

## Sham Singh and others Vs Sarabjit Kaur

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** March 6, 1998

**Acts Referred:** COMPANIES ACT, 1956 â€” Section 630

Constitution of India, 1950 â€” Article 226, 227

Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 482

Hindu Marriage Act, 1955 â€” Section 9

Penal Code, 1860 (IPC) â€” Section 109, 406, 494, 495, 498A

**Citation:** (1998) CriLJ 4788 : (1998) 3 RCR(Criminal) 78

**Hon'ble Judges:** K.K. Srivastava, J

**Bench:** Single Bench

**Advocate:** Kuldeep Sanwal, for the Appellant; Mrs. Vanita Sapra, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

1. The petitioners seek the quashing of Criminal Complaint No. 12 of 1997 titled ""Sarabjit Kaur v. Sham Singh and 16 others"", under Sections

494/109, IPC pending in the Court of Judicial Magistrate, 1st Class, Amritsar (copy Annexure P1) and the order of summoning dated 24-8-1997

(copy Annexure P2).

2. Sarabjit Kaur/respondent, daughter of Mohinder Singh, resident of Village Ibban, tehsil and district Amritsar, was married with petitioner No.

1/Sham Singh, son of Jagjit Singh, resident of Village Thanni Inna Khera, district Mukatsar, on 3-11-1984 according to Sikh rites and ceremony

of Anand Karaj in the presence of Guru Granth Saheb. After the marriage, she came to the house of petitioner No. 1 and lived there as his wife.

Sham Singh and his family members were not happy with the dowry given in the marriage and they used to harass and torture her for bringing more

dowry. A case under Ss. 498-A/406, IPC was filed by Sarabjit Kaur-respondent against her husband/Sham Singh, Nachhatar Singh, Bakshish

Singh and Narinder Kaur. She was also granted maintenance under Sec. 125, Cr.P.C. A daughter was born out of the wedlock, who is residing

with the mother. It was alleged that when Sarabjit Kaur was pregnant, she was turned out of the matrimonial home just in three clothes only. A

panchayat was taken to the house of Sham Singh for resolving the dispute. She, however, found that a new woman (Charanjit Kaur) petitioner No.

13 was living in the house of her husband. On enquiries made from Joginder Singh, son of Naurang Singh of village Jhamke, Amrik singh son of

Dhara Singh, resident of Goneana and Major Singh, son of Ajaib Singh, resident of Sandhu Colony, Vijay Nagar, Amritsar, it was revealed that

Charanjit Kaur, daughter of Mukhtiar Singh, resident of Tahni Kamal Wala, was married with Sham Singh/petitioner No. 1 on 15-4-1993 in the

presence of the aforesaid persons. They told Sarabjit Kaur respondent that the marriage party was brought by Sham Singh at village Tahni Kamal

Wala and in their presence the ceremony of Anand Karaj took place. The aforesaid persons had raised the issue of Sham Singh being already

married with Sarabjit Kaur, but no heed was paid to them and the second marriage took place.

3. On these averments, a criminal complaint was filed on 1-4-1997. The learned Judicial Magistrate, 1st Class, Amritsar, after hearing the

complainant/wife and perusing the evidence of Granthi Sher Singh and Major Singh (PW 3) was of the view that there were sufficient grounds to

proceed against all the accused (Nos. 1 to 17) for trial. Accordingly, vide the impugned order dated 28-4-1997, the petitioners were summoned

as accused u/s 494, I.P.C.

4. Notice of motion was issued to the respondent/Sarabjit Kaur, who filed reply in the shape of her affidavit. The stand taken in the reply is that the

petitioners have to face the trial for the charge under Sections 494/109, I.P.C. and during trial they will get an opportunity to plead their defence

case. On merits, the averments made in the complaint were reiterated. She further contended that the petition filed by her husband u/s 9 of the

Hindu Marriage Act was decreed by the Civil Court on 11-4-1997. An appeal was filed by the respondent-wife in this Court (being FAO No.

