



THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 1176 of 2021

Kharak Singh Dhapola

... Applicant

Versus

State of Uttarakhand and Another

... Respondents

Presence:-

Mr. Devang Dobhal, learned counsel for the applicant.

Mr. Chitrarth Kandpal, learned Brief Holder for the State.

Mr. Kunwar Nripendra Singh Rautela, learned counsel with Mr. B.S. Kathayat, learned counsel for the respondent no.2.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present Criminal Misc. Application filed under Section 482 of the Code of Criminal Procedure, 1973, the applicant has sought quashing of the judgment and order dated 07.08.2021, passed by 2nd Additional Sessions Judge, Nainital in Criminal Revision No.132 of 2019, Kharak Singh Dhapola vs. State of Uttarakhand and another, as well as the summoning order dated 04.08.2016, passed by Judicial Magistrate 1st, Haldwani, District Nainital in Criminal Case No.2019 of 2015, Smt. Sarojini Dhapola vs. Kharak Singh Dhapola and entire proceedings of Criminal Case No.2019 of 2015, Smt. Sarojini Dhapola vs. Kharak Singh Dhapola under Sections 494, 504 of IPC read with Section 357 of the Cr.P.C. pending in the Court of Additional Chief Judicial Magistrate, Haldwani, District Nainital.

2. The present Criminal Misc. Application under



Section 482 of the Cr.P.C. emanates out of a criminal complaint, which was filed by complainant Smt. Sarojini Dhapola against the applicant, Bharat Singh Dhapola, with the allegations of contracting a second marriage during the subsistence of the first marriage with the complainant. It has been alleged in the complaint that the complainant, who is the wife of the accused, got married with him on 07.03.1988, and it is contended that the accused/applicant, herein, contracted a second marriage without nullifying the first marriage with the complainant on 04.07.2010. Therefore, it was prayed that cognizance of the offence committed by the accused be taken and he may be prosecuted accordingly.

3. In pursuance to the aforesaid complaint, the complainant/respondent No.2, herein, was examined under Section 200 of the Cr.P.C. and a report of Thana Mukhani, District Nainital, was also summoned by the Trial Court and based on the said statement, by a summoning order dated 04.08.2016, the Judicial Magistrate 1st, Haldwani, District Nainital has summoned the accused/applicant herein under Sections 494 and 504 of the IPC.

4. The said summoning order was assailed by the accused/applicant, herein, by means of filing a Criminal Revision, which was dismissed by the 2nd Additional Sessions Judge, Nainital, vide judgment and order dated 07.08.2021.

5. Assailing the aforesaid summoning order dated 04.08.2016 as well as the revisional order dated 07.08.2021, the present application has been filed.

6. The learned counsel for the applicant would



submit that *prima facie* no case is made out against the accused/applicant and the main ground on which he challenges the summoning order and the revisional order is that, in the absence of establishment of marriage by performing the ritual of Saptapadi as per Hindu marriage, no offence under Section 494 of the IPC would be made out.

7. Learned counsel for the applicant has relied upon the judgment of the Hon'ble Allahabad High Court in the case of **Nisha vs. State of U.P. and Another**, reported in **2024 SCC Online All. 1462**, and he has, in particular, invited the attention of the Court to paragraph 12 thereof. Paragraph 12 of the said judgment is being extracted hereunder for ready reference:

“12. Having heard the submissions of learned counsel for the parties and perusing the record, I find that so far as the second marriage of revisionist is concerned, it is well settled that the word ‘solemnize’ means, in connection with a marriage, ‘to celebrate the marriage with proper ceremonies and in due form’. Unless the marriage is celebrated or performed with proper ceremonies and due form, it cannot be said to be ‘solemnized’. If the marriage is not a valid marriage, according to the law applicable to the parties, it is not a marriage in the eyes of law. It is also well settled that to constitute an offence under Section 494 I.P.C., it is necessary that the second marriage should have been celebrated with proper ceremonies and in due form. The ‘Saptapadi’ ceremony under the Hindu Law is one of the essential ingredients to constitute a valid marriage but the said evidence is lacking in the present case. Even there is no averment with regard to ‘Saptapadi’ in the complaint as well as in the statements under Section 200 and 202 Cr. P.C., hence, this Court is of the view that no prima facie offence is made out against the revisionist as the allegation of second marriage is a bald allegation without corroborative materials. In absence of cogent evidence in this regard, it is difficult to hold that the ‘Saptapadi



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ceremony' of the marriage as contended by the complainant was performed so as to constitute a valid marriage between the parties concerned. As such on taking into consideration the contents of the complaint on its face value, the basic ingredients to constitute an offence under Section 494 of I.P.C. are lacking, hence, no offence under Section 494 I.P.C. is made out against the revisionist."

