
(1999) 07 AHC CK 0201

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 7480 of 1989

Smt. Geeta Devi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 200, 202, 482
Penal Code, 1860 (IPC) — Section 109, 494

Citation : (1999) 2 ACR 1611

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : C.K. Parekh, for the Appellant; Namwar Singh and A.G.A., for the Respondent

Judgement

G.P. Mathur, J.—This petition u/s 482, Code of Criminal Procedure has been filed by Geeta Devi for quashing the proceedings of Criminal Case No. 1822 of 1987 pending before the IInd Munsif Magistrate, Varanasi.

2. Smt. Puspa Devi filed a criminal complaint against six persons including the applicant Geeta Devi, daughter of Ram Babu. The case of the complainant, in brief, is that she was married to Rajesh in the year 1980 and she lived in her sasural for about 5 years. During this period, Rajesh and his family members made demands of dowry. She was forced to put her signatures on blank papers and thereafter she was turned out of the house. She filed a petition claiming maintenance u/s 125, Code of Criminal Procedure which was pending. The case of the complainant further is that Geeta Devi (A-5 in the complaint) is aged about 14-15 years and she is daughter of Ram Babu. All the accused knew that the complainant is the legally wedded wife of Rajesh and that her marriage was still subsisting. The marriage of Geeta Devi was settled with Rajesh and 23.11.1987 was fixed for performing the marriage. The complainant's father gave applications to S.P., Ghazipur and S.S.P., Varanasi. After coming to know about the aforesaid fact, the accused came to Sankat Mochan temple in Varanasi

and performed the marriage of Geeta Devi with Rajesh. The entire ceremony was witnessed by the complainant's father and some other persons. The complainant's father went to P.S. Lanka, Varanasi, for lodging a report but the same was not taken down. It was, thus, alleged that the accused had committed an offence u/s 494/109, I.P.C. The learned Magistrate after recording the statement of the complainant u/s 200, Code of Criminal Procedure and that of Kashi Nath and Smt. Kewla u/s 202, Code of Criminal Procedure passed an order summoning all the accused to face trial u/s 494/109, I.P.C.

3. I have heard Shri C.K. Parikh for the applicant, Shri Namwar Singh for Smt. Puspa Devi, complainant-opposite party No. 2, and have perused the record.

4. The present petition has been filed only on behalf of Geeta Devi, daughter of Ram Babu and not on behalf of other accused of the case. It is stated in the complaint filed by Smt. Puspa Devi that the age of Geeta Devi at the time of filing of the complaint was 14-15 years. No offence u/s 494, I.P.C. simpliciter is alleged to have been committed by the applicant Geeta Devi as it is not the complainant's case that during the subsistence of an earlier marriage, she contracted marriage with Rajesh a second time. She can at best be held liable for having abetted the offence committed by Rajesh u/s 494, I.P.C. The main question is whether she knew at the time of her marriage with Rajesh that it was his second marriage and that his first marriage was still subsisting and the first wife was alive. The complainant has shown her address as resident of Galla Mandi, P.S. Moghalsarai, district Varanasi. The address of Rajesh has been given as resident of P.S. Sayed Raza, district Varanasi. The applicant Geeta Devi is the daughter of Ram Babu, resident of Sarai Pokhta, P.S. Kotwali, district Ghazipur. There is a general allegation in the complaint that all the accused knew that Rajesh had been married with Puspa Devi and that the aforesaid marriage was still subsisting. In her statement u/s 200, Code of Criminal Procedure Puspa Devi did not state anything about the aforesaid fact that the applicant Geeta Devi or her father knew about the earlier marriage of Rajesh. In fact, her statement shows that she came to know about the second marriage of Rajesh from her father. Kashi Nath and Smt. Kewla have no doubt stated that all the accused knew that Rajesh had been earlier married to Smt. Puspa Devi and that the said marriage was still subsisting but they have not said anything as to how they came to know about the aforesaid fact. Kashi Nath is resident of Galla Mandi, P.S. Moghalsarai, district Varanasi, while the applicant Geeta Devi is resident of Ghazipur. Whether a person had knowledge about certain state of affairs can normally be deposed to by that person only and not by any one else. A third person can state so if the person concerned had informed him that he had knowledge of the state of affairs or if the circumstances are such which lead to only inference that the concerned person must have got knowledge of the said state of affairs. None of the witnesses have stated that they ever met Geeta Devi or her father Ram Babu. Nor they have stated about any such circumstance from which an inference may be drawn that the applicant Geeta Devi had knowledge about the subsistence of earlier marriage of Rajesh. In this view of the matter,

the bald assertion in the complaint and in the statement of the witnesses u/s 202, Code of Criminal Procedure that Geeta Devi knew about the subsistence of earlier marriage of Rajesh specially in view of the fact that she was aged about 14-15 years and was resident of a different district cannot be accepted. In view of the material on record, there does not appear to be any chance of conviction of the applicant u/s 494 with the aid of Section 109, I.P.C. The prosecution of the applicant would, therefore, be an abuse of the process of the Court. It is liable to be quashed in exercise of inherent powers of this Court.

5. In the result, the petition succeeds and is hereby allowed. The proceedings of Criminal Case No. 1822 of 1987, Smt. Puspa Devi v. Rajesh and Ors., pending in the Court of IInd Munsif Magistrate, Varanasi, are quashed as against the applicant. It is made clear that the learned Magistrate may proceed against the remaining accused in accordance with law.