant to prosecute them for the offence of Section 498-A of the Code, in which after appearance of the accused and recording the before charge evidence at that stage of framing the charge appellant Sunita filed an application to discharge her from the case stating that she is neither wife nor relatives or member of the family of said Mukund Chandra Pandit. On consideration such application was dismissed by the trial court. On which she approached the Jharkhand High Court with criminal revision, the same was also dismissed, then she went to the Apex Court. The Supreme Court considering the circumstance that such appellant does not fall under the category of member or relative of Mukund Chandra husband of respondent No.2 by allowing her appeal discharged her from such case while in the case at hand no such situation is existing. In the present case the respondent No.2/ complainant filed the complaint against the applicants stating the applicant No. 1 being her husband the applicant No.2 to 4 his brother and parents come under the purview of the family of his husband family. Hence, this cited case is also not helping to the applicants.

(e) The another unreported case law of State of A. P. Vs. M. Madhusudhan Rao decided on 24.10.2008 in Cr. Appeal No.2008/ 07, is concerned, such case was decided by the Apex court taking into consideration the evidence available on the record led by the prosecution also after delivery of the judgment on merits by the Courts below. In such case the respondent No. 1 was convicted by the trial Court for the offence u/s 498-A of the Code but on his appeal the High Court of Andhra Pradesh has acquitted him, against that acquittal State went to the Apex Court, where on consideration the same was dismissed. While in the case at hand the evidence is yet to be recorded, hence the case being distinguishable on facts and stage of the trial is also not helping to the applicants.

(f) In the case of Priya Vrat Singh Vs. Shyamji Sahai, 2008 (III) MPWN 89, the Apex Court categorically held that inherent power vested u/s 482 of Cr. P. C. should not be invoked for stifle legitimate prosecution. Such provision should be exercised ex debito justitiae to do real and substantial justice. In the available facts and circumstances of the case at hand and also in view of the aforesaid decision of the Apex Court in the matter of A Subash Babu (Supra), this cited case is also not helping to the applicants.

18. In view of the aforesaid discussion, I have not found any perversity, illegality, irregularity or any thing against the propriety of law in the orders impugned requiring any interference at this stage under the revisional jurisdiction of this Court to discharge the applicants or any of them from the charges framed. Hence, this revision being devoid of any merits is hereby dismissed. However, the trial Court is directed to proceed with the trial in accordance with the prescribed procedure also keeping in view the above mentioned principle laid down by the Apex Court in the matter of "A Subash Babu" (Supra). In view of this cited case the trial Court shall be at liberty to consider the circumstances of the case for modification of the charge after extending the opportunity of hearing to the parties in this regard.

19. Revision is dismissed with aforesaid observation and direction.