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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DR. DHANANJAYA Y. CHANDRACHUD; BELA M TRIVEDI, JJ.
January 21, 2022
Criminal Appeal No 118 of 2022 (Arising out of SLP(Crl) No 559 of 2022) (D No 23852 of 2019)
Musstt Rehana Begum *Versus* **State of Assam & Anr.**

Summary: Appeal against Gauhati HC order which dismissed petition seeking to quash criminal proceeding under Sections 494 and 495 of the Indian Penal Code (bigamy) despite the Family Court's finding that the wife did not have a subsisting prior marriage - Allowed - High Court was not justified in coming to the conclusion that the issue as to whether the appellant had a subsisting prior marriage was a 'highly contentious matter' which has to be tried on the basis of the evidence on the record.

(Arising out of impugned final judgment and order dated 04-04-2018 in CRLP No. 179/2016 passed by the Gauhati High Court)

For Petitioner(s) Mr. Fuzail Ahmad Ayyubi, AOR Ms. Kanishka Prasad, Adv. Mr. Ibad Mushtaq, Adv. Ms. Akanksha Rai, Adv.

For Respondent(s) Mr. Nalin Kohli, AAG Ms. Diksha Rai, AOR Mr. Ankit Roy, Adv. Mr. Ankit Agarwal, Adv. Ms. Nimisha Menon, Adv. Ms. Ragini Pandey, Adv.

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J;

1. Delay condoned.

2. Leave granted.

3. This appeal arises from a judgment of a Single Judge of the Gauhati High Court dated 4 April 2018 in Criminal Petition No 179 of 2016. The Single Judge has dismissed an application filed by the appellant under Section 482 of the Code of Criminal Procedure 1973 ("CrPC") for quashing a complaint. The complaint, CR Case No 2512 of 2015, is pending in the Court of SDJM(S) II, Kamrup (M), Guwahati for offences under Sections 494 and 495 of the Indian Penal Code 1860 ("IPC").

4. The second respondent filed a complaint on 16 October 2015 before the Chief Judicial Magistrate stating that on 11 January 1996, he and the appellant were married in accordance with the tenets of Muslim law. According to the complaint, the second respondent came to know that the appellant was previously married to another person by the name of Shoukat Ali. The allegation is that during the subsistence of the previous marriage, she married the second respondent by suppressing the fact that she had a subsisting marriage. According to the complaint, the appellant has

committed an offence punishable under Section 495 of the IPC since she concealed the fact that she had a subsisting marriage when she married the second respondent.

5. The case of the appellant is that she and the second respondent got married on 11 January 1996. Alleging matrimonial abuse at the hands of the second respondent on account of her failure to fulfill his demands for dowry, the appellant lodged a complaint and a criminal case, namely Case No 51/11, under Section 498A of IPC was accordingly registered at the 'All Women Police Station'. On 5 September 2011, the second respondent is alleged to have forwarded a purported divorce certificate dated 18 August 2011 through the Sadar Kazi, Kamrup, Guwahati to a neighbour of the appellant. On 17 September 2011, the appellant instituted proceedings before the Principal Judge of Family Court – I, Kamrup, which was numbered as FC (Civil) Case No 545 of 2011 to challenge the purported divorce. By a judgment dated 20 July 2017, the Principal Judge of Family Court – I declared the divorce purportedly given by the second respondent to the appellant as null and void. In the meantime, on 11 September 2015, Complaint Case No 149/2015 was registered in regard to the allegedly forged certificate produced by the second respondent in collusion with the Sadar Kazi for offences punishable under Sections 420, 406, 468 and 34 of IPC. On 16 October 2015, the second respondent lodged a complaint case, being CR Case No 2512 of 2015, alleging that the appellant had committed an offence punishable under Section 495 of IPC.

6. The appellant instituted a proceeding under Section 482 of CrPC. The Single Judge of the High Court dismissed the petition by a judgment dated 4 April 2018. The High Court has held that "it is highly disputed" whether the appellant had entered into a marital tie with another person prior to the marriage with the complainant and whether the earlier marriage had ended in a valid divorce. Moreover, the High Court held that the appellant had not come up with a specific case that she was neither married earlier or that there was a divorce. Hence, in the view of the High Court, the allegation in the complaint involves matter of trial and a petition under Section 482 CrPC could not be entertained. The petition was consequently dismissed.