8. Relying upon the judgment of the Allahabad High Court in the case of **Nisha** (Supra), he would submit that it is settled law that the word 'solemnize' in connection with a marriage would be to celebrate the marriage with proper ceremonies and in due form.

9. He would submit that to constitute an offence under Section 494 of the IPC, it is necessary that the second marriage should have been celebrated with proper ceremonies and in due form. The Saptapadi ceremony under the Hindu Law is one of the essential ingredients to constitute a valid marriage, and the said evidence is lacking in the present case.

10. Hence, in the absence of cogent evidence in this regard, it is difficult to hold that the Saptapadi ceremony of the marriage has been performed to constitute a valid marriage between the parties concerned. Hence, the complaint on its face value lacks the basic ingredients to constitute an offence under Section 494 IPC. Hence, the cognizance order is bad and the Trial Court as well as the Revisional Court have erred in law by summoning the applicant and by dismissing the revision respectively.

11. He would further submit that, in view of the facts and circumstances of the case, no *prima facie* case is made out. Section 494 of IPC would not be attracted in



the absence of establishing the ceremony of marriage by Saptapadi between the applicant and the alleged second wife.

12. Hence, he would urge that the powers under Section 482 of the Cr.P.C. be exercised in the interest of justice to prevent the abuse of the process of law, and the summoning order as well as the order passed in criminal revision be quashed.

13. Per contra, learned counsel for the respondent no.2 would submit that the main question of law that falls for consideration in this case is whether it is incumbent upon the complainant/respondent No. 2 to establish and give evidence of Saptapadi and the ceremonies of marriage to establish a case under Section 494 IPC for the purposes of summoning the accused to face the trial under the aforesaid section.

14. Refuting the contentions as raised by learned counsel for the applicant, the learned counsel for respondent No. 2 has relied upon a judgment of the High Court of Delhi in the case of **Pooja Sharma Bajaj vs. Kunal Bajaj and Others**, reported in **(2024) SCC OnLine Del 38**, and he has invited the attention of the Court to paragraph 18 and paragraphs 54, 55, 56, and 57 of the said judgment, which are extracted hereunder for ready reference :-

“18. While observing so, this Court remains guided by the observations of Supreme Court in K. Neelaveni v. State of T.N. (2010) 11 SCC 607 wherein it has held that in case of an offence under Section 494IPC, it is a matter of trial as to whether the essential ceremonies of the marriage were performed or not. The relevant portion of the decision reads as under: (SCC p. 610, paras 14-15)



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“14. It has to be borne in mind that while considering the application for quashing of the charge-sheet, the allegations made in the first information report and the materials collected during the course of the investigation are required to be considered. Truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. Essential ceremonies of marriage were gone into or not is a matter of trial.

15. From what we have said above, we are of the opinion that the High Court erred in holding that the charge-sheet does not reveal the ingredients constituting the offences under Sections 494 and 406 of the Penal Code.”

(emphasis supplied)

54. Therefore, to insist that all the ceremonies of marriage, as performed for the purpose of a valid marriage, must be proved for the purpose of even summoning the accused for offence of bigamy will put the first wife into a situation where though she knows that her husband is living with another woman after performing some kind of marriage ceremony, and are living and projecting themselves as husband and wife, but still she can take no action against him since one of the ceremonies of marriage could not be proved by her. In any case, it cannot be expected that the husband of a wife will get married for the second time, during the subsistence of earlier marriage, after informing her first wife or in her presence so that she can collect evidence of his second marriage and the ceremonies performed therein.

55. It will be a cumbersome burden on a woman to be asked to first prove every ceremony of the second marriage of the husband, even before issuing summons.

