

Vijay Gupta And Others vs Deeksha Sharma And Others on 1 September, 2022

Author: Vinod Chatterji Koul

Bench: Vinod Chatterji Koul

HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU

Reserved on : 19.07.2022
Pronounced on: 01.09.2022

CRM(M) 893/2021

Vijay Gupta and others

.....Petitioner/appellants (s)

Through:- Mr. Abhimanyu Sharma, Advocate,

v/s

Deeksha Sharma and others

.....Respondent(s)

Through:- Mr. G. S. Thakur, Advocate

Coram:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER

1. The prayer in this petition is for quashing of complaint bearing No. 95/Comp. titled "Deeksha Sharma vs. Nikhil Mahajan & ors" pending before learned Chief Judicial Magistrate Reasi (for short 'Trial Court') and also the order dated 05.03.2020 (for short 'impugned order') by virtue of which Trial Court has taken cognizance and has issued process to the petitioners.

2. The brief facts of the case are that the petitioner No.1 is the father, petitioner No. 2 is the mother and petitioner No. 3 is the sister of the pro-forma respondent no. 2, and the proforma respondent No. 2 is the husband of the respondent No. 1 whose marriage was solemnized on 04.05.2017. The respondent No. 1 soon after the marriage was having matrimonial discord with the proforma respondent No. 2, she left her CRM(M) 893/2021 matrimonial house and went to her parental house, whereas the proforma respondent No. 2 is stated to have also left the house whose whereabouts of are not known to the petitioners. A case under Protection of Women against Domestic Violence Act (for short 'the Act') has been filed by the respondent No. 1 against the proforma respondent No. 2 and in the said petition the petitioners are respondents. It is stated that

petitioner No. 3 is the daughter of the petitioner No. 1 and is married and living with her husband at her matrimonial home. It is stated that during the pendency of the aforesaid complaint the respondent No. 1 in order to humiliate and harass the petitioners herein filed another complaint under sections 494, 109, 114, 120-B of Indian Penal Code against the petitioners as well as proforma respondents before the Trial Court and the Trial Court vide impugned order dated 05.03.2020 took cognizance in the aforesaid complaint and issued process against the petitioners.

3. The complaint and impugned order dated 10.11.2021 has been called in question and is sought to be quashed, in this petition precisely, on the following grounds:-

(a) That the impugned complaint as well as consequent order dated 05.03.2020 is an abuse of process of law, therefore, same are required to be quashed;

(b) That perusal of the complaint, more specifically Para no. 7 of the complaint the complainant /respondent no. 1 has stated that the proforma respondent no. 2 has contracted a second marriage during the subsistence of the earlier marriage somewhere in the month of May, 2018, meaning thereby that the factum of the marriage is still unknown to CRM(M) 893/2021 the respondent no. 1 and merely on the basis of a birth certificate of a child the respondent no. 1 is alleging the same, therefore, from the perusal of the complaint the complainant have stated that the proforma respondent No. 2 has contracted the marriage as per Hindu rites and customs at Jammu, however, prima facie nothing has been placed on record by the respondent no. 1, so as to make out a case for taking cognizance and issuing summons against the petitioners;

(c) That nothing has been placed on record by the respondent No. 1 so as to make out a case for taking cognizance and issuing summons against the petitioners;

(d) That the complaint and the consequent order dated 05.03.2020 is required to be quashed on the ground, that the Trial Court lacks the jurisdiction for entertaining the same. It is stated that section 177 of Code of Criminal Procedure lays down the jurisdiction of the Court to try an offence in the terms that every offence shall ordinarily be enquired into and tried by the Court within local limits of whose jurisdiction the same was committed;

(e) That the Trial Court below while taking cognizance has committed an error, inasmuch as the Trial in para no. 3 of the impugned order has specifically stated that "photographs of marriage and date of birth certificate of child alleged to have been born" is also annexed with the complaint, however, it is stated that the complainant/the respondent no. 1 has annexed the photographs of her marriage with the proforma respondent no. 2 and the Trial Court without appreciating this fact has taken cognizance of the matter and has issued summons to the petitioners.

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(f) That the Trial Court has taken cognizance in respect of the offences punishable under Section 494 read with Sections 109 and 120 IPC against the petitioners, however, the fact remains that the petitioners cannot be criminally prosecuted for the same as the Section 494 particularly provides that the offence there under is committed by the either spouse, who remarries during the subsistence of a legal and a valid marriage, whereas, in the present case the cognizance against the petitioners has been taken for commission of the offences under section 494 IPC which is legally not permissible;

4. Respondent No. 1 has filed objections, wherein it is stated that she has filed a criminal complaint against the petitioners and the proforma respondents alleging therein that she is the legally wedded wife of the proforma respondent No. 2 whose marriage was solemnized on 4th of May 2017, as per Hindu rites and Ceremonies, out of the said wedlock a male child was born, despite the said fact, the proforma respondent No. 2 has solemnized second marriage with the respondent No. 3. It is stated that the proforma respondent No. 2 has solemnized second marriage with the respondent No. 3 and out of the said wedlock a male child was born and in order to substantiate the said fact she has placed on record the birth certificate of the child issued by South Delhi Municipal Corporation on 20.09.2019. In the objections, it is further stated that in the complaint she has made specific allegations that the proforma respondents in connivance with the petitioners herein solemnized second marriage despite the fact that the first marriage with the answering respondent was subsisting at the time of solemnizing the second marriage.