7. Mr Fuzail Ahmad Ayyubi, counsel appearing on behalf of the appellant, submitted that the complaint which was lodged by the second respondent was essentially a counter blast to the complaint which was lodged by the appellant that the purported certificate of divorce which is obtained by the second respondent in collusion with the Sadar Kazi was forged. Counsel submitted that the complaint alleging that the appellant had entered into a wedlock with the second respondent during the subsistence of an earlier marriage was lodged on 16 October 2015, soon after the appellant had lodged a complaint against the second respondent on 11 September 2015. That apart, it was submitted that the finding in the judgment of the Family Court that the appellant did not have a subsisting marriage with Shoukat Ali has attained

finality and is binding inter partes. In this backdrop, it was urged that the continuance of the criminal proceedings would amount to an abuse of the process of the court.

8. Notice was issued in these proceedings by an order dated 2 August 2019, which reads as follows:

"Learned counsel appearing on behalf of the petitioner has relied upon the finding which was recorded by the Principal Judge, Family Court-I, Kamrup, Guwahati on 20 July 2017 (Annexure P-4) that the second respondent had failed to prove that the petitioner had a subsisting marriage when she married him.

Issue notice on the application for condonation of delay and on the Special Leave Petition, returnable in eight weeks.

Until the next date of listing, there shall be a stay of further proceedings in CR Case No 2512/2015 pending in the Court of SDJM (S)II, Kamrup (M), Guwahati."

9. The office report indicates that the second respondent has been served. Yet, no appearance has been entered on his behalf.

10. Mr Nalin Kohli, AAG, appears on behalf of the State of Assam with Ms Diksha Rai. Opposing the submissions which have been urged on behalf of the appellant, the AAG submitted that the issue as to whether the appellant had a prior marriage with Shoukat Ali is contentious and that this would emerge from the judgment of the Family Court. Hence, the AAG submitted that the allegation in the complaint would raise matters of trial and, hence, the High Court was not justified in declining to exercise the jurisdiction under Section 482 of CrPC.

11. The gravamen of the complaint which has been lodged by the second respondent is that on 11 January 1996, when he and the appellant entered into marriage, the appellant had a prior subsisting marriage as a consequence of which she is guilty of an offence punishable under Section 494 of IPC. Now, from the record which has been produced before the Court, it emerges that the appellant moved the Family Court for seeking a declaration that the divorce which was pronounced by the second respondent was null and void under Muslim law. In his written statement, the second respondent specifically supported the purported talaq and the divorce certificate issued by the Sadar Kazi under the Muslim personal law. In the additional written statement, the second respondent took the plea that the appellant did not disclose to him that she had a prior marriage with another person which was solemnized on 11 June 1987. Among the issues which were framed by the Family Court, the second issue read as follows:

"(2) Whether the petitioner was already married to Shoukat Ali, s/o Raja Ali @ Bhaiya Ali when getting married to the respondent?"

12. Evidence was adduced before the Family Court. The second respondent deposed before the Family Court. The Principal Judge of the Family Court at Guwahati, by a judgment dated 20 July 2017, issued a declaration that the divorce which was purportedly granted by the second respondent to her is null and void. The conclusion which has been arrived at by the Principal Judge is extracted below:

"In view of the above discussions it is clear that the talaq pronounced by the respondent No.1 is not as per due procedure, as no reconciliation took place between the parties and as such the talaq is not valid one. It is also found that the respondent has failed to prove that the petitioner was already married to Shoukat Ali, s/o Raja Ali @ Bhaiya Ali when getting married to the respondent."