56. Learned Sessions Court, at the stage of summoning, also could not have disregarded the fact that in the peculiar facts and circumstances of the case, the police assistance was not available to the petitioner, as for reasons best known to her an application under Section 156(3)CrPC was not filed so that the police could have assisted in collecting evidence regarding the second marriage which could have proved its validity or its factum.

57. Thus, this Court takes cognizance of the fact that the inability of one partner to prove performance of saptapadi by the other partner while marrying for the second time during subsistence of first marriage, at the stage of summoning itself, especially when the other partner may have solemnised such marriage with the



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third person in secrecy, should not be exploited as a clever tactic to circumvent the legal consequences of committing offence of bigamy. While legal proceedings do involve strategic elements, such smart maneuvers should not be allowed to compromise the principles of fairness and justice.”

15. Learned counsel for respondent no. 2 would submit that it would be a cumbersome burden on a woman to be asked to first prove every ceremony of the second marriage of her husband even before issuing summons. Referring to paragraph 18 of the judgment of the Delhi High Court in the case of **Pooja Sharma Bajaj (Supra)**, he would submit that the High Court of Delhi has relied upon the judgment of the Hon’ble Supreme Court in the case of **K. Neelaveni vs. State Rep. by Inspector of Police and Others**, reported in **(2010) 11 SCC 607** and the Delhi High Court has held that it is a matter of trial as to whether the essential ceremonies were performed or not.

16. He has also relied upon the aforesaid judgment of **K. Neelaveni** (Supra), as aforesaid, and he has drawn the attention of the Court to paragraphs 14 and 15 of the said judgment, which are being extracted hereunder :-

“14. It has to be borne in mind that while considering the application for quashing of the charge-sheet, the allegations made in the first information report and the materials collected during the course of the investigation are required to be considered. Truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. Essential ceremonies of marriage were gone into or not is a matter of trial.”

15. From what we have said above, we are of the opinion that the High Court erred in holding that the charge-sheet does not reveal the ingredients constituting the offences under



Sections 494 and 406 of the Penal Code.”

17. After hearing learned counsel for the parties and after going through the record, the sole question that falls for determination in this case is whether the essential ceremonies of marriage were performed or not would be a matter of trial, or even at the initial stage of summoning the accused, the said essentials have to be proved by the complainant for the passing of a summoning order.

18. On one hand, learned counsel for the applicant has relied upon the judgment of the Allahabad High Court in the case of **Nisha** (Supra), and on the other hand, learned counsel for respondent no. 2 has relied upon the judgment of the High Court of Delhi in the case of **Pooja Sharma Bajaj** (Supra) **and K. Neelaveni** (Supra).

19. In the case of **Nisha** (Supra), the Allahabad High Court has held that in the absence of cogent evidence regarding the Saptapadi ceremony of marriage, the basic ingredients to constitute an offence under Section 494 of the IPC would be lacking, and thus there is no offence made out, and the summoning order could not have been passed. However, the view taken by the High Court of Delhi is contrary. The High Court of Delhi has relied upon the judgment of the Hon’ble Apex Court in the case of **K. Neelaveni** (Supra). A perusal of paragraph 14 of **K. Neelaveni** (Supra) would show that it has been held by the Hon’ble Supreme Court that whether essential ceremonies of marriage were performed or not is a matter of trial.

20. Therefore, ceremony of Saptapadi would be one



of the essential ceremonies of marriage that would fall for consideration by the Trial Court during trial, and that question cannot be gone into at the primary stage of taking cognizance.

21. Hence, in view of the aforesaid facts and circumstances, and in view of the settled law on the subject as held in the case of **K. Neelaveni** (Supra), the contentions as raised on behalf of learned counsel for the applicant does not find favour and the contentions as raised on behalf of respondent No. 2 appear to be correct.

22. In such view of the matter, the Court does not find any error in the summoning order or the judgment passed by the revisional court, and no interference is called for.

23. Hence, the application under Section 482 of the Cr.P.C. is liable to be dismissed and is accordingly dismissed.

24. Pending application(s), if any, stands disposed of accordingly.

(Siddhartha Sah, J.)

31.07.2026

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