82-M/1987), wherein notice of motion has been issued to petitioner/Sham Singh to appear in person at the time of bearing, which was fixed for 8-

12-1997. A copy of the wedding card of the second marriage of Sham Singh with Charanjit Kaur was annexed with the reply as Annexure R1.

The inter se relationship of the petitioners was also mentioned in para 3 of the reply, which shows that petitioner No. 1 - Sham Singh is the

husband of respondent-Sarabjit Kaur. Petitioner No. 2/Balwinder Kaur is mother of Sham Singh/petitioner No. 1. Petitioners Nos. 3, 5 and 7

namely Nachhatar Singh, Bakhshish Singh and Chanan Singh are the real brothers of Sham Singh while petitioner No. 4/Sukhwant Kaur is wife of

Nachhattar Singh petitioner No. 3. Petitioner No. 6/Kashmir Kaur is the wife of petitioner No. 5/Bakhshish Singh. Gurbant Kaur petitioner No. 8

is the wife of Chanan Singh petitioner No. 7. Petitioner No. 9 Asa Singh is the intermediary, who got the second marriage of Sham Singh

arranged. Harbans Kaur/petitioner No. 10 is the wife of Asa Singh/petitioner No. 9 Petitioner No. 12 Swinder Kaur is wife of Balbir

Singh/petitioner No. 11. Petitioner No. 13/Charanjit Kaur is the second wife of Sham Singh-petitioner. She is daughter of petitioners Nos. 14 and

15 namely Mukhtar Singh and Balwant Kaur. Petitioner No. 16/Puro is the Massi of Sham Singh while petitioner No. 17/Gurdip Singh is husband

of petitioner No. 16. It has been averred in the reply that all the petitioners are closely related to each other and have been arrayed as accused in

the complaint, as they have all participated in the solemnisation of the second marriage. It was admitted in the reply that Charanjit Kaur the second

wife of Sham Singh was blind, but it was contended that her blindness does not in any way dilute the offence.

5. I have heard learned Counsel for the petitioners and the respondent and have carefully gone through the pleadings and record of the case.

6. The grounds on which the complaint and the order of summoning are sought to be quashed, are as under :

1) Even if the contents of the complaint are taken to be true, they do not constitute offence under Sections 494/109, I.P.C. There is no allegation in

the complaint as to what ceremonies were undertaken for performance of the second marriage.

2) The decision of the Civil Court is binding upon the Criminal Court. The respondent-wife had raised the question of second marriage in the

proceedings u/s 9 of the Hindu Marriage Act and led evidence in this regard, which was not believed and the said petition was decreed.

3) The second marriage was undertaken with a consideration to have a better partner and better relation. It is highly absurd and improbable that a

person would leave a normal spouse and remarry with a blind girl.

4) It is improbable that the second marriage would be performed with great pomp and show. Second marriage is always performed in secrecy.

The availability of as many as 5 witnesses and the assembly of barat is highly improbable.

5) The main object of the respondent is to harass as many persons in one go. In the case under Sections 406/498-A, I.P.C. she could not

implicate more persons as the residence of petitioner No. 1 was separate. She has roped in 17 persons in this complaint. The so-called granthi was

not the granthi of village Tahni Kamal Wala. He is some imposter.

6) It cannot be assumed that the second marriage would have been performed in the presence of witnesses named in the complaint despite the fact

that they knew that the earlier marriage was subsisting.

7) The summoning order is not a speaking order and its operative part does not depict application of judicial mind.

8) Manifest injustice is writ large because 17 persons are going to be harassed just in order to satisfy the ego of the respondent. The Court cannot

be allowed to be made a platform to serve the personal purposes and abuse should be curbed in the initial stage itself.

7. Learned Counsel for the petitioners cited the judgment of the Apex Court in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial

Magistrate and Others, regarding the scope of quashing of criminal proceedings u/s 482 Cr.P.C., wherein the Apex Court held (at page 7 of Cri

LJ) :-

It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others Vs. Ch. Bhajan Lal

and others, this court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers u/s 482 of the Code

which it said could be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice,

while laying down certain guidelines where the Court will exercise jurisdiction under these provisions, it was also stated that these guidelines could

not be inflexible or laying rigid formulae to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of

each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of such guidelines

is 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. Under Article 227 the power of superintendence by the High

Court is not only of administrative nature but is also of judicial nature. This Article confers vast powers on the High Court to prevent the abuse of

the process of law by the inferior Courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the

High Court under Articles 226 and 227 of the Constitution and u/s 482 of the Code have no limits but more the power more due care and caution

is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always

be necessary to invoke the provisions of Article 226.

