

(1997) 05 AHC CK 0173

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 234 of 1996

Suresh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-05-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 25, 26
Hindu Marriage Act, 1955 — Section 17
Penal Code, 1860 (IPC) — Section 494

Citation : (1999) 1 DMC 304

Hon'ble Judges : N.S. Gupta, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Tej Pal, for the Appellant; R.P. Tiwari, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—Following prayers have been made in this writ petition:

(i) To quash the order dated 29.11.1995, passed by CO., Civil Lines, Jhansi (respondent No. 3), as contained in Annexure-10, directing the application dated 9.12.1995 filed by Jagdish, respondent No. 5 to be registered and investigated to by the Station Officer, Police Station Tehrauli, District Jhansi.

(ii) To quash the FIR, as contained in Annexure-9, giving rise to registration of Crime Case No. 100 of 1995, under Sections 498A, 494, 364, Indian Penal Code, Police Station Tehrauli, District Jhansi drawn up on the basis of the application dated 9.11.1995 aforementioned.

(iii) To quash the investigation in relation to the aforementioned case.

(iv) Alternatively direct fresh investigation by CB, CID or any other impartial investigating agency.

2. Perused the writ petition as well as counter affidavit filed on behalf of the respondent Nos. 5 and 6, it appears that during lifetime of his wife Smt. Girja

Devi, the petitioner No. 1 Suresh remarried one Kiran. According to the prosecution the petitioners were demanding heavy dowry and tortured Girja and later on got her disappeared, who might have been killed by the petitioners. The petitioners deny these allegations and has come up with a claim that Girja Devi had left the house out of her own.

3. The solitary question urged by Mr. Tej Pal, learned Counsel for the petitioner, is that Section 17 of the Hindu Marriage Act read with Section 494, Indian Penal Code whereby Hindus are denied to marry more than one wife and if they do so they will be punished u/s 494, Indian Penal Code whereas the Muslims are allowed to have 4 wives and shall not be punished and are thereby violative of Articles 14, 15, 19, 20 and 21 of the Constitution. Mr. Tej Pal also read out the decisions referred to in the writ petition.

4. We are of the view that the solitary question raised has got no substance. The decisions relied upon do not support the contention of Mr. Tej Pal. Our conclusion follows from the patent fact that Section 17 of the Act in question applies only to Hindus and not to Mohammedans, who as per the Holy Quran are entitled to keep upto 4 wives which has been protected under Articles 25 and 26 of the Constitution and thus, there is no vice of discrimination as envisaged under Article 14 of the Constitution or any other Article thereof. In this regard it is also relevant to remember that a Muslim marriage is a contract in which Mehr is fixed as per the demand of the bride and agreed to be the bridegroom, which is not dowry and governed by personal Muslim Laws.

5. The solitary submission having failed, we dismiss this writ petition.