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5. Heard learned counsel for the parties and perused the record on file.

6. The impugned order dated 05.03.2020 passed by the Trial Court reads as under:-

The assertions highlighted in the complaint as also material available on record prima facie indicate that complainant is wife of accused No. 1; that her marriage with accused No. 1 still subsists; that during subsistence of this marriage, accused No. 1 contracted second marriage with accused No. 2 out of which a male child is born whose date of birth is 04.02.2019 as per certificate issued by South Delhi Municipal corporation; that accused No. 3 to 9 actively facilitated second marriage inter-se accused No. 1 & 2 despite knowing the fact that marriage between complainant and accused No. 1 still subsists. Prima-facie there are amply justifiable grounds to proceed against accused for offences under Sections 494, 109, 114, 120-B IPC therefore, cognizance of the said offences is taken and process is directed to be issued against accused requiring their appearance in this Court on next date of hearing so that matter can be proceeded further in accordance with law ordained by Code of Criminal Procedure."

7. A perusal of the record tends to show that the complainant- respondent No. 1 claiming herself to be legally wedded wife of respondent No. 2 filed a complaint under Sections 494, 109, 114, 120-8 IPC before the Trial Court against the petitioners. She alleged that right from the beginning of

marriage the proforma respondent No. 2 herein and his family members started harassing her for bringing dowry, when she conceived child the proforma respondent No. 2 and his family members made several CRM(M) 893/2021 attempts to abort her fetus and on her refusal she was thrown out of the matrimonial house. In the complaint it was alleged that proforma respondent No. 2 -Nikhil Mahajan with the connivance of petitioners has contracted second marriage with proforma respondent No. 3- Ananya Wadhera somewhere in the month of May 2018, during the subsistence of the first marriage and from the second marriage a male child has born on 04.02.2019 to the proforma respondent Nos. 2 and 3.

8. Learned counsel for the petitioners submits that complaint and the consequent impugned order dated 05.03.2020 is required to be quashed as the trial Court lacks jurisdiction to entertain the same.

9. On the other hand, learned counsel for the respondent No. 1 submits that respondent No. 1 is permanently residing with her parents at Reasi, therefore, the Court at Reasi has the jurisdiction to entertain the present complaint.

10. It would be appropriate and advantageous herein to refer to the judgment of this Court rendered in case titled S. Karan Singh Sodhi and others vs. Jatender Jeet Kour, reported in 2007 (2) JKJ 566, wherein this Court has held as follows:-

"The question is which marriage constitute the offence punishable under Section 494, R.P.C. In terms of Section 494, R.P.C. performing/contracting the second marriage during the subsistence of first valid marriage is the offence. The Court within whose jurisdiction, the second marriage is performed is having the jurisdiction to try the case in terms of Section 177 of Criminal Procedure Code (in short "the Code"). This provision of law lays down the general principles as regards the jurisdiction of the CRM(M) 893/2021 Court. Every offence shall ordinarily be enquired into and tried by a Court within the local limits of whose jurisdiction it was committed. Admittedly offence under Section 494, R.P.C. is the second marriage. As discussed herein above the second marriage has been contracted at Baramulla, as alleged. Thus, Baramulla Court is having the jurisdiction to try the complaint.

11. The Apex Court in a case titled as Trisuns Chemical Industry v. Rajesh Agarwal , reported in 1999(4) RCR (Criminal) 223 (SC) held that any Magistrate can take cognizance whether it has the jurisdiction or not but enquiry of trial is to be conducted by the Magistrate having jurisdiction. It is profitable to reproduce para No. 12 of the judgment as under:

"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 which Court has jurisdiction to enquiry into or try the offence and that situation would

reach only during the post cognizance stage and not earlier"

12. In the back drop of aforesaid discussion, this Court finds that the Chief Judicial Magistrate, Reasi is lacking jurisdiction to try the case, as such, the impugned order taking cognizance dated 05.03.2020 in CRM(M) 893/2021 complaint bearing No. 95/Comp. titled "Deeksha Sharma vs. Nikhil Mahajan & ors" is quashed.

13. Complainant-respondent No. 2 herein shall be at liberty to approach appropriate forum for redressal of her grievance.

(VINOD CHATTERJI KOUL) JUDGE Jammu 01.09.2022 Bir Whether approved for reporting?
Yes/No