

(1996) 05 AHC CK 0149
In the Allahabad High Court
Case No : Criminal Revision No. 1552 of 1995

Smt. Manorama and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-05-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 397, 482
Penal Code, 1860 (IPC) — Section 109, 494

Citation : (1997) CriLJ 974

Hon'ble Judges : G.S.N. Tripathi, J

Bench : Single Bench

Advocate : P.N. Tripathi, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

G.S.N. Tripathi, J.—This is a revision u/s 397 Cr.P.C. against the order dated 14-8-95 passed by 1st A. C. J. M., Jaunpur, whereby the learned Magistrate has ordered that as a prima facie case was made out against the accused, they should be summoned to face charges under Sections 494/109 I.P.C.

2. Admittedly, Smt. Indrawati was married to Ram Dular about 15 or 16 years earlier. She was turned out of her house by the husband and other family members after assaulting her. Some times in May, 1995, Ram Dular remarried with another lady Smt. Manorama. Her father Haripat lodged a complaint, wherein he has alleged that the marriage between Indrawati and Ram Dular was performed according to Hindu rites by observing all the formalities required by law and customs. She was ill-treated by the husband and his family members. She was assaulted for bringing more and more dowry. A daughter was born from the this wedlock. But unfortunately, she died. There -after, no other issue Was born. The husband assaulted her and turned her out from her matrimonial house. Even earlier, the husband had ill-treated her. Smt. Indrawati launched legal proceedings. But that resulted in a compromise. Her husband gave an assurance to mend himself. But he did not abide by that assurance. It was learnt

that the accused was going to marry with another lady Smt. Manorama, daughter of Sheo Kumar, r/o Dariaoganj, P. S. Baksa. On 28-5-95, the Complainant and his other companions reached at the house of the husband at about 8 p. m. There they saw that the husband was performing his marriage with Smt. Manorama. Other accused were actively helping her. When the father of Smt. Indrawati and other persons accompanying him objected to it and told that during the subsistence of the first marriage, second marriage was illegal and it should not be done, the accused husband and other companions of his, did not relent and allowed the marriage to be performed.

3. In support of the case, the complainant had examined u/s 200 Cr.P.C. Smt. Indrawati, the wife and Hari Har, a villager, who was accompanying her to the house of her husband, P. Ws. were examined u/s 202 Cr.P.C. After perusal of the evidence on the record, the learned Magistrate was satisfied that a prima facie case was made out against all the accused. He, accordingly, summoned them to face trial u/s 494/109 I.P.C.

4. Aggrieved, these accused have filed this revision.

5. I have heard the learned counsel for the parties and gone through the record. I find there is prima facie a good case to summon the accused and the evidence is adequate upon which the learned Magistrate has acted. It cannot be said that to a reasonable mind, on the basis of evidence on the record, if believed, no case is made out of at all and the accused were entitled to be let off before being summoned. Therefore, this revision has no force and it deserves to be quashed.

6. The latest legal position has been enunciated by the Hon''able Supreme Court in Smt. Chand Dhawan Vs. Jawahar Lal and others, The evidence against other accused in that case, was simply this much that they were present at the time of marriage. There was no evidence to show that apart from the husband and his second wife Smt. Shashi Arora, others were actively participating in the performance of the second marriage. The result was that the Hon''ble Supreme Court upheld the summoning of the husband and the second wife. But it quashed the order of summoning against other persons, who were simply present at the time of the second marriage and were not doing anything in furtherance of the performance of 2nd marriage.

7. While criticizing the High Court, the Hon''ble Supreme Court observed in paragraph 6 as follows at page 1381 of AIR:-

The High Court has, however, in approaching the question misdirected itself in analysing the truth or otherwise of the allegations on the basis of the materials which could not be relied on without legal proof. It is not disputed that the complaint filed by the appellant does disclose an offence u/s 494 I.P.C. The allegations made by the complainant in law constitute and spell out an offence, if so, the only question that could have been considered at this stage is whether the continuance of the proceedings would be abuse of the process of the Court. This Court has in various decisions examined the scope of the power u/s 482

Cr.P.C. and has reiterated the" principle that the High Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. No inflexible guidelines or rigid formula can be set out and it depends upon the facts and circumstances of each case wherein such power should be exercised. When the allegations in the complaint prima facie constitute the offence against any or all of the respondents, in the absence of materials on record to show that the continuance of the proceedings would be an abuse of the process of the Court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint.