8. The Hon"ble Supreme Court in the aforesaid case referred to some of the decisions of the Apex Court, laying down principles for exercise of

powers by the High Court under Arts. 226/227 of the Constitution. The relevant discussion is contained in paras 21, 22 and 23 of the authority,

which read as under :-

21. "In Waryam Singh and Another Vs. Amarnath and Another, , this Court considered the scope of Article 227. It was held that the High Court

has not only administrative superintendence over the subordinate Courts and tribunals but it has also the power of judicial superintendence. The

Court approved the decision of the Calcutta High Court in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee*, where the High Court said that the

power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the

subordinate Courts within the bounds of their authority and not for correcting their mere errors. The Court said that it was, therefore, a case which

called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so.

22. "In AIR 1975 1297 (SC), this Court again reaffirmed that the power of superintendence of High Court under Article 227 being extraordinary

was to be exercised most sparingly and only in appropriate cases. It said, the High Court could not, while exercising jurisdiction under Article 227,

interfere with the findings of fact recorded by the subordinate Court or tribunal and that its function was limited to seeing that the subordinate Court

or tribunal functioned within the limits of its authority and that it could not correct mere errors of fact by examining the evidence or reappreciating it.

The Court further said that the jurisdiction under Article 227 could not be exercised, "as the cloak of an appeal in disguise. It does not lie in order

to bring up an order or decision for rehearing of the issues raised in the proceedings". The Court referred with approval the dictum of Morris, L.J.

in *Rex v. Northumberland Compensation Appeal Tribunal* 1952 (1) ALLER 122

23. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, this Court observed as under

:

It is, thus, clear that the powers of judicial interference under Art. 227 of the Constitution with orders of judicial or quasi-judicial nature, are not

greater than the power under Art. 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent

on the face of the record. But under Art. 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the

limits of its authority.

9. Summarising the position of law, the Apex Court observed :-

Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it

possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the Court finds that the

appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition one under Article 227 or Section 482 of the

Code. It may not, however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482

of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate Courts. The

present petition though filed in the High Court as one Articles 226 and 227 could well be treated under Article 227 of the Constitution.

10. While dealing with the power of the Magistrate to summon an accused in a criminal case, the Apex Court in M/s. Pepsi Foods Ltd. case

(supra), observed as under (at page 8 of Cri LJ) :-

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the

complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the

Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to

examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and that would be

sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of

recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may

even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then

examine if any offence is prima facie committed by all or any of the accused .....

11. On the other hand, learned Counsel for the respondents relied upon the judgments of the Apex Court in State of Bihar Vs. Rajendra

Agrawalla, ; State of U.P. Vs. O.P. Sharma, and Kartar Kaur alias Taro v. Gurdev Singh 1991 (3) RCR 416 regarding the jurisdiction of the High

Court to quash the order of cognizance of criminal offence u/s 482, Cr.P.C. In the case of State of Bihar (supra), the Apex Court while dealing

with the exercise of inherent powers of High Court u/s 482, Cr.P.C. held (at page 1373 of Cri LJ) :-

..... It has been held by this Court in several cases that the inherent power of the Court u/s 482 of the Code of Criminal Procedure should be

very sparingly and cautiously used only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of

the process of the Court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can

be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation

taken at their face value, do not constitute the offence alleged. At that stage, it is not open for the Court either to shift the evidence or appreciate

the evidence and come to the conclusion that no prima facie case is made out .....

