

Neetu vs Suresh Grewal & Anr on 12 October, 2022

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 5195/2022
NEETU

Through: Mr.R.K.Tarun, Advocate.
versus

SURESH GREWAL & ANR.

Through: None.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 12.10.2022
CRL.M.A. 20731/2022

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

3. This petition is filed to challenge the order dated 29.05.2019 whereby the learned Trial Court has failed to take cognizance of the offence under Section 494 IPC against the husband of petitioner herein. Even the Crl.Rev. No.447/2019 filed by petitioner was also dismissed by learned Session's Court vide order dated 01.10.2022.

4. It is the submission of the learned counsel for petitioner, the petitioner was got married with respondent No.1 on 07.12.2012 according to Hindu rites and ceremonies, but the relations became sour, hence the aforesaid FIR was registered. It is also alleged when she visited the matrimonial home on 18.09.2017, she found a newly wedded woman and later on 29.09.2017 when the petitioner saw the respondent No.1 walking with said newly wedded woman, had seen in her matrimonial home, she confronted the respondent No.1, who in turn took out a pistol and threatened her. The learned Magistrate had taken the cognizance for offence under Section 506/509 IPC.

5. The petitioner is aggrieved of the fact while taking cognizance under Section 506/509 IPC, the learned Magistrate had refused to take cognizance for offence under Section 494 IPC on the ground the second marriage took place at Kalkaji Mandir, New Delhi, which place is outside the jurisdiction of the Court and further bigamy is not a continuing offence.

6. In *Trisuns Chemical Industry vs Rajesh Aggarwal & Others* AIR 1999 (8) SCC 686, the Hon'ble Supreme Court noted:-

9. It is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. Chapter XIII of the Code relates to jurisdiction of the criminal courts in enquiries and trials. That chapter contains provisions regarding the place where the enquiry and trial are to take place. Section 177 says that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. But section 179 says that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the place of enquiry and trial can as well be in a court "within whose local jurisdiction such thing has been done or such consequence has ensued". It cannot be overlooked that the said provisions do not trammel the powers of any court to take cognizance of the offence. Power of the court to take cognizance of the offence is laid in Section 190 of the Code.

Sub-sections (1)& (2) read thus:

(i) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon a police report of such facts;

(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(ii) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

12. The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier.

13. Unfortunately, the High Court, without considering any of the aforesaid legal aspects rushed to the erroneous conclusion that the judicial magistrate of first class, Gandhidham has no power to take cognizance of the offences alleged merely because such offences could have been committed outside the territorial limits of the State of Gujarat. Even otherwise, without being apprised of the

fuller conspectus a decision on the question of jurisdiction should not have been taken by the High Court at a grossly premature stage as this.

7. In Rajendra Prasad & Others vs State of UP & another II(2007) DMC 343 it was held bigamy is a continuing offence.

8. Issue notice to respondents through all modes returnable on 09.02.2023.

YOGESH KHANNA, J.

OCTOBER 12, 2022 M