

Balwinder Singh v. State of Punjab (P&H) : Law Finder Doc Id # 235608
PUNJAB AND HARYANA HIGH COURT

Before :- Nirmaljit Kaur, J.

Crl. M. No. 9655-M of 2010. D/d. 13.9.2010.

Balwinder Singh and others - Petitioners

Versus

State of Punjab and another - Respondents

For the Petitioner :- Mr. Ashish Aggarwal, Advocate.

For the Respondent :- Mr. K.S. Pannu, D.A.G. Punjab.

For the Complainant :- Mr. B.S. Jaswal, Advocate.

Indian Penal Code, 1860, Sections [420](#), [494](#), [109](#) and [120B](#) - FIR - Quashing of - Accused/Wife alleged to have performed second marriage with co-accused during life of her first husband without getting divorce - FIR lodged under Sections [420](#), [494](#), [109](#) and [120B](#) against wife, second husband and relatives of second husband - Relatives seeking quashing of FIR - Held, it can not be presumed that petitioners had by their presence or otherwise facilitated solemnization of a second marriage with the knowledge that earlier marriage was subsisting - No offence made out against petitioners except Section [109](#) - Hence, FIR qua only petitioners quashed - 2002(1) RCR Cri. 538; 1992(3) RCR 534 (SC) : 2009(2) RCR (Cri.) 496; relied on.

[Paras 14 and 15]

Cases Referred :

[Nafe Singh v. Mohinder Dass, 2002\(1\) RCR\(Cri\) 538.](#)

[Chand Dhawan v. Jawahar Lal, 1992\(3\) RCR 534 \(SC\).](#)

[Om Parkash Sharma v. Jagatjit Singh Ahluwalia, 2009\(2\) RCR \(Criminal\) 496.](#)

[Sham Singh v. Sarbjit Kaur, 1998\(3\) RCR \(Criminal\) 78.](#)

[Bir Bahadur Singh v. State of Punjab, 2007\(1\) RCR \(Criminal\) 786.](#)

[Surjit Singh v. State of Punjab, 2002\(3\) RCR \(Cri.\) 489 \(P&H\).](#)

JUDGMENT

Nirmaljit Kaur, J. - The present petition has been filed under Section [482](#) Criminal Procedure Code for quashing of FIR No. 407 dated 2.10.2009 registered under Sections [420](#), [494](#), [109](#), [120B](#) Indian Penal Code at Police Station Sadar Amritsar, District Amritsar City qua the petitioners only.

2. As per the allegations levelled in the FIR, co-accused Rajni had performed second marriage with Nirmal Singh son of Surjit Singh on 15.3.2009 in Gurudwara Dera Baba Nanak during the life of her first husband namely Kanwaljit Singh, without getting divorce from any competent Court of law and had got protection from this Hon'ble Court by concealing the fact of her first marriage. As such a complaint was made by Kanwaljit Singh under Section [156\(3\)](#) Criminal Procedure Code on the basis of which a case FIR under Sections [420/494/109/120B](#) Indian Penal Code had been registered against the said Rajni, Nirmal Singh and all of his family members.

3. Petitioners No. 1 to 3 are the brothers of the co-accused Nirmal Singh whereas petitioners No. 4 and 5 are his parents and petitioners No. 6 and 7 are the respective wives of his brothers.

4. Learned counsel for the petitioners has placed reliance on the judgment of this Court rendered in the case of **Nafe Singh v. Mohinder Dass, 2002(1) RCR Criminal 538** to state that no offence under Section [494](#) Indian Penal Code is made out against parents and relations of husband and other persons merely because they were present at the time of second marriage.

5. Learned counsel for respondent No. 2-complainant on the other hand submitted that as per the allegations in the FIR, the present petitioner had actively participated in the marriage and therefore, the offences under Sections [420/494/109/120B](#) Indian Penal Code are made out against the petitioners.

6. Learned counsel for the parties are heard.

7. It is not disputed that accused Rajni had filed an affidavit before this Court regarding solemnization of her first marriage with Nirmal Singh and concealed the fact of her first marriage with the complainant Kanwaljit Singh. It is also not disputed that said Rajni had run away with Nirmal Singh and got married out of her own free will. She also approached the High Court for protection of her life and liberty. The allegation of deceiving is only against the accused Rajni and Nirmal Singh, who married each other on 15.3.2009 and sworn in an affidavit before this Court that the marriage between them was their first marriage. The only role attributed to the petitioners is that they were present at the time of marriage. Thus, the question of abetment by the petitioners just because they participated in the marriage does not arise. Said Rajni and Nirmal Singh are not the petitioners before this Court.