12. In the State of U.P. (supra), while dealing with the question of whether the High Court is right in its exercise of inherent power u/s 482,

Cr.P.C., the Apex Court observed as under (at page 1881 of Cri LJ) :-

..... This Court in State of Himachal Pradesh v. Pirthi Chand and another, Cri. A. 1752 of 1995 decided on November 30 1995 : 1996 AIR

SC 591 held as under :-

It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court

before embarking to scrutinize the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its

inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an

initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted and the charge-sheet is laid the

prosecution produces the statements of the witnesses recorded u/s 161 of the Code in support of the charge-sheet. At that stage it is not the

function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are

considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from

the averments in the charge-sheet and the statements of the witnesses on the record in support thereof whether Court could take cognizance of the

offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be

done except to quash the charge-sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak

private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the Court

may embark upon the consideration thereof and exercise the power.

When the remedy u/s 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since

efficacious remedy u/s 482 of the Code is available. When the Court exercises its inherent power u/s 482 the prime consideration should only be

whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the Court. When Investigating

Officer spends considerable time to collect the evidence, and places the charge-sheet before the Court, further action should not be short circuited

by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the

offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising

inherent power. The accused involved in an economic offence destabilises the economy and causes grave incursion on the economic planning of

the State. When the legislature entrusts the power to the Police Officer to prevent organised commission of the offence or offences involving moral

turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert,

greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social

order and security would be put in jeopardy and to grave risk. The accused will have field-day in destabilising the economy of the State regulated

under the relevant provisions.

13. The decisions in the aforesaid cases, relied on by learned Counsel for the respondents, are in no way in conflict with the law laid down the case

of M/s. Pepsi Foods Ltd. (supra). It is settled law that the High Court can exercise of its inherent Powers u/s 482, Cr.P.C. and if need be, in a

given case in exercise of power under Articles 226/227 of the Constitution examine the matter regarding the quashing of the FIR/criminal complaint

and where it is found that it is necessary to prevent the abuse of process of the Court or otherwise to secure the ends of justice, this Court can

exercise the inherent powers and quash the criminal proceedings.

14. In this settled position of law, the impugned complaint and the order of summoning in the instant case deserve to be examined.

15. The respondent-wife/Sarabjeet Kaur filed the impugned complaint (Annexure P1) wherein she made a categorical averment about petitioner

No. 1/Sham Singh getting married for the second time with petitioner No. 13/Charanjit Kaur during, the subsistence of his earlier marriage with her

(Sarabjeet Kaur). A perusal of the order of summoning (Annexure P2) would go to show that the complainant deposed on oath the version as

contained in the complaint. She examined the Granthi/Sher Singh as PW-2 to depose about his being invited by father of Charanjit Kaur to

perform the duty of Granthi. Another witness, Major Singh (PW 3) also corroborated the version of the complainant. Photo copy of the wedding-

card (Annexure R1) shows the solemnisation of the marriage of Sham Singh son of Jagjit Singh with Charanjit Kaur daughter of Mukhtiar Singh on

15-4-1993.

16. The petitioners, particularly Sham singh petitioner, seek the quashing of the complaint on the ground that it is absurd and improbable that he



would marry a blind girl and take her as his second wife during the subsistence of his earlier marriage with Sarabjit Kaur. The other ground taken

by him in this context is that the factum of second marriage has been disbelieved by the trial Court, decreeing the petition u/s 9 of the Hindu

Marriage Act and the findings of the Civil Court should be duly taken note of and the same would be binding insofar as the criminal proceedings

are concerned, where this very question is involved as to whether Sham Singh performed second marriage with Charanjit Kaur ?

17. Copy of the judgment passed in the petition u/s 9 of the Hindu Marriage Act is Annexure P3. The said petition was decided after contest from

the wife/Sarabjit Kaur. In para 2 of the judgment, the Court has taken note of the averment regarding the second marriage and has observed as

under :-

..... It has been averred that the respondent has solemnized second marriage on 15-4-1993 with Charanjit Kaur d/o Mukhtiar Kaur and one

female child was born to the petitioner from the second wife. Thus, it has been averred by the respondent that she has been residing in her parents

house with reasonable cause.