13. The above judgment clearly shows that whether (i) the appellant had a prior subsisting marriage with another person; and (ii) the second respondent had obtained a valid divorce was in issue before the Family Court. The finding of fact as between the appellant and the second respondent is that the appellant did not have a subsisting prior marriage when she married him. The judgment of the Family Court was questioned in MAT Appeal No 47 of 2017. A Division Bench of the High Court dismissed the appeal for non-prosecution on 20 June 2019, having noted that on the previous occasion on 27 May 2019, no one had appeared on behalf of the second respondent in those proceedings. The order of the High Court continues to hold the field. Yet, the impugned judgement has held that the factum of the subsisting marriage of the appellant is a contentious matter and has declined to quash the criminal complaint against the appellant.

14. In **Neeharika Infrastructure** v. **State of Maharashtra, 2021 SCC OnLine SC 315** a three-judge Bench of this Court analysed the precedent of this Court and culled out the relevant principles that govern the law on quashing of a first information report ("**FIR**") under Section 482 of the CrPC. The Court held:

"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad(supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing

under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) **However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal(supra), has the jurisdiction to quash the FIR/complain**t; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether

or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

(**emphasis supplied**)

The parameters for quashing an FIR have been laid down in **State of Haryana** v. **Bhajan Lal**, **1992 Supp (1) SCC 335 ["Bhajan Lal"]** by a two-judge Bench of this Court. The Court has held:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) **Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code**.

(3) **Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.**

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution

and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(**emphasis supplied**)

In **State of Andhra Pradesh** v. **Golconda Linga Swamy**, **(2004) 6 SCC 522** a two-judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:

"5…..Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. **When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto**."

6. In R.P. Kapur v. State of Punjab [AIR 1960 SC 866 : 1960 Cri LJ 1239] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) **where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.**

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the

accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death….."

(**emphasis supplied**)

15. The precedent of this Court clarifies that in certain circumstances, the High Court is entitled to consider other materials before exercising its powers of quashing under Section 482 of the CrPC. In the present case the appellant and the second respondent were parties to the decision of the Family Court. No contentious material or disputed issues of evidence arise. In the above backdrop, allowing the criminal proceeding to proceed for an offence under Sections 494 and 495 of IPC would constitute an abuse of the process. As between the appellant and the second respondent the issue as to whether she had a subsisting marriage on the date on which she entered into a marriage with the second respondent is the subject matter of a conclusive finding of the Principal Judge of the Family Court which has attained finality. Explanation (b) to Section 7(1) of the Family Courts Act 1984 expressly confers the Family Court with jurisdiction to determine the matrimonial status of a person. Section 7(1) of the Family Courts Act 1984 grants a Family Court with the status of a District Court and Section 7(2) confers it with jurisdiction exercisable by a Magistrate of the first class under Chapter IX of the CrPC, thus enabling to collect evidence to make such a determination. Thus, relying on the judgement of the Family Court which has jurisdiction to decide the gravamen of the offence alleged in the criminal complaint, would not be same as relying on evidentiary materials that are due for appreciation by the Trial Court, such as the investigation report before it is forwarded to the Magistrate. [Pratibha v. Rameshwari Devi, (2007) 12 SCC 369, paras 17-21; State of Madhya Pradesh v. Awadh Kishore Gupta, (2004) 1 SCC 691, para 13] An analogous factual matrix came up for determination before this Court in **P S Rajya** v. **State of Bihar**, **(1996) 9 SCC 1**. This Court quashed an FIR against an accused under the Prevention of Corruption Act 1947 by noticing that the accused had been exonerated on an identical charge in the relevant departmental proceedings in light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission. A two-judge Bench of this Court relied on the principles laid down in **Bhajan Lal** (supra) and quashed the FIR by holding:

"17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it. **On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings**…..

23. Even though all these facts including the Report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs."

(**emphasis supplied**)

Therefore, in this case, the Single Judge of the High Court was not justified in coming to the conclusion that the issue as to whether the appellant had a subsisting prior marriage was a 'highly contentious matter' which has to be tried on the basis of the evidence on the record.

16. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the Gauhati High Court dated 4 April 2018. Criminal Petition No 179 of 2016 instituted by the appellant for quashing the complaint is allowed. The complaint, CR Case No 2512 of 2015, pending in the Court of SDJM(S) II, Kamrup (M), Guwahati is quashed.

17. Pending application, if any, stands disposed of.