8. In paragraph 7, the Hon''ble Supreme Court has observed as follows:-

The truth or otherwise of the allegations in the complaint is a matter for proof. When the materials relied on by the respondent require to be proved, no inference can be drawn on the basis of these materials to conclude that the complaint is false. The High Court was not justified in assuming that the first information report has been lodged by the complainant appellant solely because she had not filed any reply before the High Court denying the fact. It does not appear that sufficient opportunity was given to the appellant to do so. The affidavits of one of the persons who is stated to have performed the ceremonies would also be of no assistance in drawing any inference either way.

Therefore, the High Court's order was quashed.

9. At the same time, the Hon''ble Supreme Court found that the case of other persons apart from the husband and wife, was not prima facie made out. An observation was made in paragraph 9 at page 1559 as follows :-

So far as other respondents are concerned, it may be said that they had been unnecessarily and vexatiously raped in. The allegations in the complaint so far as these respondents are concerned are vague. It cannot be assumed that they had by their presence or otherwise facilitated the solemnisation of a second marriage with knowledge that the earlier marriage was subsisting. The explanation of the first respondent that the second respondent has been functioning as a governess to look after his children in the absence of the mother who had left them implies that respondents Nos. 1 and 2 are living together. In this back-ground, the allegations made against respondents 3 to 7 imputing them with guilty knowledge unsupported by other material would not justify the continuance of the proceedings against those respondents.

10. Learned counsel tried to misinterpret the aforesaid observations of the Hon''ble Supreme Court by saying that it is a universal law now that apart from husband and second wife, no other person can be charged or summoned u/s 494/109 I.P.C. Unfortunately, this is not the law laid down by the Hon''ble Supreme Court. On the facts of that particular case, it was found that the allegations were vague and the only evidence was that these persons were only

present. There was no evidence to show that they facilitated the solemnization of the second marriage with the knowledge that the earlier marriage was subsisting.

11. In the present case before me, the statement of Hari Har u/s 202 Cr.P.C. is that when he reached at about 8 p.m. along with the complainant and others, he saw that the marriage between Smt. Manorama and Ram Dular was going on. Sheo Kumar, Luttur, Raj Bahadur, Parimal and Firoz, the revisionists No. 2 to 7 were aiding in this marriage. The witness and others asked them not to perform the marriage because Ram Dular had already been married to Smt. Indrawati and their marriage still subsisted? But these persons did not relent, even after getting this information from these persons. Not only this, they were bent upon assaulting these persons, who had come from the village of Smt. Indrawati.

12. Similarly, Haripat, the complainant had said that when he along with Ram Deo, Vijayee and Hari Har went to village Darion Ganj, it was about 8 p.m. There they saw that Ram Dular was marrying with Smt. Manorama, Luttur, Raj, Rajman, Raj Bahadur, Firoz, Parimal and Sheo Kumar (revisionists) were present, helping in this marriage. The complainant along with other persons, who had accompanied him asked the accused not to proceed with the marriage as Ram Dular had already been married with his daughter Smt. Indrawati. But instead of abandoning the performance of marriage, these accused threatened them and allowed the marriage to be performed. The evidence prima facie shows that the revisionists were informed that a valid marriage between Smt. Indrawati and Ram Dular was subsisting. Therefore, Ram Dular should not proceed with the second marriage and his companions (revisionists) should not help in performing this illegal marriage. But despite the knowledge that a first marriage between Ram Dular and Smt. Indrawati was subsisting, these persons did not leave the place of marriage. Not only this, they threatened the witnesses, who were asking them not to proceed with the marriage. Thus, these revisionists not only actively participated in the marriage but countered all the efforts and same advice given by the complainant and other witnesses, to them. Therefore, the facts of the case before the Hon"ble Supreme Court were altogether different from the facts of the case before me. This way, it cannot be said that Hon"ble Supreme Court has mandated that other than husband and his second wife, no other person can be charged as an accused. On the basis of the facts and evidence, before the Hon"ble Supreme Court in that particular case, the aforesaid observations were made in paragraph 9 of the judgment quoted above.

13. The result is that from the evidence on the record, it is clearly established that all the revisionists actively participated in the performance of the second marriage. They had every knowledge that Ram Dular's first wife is still surviving and the marriage between the two was still in existence.

14. The learned Magistrate has taken all these facts into consideration and passed a judicial order summoning the accused. This order is based on evidence and circumstance on the record. There is neither any illegality nor any impropriety nor any incorrectness in this order of the learned Magistrate entitling

this Court to quash the order of summoning either in a revision or in a petition u/s 482 Cr.P.C.

15. The revision is accordingly dismissed.

16. No observation made in the body of this judgment shall in any way, bind the learned Magistrate while trying the case.