8. Section [494](#) reads as under :

"494. Marrying again during life time of husband or wife.- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

9. In the case of Nafe Singh (Supra) while relying on the judgment of Hon'ble the Supreme Court rendered in the case of **Smt. Chand Dhawan v. Jawahar Lal and other, 1992(3) RCR 534 (SC)** this Court quashed the complaint under Sections [494,109,120B](#) Indian Penal Code against the parents, relatives of the husband and others while coming to the conclusion that no offence under Section [494](#) Indian Penal Code is made out against the

parents and relations of the husband merely because they were present at the time of second marriage and discussed in para 5 as under :

"After considering various contentions of both the sides, the Hon'ble Supreme Court was of the view that the High Court had clearly erred in reaching the conclusion that the proceedings are liable to be quashed. It was further observed that in the light of allegations made in the complaint and material produced in support of these allegations by the appellant before the Magistrate, the issue of process to respondents No. 1 and 2, who are alleged to have solemnised the second marriage during the subsistence of the earlier valid marriage of the appellant, was proper and when the process had been issued the proceedings had to continue in accordance with law against respondents No. 1 and 2. Regarding the other accused, it was held by their Lordships of the Supreme Court that they had been unnecessarily and vexatiously roped in. It was further held that it could not be assumed that they had by their presence or otherwise facilitated the solemnisation of a second marriage with the knowledge that the earlier marriage was subsisting. Accordingly, the appeal was partly allowed and order with regard to respondents No. 1 and 2 were set aside and it was held that the complaint should proceed against these two respondents in accordance with law."

10. Similar view was also held by this Court in the case of **Om Parkash Sharma and others v. Jagatjit Singh Ahluwalia, 2009(2) RCR (Criminal) 496.**

11. Further in the case of **Sham Singh v. Sarbjit Kaur, 1998(3) RCR (Criminal) 78**, this Court while quashing the complaint against relatives of the husband and 17 others held that Section [494](#) Indian Penal Code was not maintainable against the relatives.

12. Offence under Section [494](#) Indian Penal Code is non-cognizable in nature. The Magistrate cannot take cognizance of the said offence on a police report.

section [198](#)(c) Criminal Procedure Code provides as under :

"198. Prosecution for offences against marriage. (1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code, 1860- except upon a complaint made by some person aggrieved by the offence :-

Provided that :

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) Where the person aggrieved by an offence punishable under Section [494](#) or Section [495](#) of the Indian Penal Code, 1860 is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or with the leave of the court by any other person related to her by blood, marriage or adoption.

13. In the case of **Bir Bahadur Singh and others v. State of Punjab and another, 2007(1) RCR (Criminal) 786**, this Court while relying on the judgment rendered in the case of **Surjit Singh v. State of Punjab, 2002(3) RCR (Crl.) 489 (P&H)** held in para 6 as under :

"The grievance of the petitioner appears to be genuine one. Section [198](#) Criminal Procedure Code debars the police from taking cognizance of such an offence since it is shown to be a non cognizable one, nor the Ilaqa Magistrate could take cognizance of the offence on police report. Section [198](#) Criminal Procedure Code empowers taking cognizance of an offence under Section [494/495](#) Indian Penal Code by the Magistrate only upon a complaint made by some person aggrieved of the offence.

In the present case also, no complaint had been filed and only FIR has been lodged. The offence being non-cognizable the Magistrate in any case cannot take cognizance of the report, if any, in pursuance to FIR except on a complaint filed by the aggrieved person.

14. Thus, in view of the above discussions and the judgments rendered by the Apex Court and this Court in the case of Smt. Chand Dhawan (Supra), Nafe Singh (Supra), Om Parkash Sharma (Supra), it cannot be assumed that the petitioners had by their presence or otherwise facilitated the solemnization of a second marriage with the knowledge that the earlier marriage was subsisting. If at all, only offence under Section [109](#) Indian Penal Code is made out.

15. Accordingly and also in view of the judgment rendered in the case of and Bir Bahadur Singh (Supra), the present petition is allowed and FIR No. 407 dated 2.10.2009 registered under Sections [420,494</109,120B](#) Indian Penal Code at Police Station Sadar Amritsar, District Amritsar City qua only the petitioners is hereby quashed.

Petition allowed.