

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**CRM(M) No. 494/2021
CrIM No. 1607/2021**

1. **Beero Devi,**Appellant(s)/Petitioner(
W/O Lt. Sh. Isher Dass
2. **Bansi Lal**
S/O Lt. Sh. Isher Dass
3. **Nimo Devi**
W/O Sh. Bansi Lal
(R/o Village Soul Tehsil Akhnoor,
District Jammu)

Through: Mr. Pawan Kumar Kundal, Advocate.

vs

1. **Kanchan Devi W/O Sh. Kali Dass** Respondent(s)
R/O Village Chatter Kheral, Tehsil and
District Reasi.

Through: Mr. Prince Khanna, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioners have filed this petition for quashing the proceedings of the complaint titled "*Kanchan Devi vs Kali Dass and others*" pending before the Court of learned Munsiff (JMJC), Reasi and for quashing the order dated 26.02.2021 by virtue of which process has been issued against the petitioners for commission of offences under Sections 494, 109 and 34 IPC, on the ground that no allegations have been levelled against the petitioners in the complaint and no reason has been assigned by the learned Magistrate while issuing process against the petitioners.
2. Mr. Pawan K. Kundal, learned counsel for the petitioners has argued that in the complaint, no role has been attributed to the petitioners in the commission of aforementioned offence, as such, process could not have

been issued against them. He has further argued that the order dated 26.02.2021 has been issued in a mechanical manner without application of mind. He has placed reliance upon the judgment of Hon'ble the Supreme Court of India in cases titled "**Mehmood Ul Rehman vs. Khazir Mohammad Tunda and others**", (2015) 12 SCC 420 and **N. S. Madhanagopal and another vs. K. Lalitha, 2023 SCC Online Mad 9033**.

3. *Per contra*, Mr. Prince Khanna, learned counsel for the respondent has argued that the High Court while exercising jurisdiction under Section 482 Cr. P.C. cannot appreciate the evidence and the proceedings cannot be quashed at the threshold when *prima facie* case for trial is made out. He has further argued that no reasons in detail are required to be assigned while issuing process.
4. Heard and perused the record.
5. The petitioner No. 1 is the mother, petitioner No. 2 is the brother and petitioner No. 3 is the sister-in-law of Kali Dass, who happens to be husband of the respondent. The respondent has filed the complaint against the petitioners, her husband-Kali Dass and others under Section 494, 34 and 109 IPC on the ground that during the subsistence of her first marriage with Kali Dass i.e. the accused No. 1 in the complaint, Kali Dass solemnized marriage with accused No. 2-Pali Devi on 22.12.2020 in Arya Samaj Mandir, Chinore, Jammu.
6. A perusal of the trial court record reveals that the respondent has stated in the complaint that the marriage was solemnized between the accused No. 1 and the respondent on 29.11.2009 at village Chatter (Kheral) Tehsil and District Reasi. As her husband-Kali Das did not maintain the

respondent, she filed an application under Section 488 Cr. P.C. against her husband Kali Dass, which was settled in the year 2013. In the year 2016, the accused No. 1 filed a petition for restitution of conjugal rights and again a compromise was arrived at between the them and the accused No. 1-Kali Dass furnished an undertaking that he would not commit any violence upon the respondent or her son and they started living together in a rented accommodation at Akhnoor. Relationship between the accused No. 1 and the respondent got strained due to intervention of petitioners and, as such, the respondent was left with no option but to leave the rented accommodation and she started residing with her parents, where she delivered her second child. It is further pleaded that on 25.12.2020, the respondent came to know from sister-in-law, namely, Sushma Devi that her husband Kali Dass has solemnized marriage with one girl, namely, Pali Devi i.e. the accused No. 2 in the complaint and the said information was confirmed by the witness to the said marriage namely, Ravi Kumar to her brother-Tarsem Lal. She also came to know that the accused Nos. 6 and 7 in the complaint were told by the petitioner Nos. 2 and 3 to arrange the second marriage of the accused No. 1-Kali Dass and pursuant to the common intention, marriage of the accused Nos. 1 and 2 was solemnized at Arya Samaj Mandir, Chinore, Jammu. The respondent visited Arya Samaj Mandir, Chinore, Jammu on 22.01.2021 along with her brother and then came to know about solemnization of second marriage of her husband, which was substantiated by the documents provided by the Shastri of Arya Samaj Mandir, Chinore, Jammu. It was also alleged that the accused persons conspired with each other to conduct second marriage

of her husband with Pali Devi even though they were aware that the accused No. 1 was already married. After filing of the complaint, statements of the complainant and one witness, namely, Shamsheer Lal were recorded by the learned Magistrate on 26.02.2021. In her statement before the learned Magistrate, the respondent has specifically stated that the accused No. 1 and 2 solemnized marriage despite the fact that the accused No. 1 i.e. Kali Dass was already married and was having two children. It is also stated by her that all the accused have conspired to solemnise the marriage of accused Nos. 1&2.

7. It is contended by the petitioners that there are no allegations levelled in the complaint against the petitioners, as such, they could not have been summoned by the learned Magistrate. A perusal of the complaint reveals that the accused No. 6 and 7 were told by the petitioner Nos. 2 and 3 to arrange second marriage of Kali Dass and further that the accused persons conspired together to get the marriage of accused No. 1 solemnized with the accused No. 2 despite knowing the fact that the accused No. 1 was already married. The respondent has also stated in her statement that all the accused conspired to solemnise the marriage of the accused Nos. 1 and 2 despite knowing the fact that the accused No. 1 was already married and was having two children. The trial court record reveals that the marriage agreement dated 22.12.2020 was executed between Kali Dass and Pali Devi.
8. At this stage, from perusal of the complaint and the statement made by the respondent before the learned Magistrate, it cannot be said that no offence is made out against the petitioners. This Court while examining the legality of the criminal proceedings initiated pursuant to the

complaint lodged by the respondent cannot appreciate the evidence brought on record. Whether the petitioners have abetted the commission of offence by the accused Nos. 1 and 2 or not, is a matter to be determined by the learned trial court. In '**Mohd. Allauddin Khan v. State of Bihar**', (2019) 6 SCC 107, the Hon'ble Supreme Court of India has held as under:

14. In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC") because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case."

9. The other contention raised by the petitioners is that order dated 26.02.2021 has been issued without application of mind. A perusal of the order dated 26.02.2021 reveals that the learned Magistrate after perusing the statement made by the respondent and one witness Shamsheer Lal has recorded his satisfaction that *prima facie* case in respect of commission of offences under Section 494, 109 and 34 is made out.
10. In "**Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and others**", (2015) 12 SCC 420 (supra), Hon'ble the Supreme Court of India has held that no formal or speaking or reasoned order is required at the stage under Section 190/204 Cr. P.C. but there must be sufficient indication in respect of application of mind by the Magistrate while issuing process against the accused. The learned Magistrate has recorded its satisfaction in respect of commission of offence and has issued the process against the petitioners though it is true that detailed

reasons are not mentioned in the order, which otherwise are not required to be recorded in the order in respect of issuance of process.

11. In view of above discussion, there is no merit in the present petition, as such, the same is **dismissed**.

(RAJNESH OSWAL)
JUDGE

Jammu
25.10.2024
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.

