



2025:CGHC:4513

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 2197 of 2024

Dr. Manju Sinha D/o Ishwari Prasad Sinha, Aged About 38 Years R/o Near Shiv Mandir, Urla Road, Birgaon, Raipur, Tahsil And District- Raipur (C.G.) Presently R/o Bhilai-3, Mansarovar Colony Qt. No. 55/56, Durg, District Durg (C.G.).

... Petitioner

versus

1 - Smt. Pyari Dadsena W/o Shri Nagendra Dadsena, Aged About 40 Years R/o Village-Kesra, Tahsil - Patan, District- Durg (C.G.).

2 - State Of Chhattisgarh, Through District Magistrate Raipur, District- Raipur (C.G.).

... Respondents

For Petitioner	: Mr. Sunil Sahu, Advocate
For Respondent No.1	: Mr. S.P. Sahu, Advocate
For State-Respondent No.2	: Ms. Laxmeen Kashyap, Panel Lawyer

Hon'ble Shri Justice Arvind Kumar Verma
Order on Board

24/01/2025

1. With the consent of learned counsel for the parties, the matter is heard finally.
2. This petition has been preferred by the petitioner under Section 528 of the BNSS, 2023, for quashing the criminal proceedings of Complaint

Case No.471/2013 pending before the JMFC, Raipur against the petitioner.

3. Brief facts of this case are that the marriage of the Complainant was taken place with Nagendra Kumar Dadsena on 18.05.2006 as per the custom prevailing in the society and due to wedlock on 09.06.2009, a daughter Yoglakshmi was born. Thereafter, the husband and family members have started harassing her mentally as well as physically. In the month of November, 2012, the family members ousted her saying that your husband has performed the second marriage. When she came to know that the husband has performed the second marriage with the petitioner on 11.05.2011 at Arya Samaj Temple Baijnathpara Raipur without obtaining divorce from the complainant so she made the complaint to the police on 03.12.2012, but no offence has been registered, therefore, she filed the complaint case including the name of petitioner and three others. On the basis of said complaint, a criminal case no. 1263/2013 for offence punishable under Sections 498-A, 34, 494/34 of IPC have been pending before JMFC, Bhilai and the proceedings of the said case are stayed by this Court vide order dated 09.03.2022. Learned trial Court passed the order for registration of the complaint on 20.06.2013 and fixed the case for recording the evidence before charge, the other two accused who were added in the complaint namely Vikas Chandrakar and Sanjay Chandrakar have challenged the order of registration of complaint dated 20.06.2013 in the revision, revision was dismissed on 20.03.2014 so the said persons have filed

the petition u/s 482 of Cr.P.C. before this Court in which this Court allowed the petition and quashed the criminal case against those petitioners vide order dated 05.07.2023. The petitioner has filed the application for deleting her name from the array of respondent but the said application was dismissed vide order dated 03.10.2023. After passing of the order dated 05.07.2023, the learned trial court fixed the case for recording the evidence in the matter and side by side rejected the application of the petitioner for staying the proceeding of complaint case due to pendency of the criminal case no. 1263/2013 which is stayed by the High Court and in two cases petitioner is prosecuted along with others for the offence punishable u/s 494 of IPC therefore an application u/s 309 of Cr.P.C. is filed which was dismissed thereafter a revision is also dismissed and the petition u/s 482 of Cr.P.C. is filed by the petitioner and Nagendra Kumar Dadsena, said petition is withdrawn vide order dated 03.07.2024. The complaint case is filed on 04.01.2013 and the same is pending before the Judicial Magistrate First Class, Raipur against the petitioner and one Nagendra Kumar Dadsena and the same is fixed for evidence though the petitioner who is a woman cannot be prosecuted u/s 494 of IPC as the provision u/s 494 of IPC does not contemplate the person to whom the husband of the complainant has married therefore the petitioner is filing herewith the present petition for quashing of the proceedings of criminal complaint case no. 471/2013. Hence, this petition.

4. Learned counsel for the petitioner contended that the complaint case filed against the petitioner alleging that she is the second of the complainant's husband Nagendra Kumar Dadsena is not maintainable and the further prosecution of the petitioner is clear abuse of the process of law.

5. **The provision contained u/s 494 of IPC which reads as under :-**

"Marrying again during lifetime 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."

6. From bare perusal of the above provision the ingredients of the offence u/s 494 of IPC is not attracted against the second wife i.e. petitioner in the present case. At the time of performing the marriage the petitioner did not have knowledge of the fact regarding first marriage of Shri Nagendra Kumar Dadsena. Further prosecution of petitioner on the basis of the material available on record is nothing, but the same is abuse of the process of law to harass the petitioner.

7. It is further contended that the woman with whom the second marriage has been taken place cannot be prosecuted u/s 494 of IPC, but in the

present case the petitioner is prosecuted and harassed by the complainant since the year 2013 when she filed the application for deleting her name the learned trial court rejected the application vide order dated 03.10.2023 only on the ground that the complaint case is registered on 20.06.2013 therefore her name cannot be deleted as the case is fixed for evidence before charges. He further contended that, initially the complaint is filed against 4 persons and the two persons challenged the order of registration of criminal complaint case before this Hon'ble Court and this Hon'ble Court vide order dated 05.07.2023 discharged those petitioners by quashing the criminal proceedings against them and the case of the petitioner is also identical to them therefore she is entitled for the similar relief. He further contended that the learned courts below have failed to consider the law laid down by Hon'ble Apex Court in the matter of Kishanlal Chawla and others reported in 2021 (5) SCC 435 as the complainant one side filed the present complaint case u/s 494 of IPC and other side also lodged the FIR in which a criminal case no. 1263/2013 is pending before JMFC Bhilai. It, is therefore, prayed that the petition may kindly be allowed and the proceedings of criminal Complaint Case No.471/2013 pending before JMFC, Raipur may kindly be quashed in respect of petitioner, in the interest of justice.

8. Learned counsel for the respondents submit that Section 494 of IPC is maintainable in this case, hence, the case of petitioner may be rejected.

9. I have heard learned counsel for the respective parties and perused the record with utmost circumspection.

10. **Issue-** Only one vital issue in this case is that whether a complaint under Section 494 of IPC is maintainable against the second wife of the erring husband ?

11. It is useful to refer Section 494 of the Indian Penal Code, 1860 which reads as under :

“494. Marrying again during lifetime 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.

(Exception)- This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of

seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

12. In the present case, it is not the case of the prosecution that this petitioner was already married by the time she married. A person who is single marrying another whose marriage is substituting is not liable under Section 494 IPC, but the person whose marriage is substituting would be liable.

13. A bare perusal of the Section 494 of the IPC, it is crystal clear that the word used by the Legislature “whoever, having a husband or wife living” commits bigamy as provided therein, and in the later half to fix liability against the “such husband or wife”, expressing the intension of the Legislature to prosecute the erring husband/wife, as the case may be.

14. In this case, the petitioner herein who is the second wife of the accused- Nagendra Dadsena, therefore, in this factual circumstances, petitioner cannot be prosecuted for the offence under Section 494 of IPC.

15. In the result, the instant CrMP is allowed quashing the proceedings against the petitioner.

Sd/-

(Arvind Kumar Verma)
Judge

Vasant