18. The trial Court considered the allegation of second marriage while dealing with issues Nos. 1 and 1-A, which were framed as under :-

1. Whether the petitioner is entitled to a decree for restitution of conjugal right, as prayed for ? OPA

1-A. Whether the respondent has withdrawn from the company of the petitioner with sufficient cause ? OPR

observed as under :-

..... As regards the second marriage with one Charanjit Kaur d/o Mukhtiar Singh, who is residing with him and from their loins, two

children are born and are also residing with the petitioner, I have come to the conclusion that the second reason is also not proved by the

respondent. There is not an iota of evidence from the side of the respondent for proving second marriage of respondent with Charanjit Kaur d/o

Mukhtiar Singh and regarding the birth of two children from the second marriage. There is a bald testimony of the respondent and her father which

is not sufficient for proving the second marriage of the petitioner with one Charanjit Kaur and birth of two children. It is the case of the respondent

that the petitioner is having children from the second marriage who are residing with him at village Kamalwala. However, none of the residents of

the village of the respondent has been summoned nor any other relative of the parties has been examined by the respondent for proving the second

marriage. Oral testimony of the respondent and her father in absence of any material is not sufficient to prove second marriage of the petitioner.

Once the respondent has alleged birth of two children from the second marriage of the petitioner she could have easily proved the same by way of

summoning chowkidar of the village who maintains birth record of the villagers. Even the respondent has not cared to summon the voters' list or

ration card record of the petitioner in order to prove second marriage and birth of two children of the petitioner. In absence of any documentary

evidence or any direct evidence of second marriage, it cannot be held that the petitioner has solemnized second marriage with Charanjit Kaur d/o

Mukhtiar Singh and therefore, this ground of the respondent for living away from the petitioner is also not sustainable.

19. The learned trial Judge has, thus, recorded a categorical finding that the respondent-wife had failed to prove that the petitioner-Sham Singh had

solemnized the second marriage with Charanjit Kaur. Sarabjit Kaur/respondent-wife has filed an appeal against the judgment aforesaid, which is

pending. The Hon'ble Supreme Court in V.M. Shah Vs. State of Maharashtra and another, , considered the effect of the findings of the Civil

Court in a civil case, against which an appeal was pending, on the findings of the Criminal Court in summary trial u/s 630 of the Companies Act

and held as under (at page 4142 of AIR SCW) :

As seen that the Civil Court after full dressed trial recorded the finding that the appellant had not come into possession through the company but

had independent tenancy rights from the principal landlord and, therefore, the decree for eviction was negated. Until that finding is duly

considered by the appellate Court after weighing the evidence afresh and if it so warranted reversed; the findings bind the parties. The findings,

recorded by the Criminal Court, stand superseded by the findings recorded by the Civil Court. Thereby the findings of the Civil Court get

precedence recorded by the trial Court, in particular, in summary trial for offences like S. 630. The mere pendency of the appeal does not have the

effect of suspending the operation of the decree of the trial Court and neither the finding of the Civil Court gets nor the decree becomes

inoperative.

20. In the instant case also, the mere fact that an appeal has been filed by the respondent/wife against the decree of restitution of conjugal rights u/s

9 of the Hindu Marriage Act, will have no bearing on the finding of fact on the question of the second marriage of petitioner/Sher Singh with

petitioner/Charanjit Kaur. In other words, for the purpose of this case, the finding of the Civil Court regarding the second marriage aforesaid is to

be duly considered notwithstanding the appeal filed by the respondent-wife in this Court.

21. Since the Civil Court has in the petition u/s 9 of the Hindu Marriage Act recorded a categorical finding that no second marriage took place

between Sher singh and Charanjit Kaur, the same would be binding on the Criminal Court, dealing with the impugned complaint Annexure P1).

22. The learned Magistrate while passing the impugned order of summoning has not duly and properly considered the evidence led by the

complainant. After referring the evidence led by the complainant, he has held as under :-

In the preliminary evidence, the complainant herself stepped into the witness-box as PW 1 and deposed on oath as per version of the complaint.

The complainant also examined Granthi Sher Singh as PW 2, who also deposed that he was invited by father of Charanjit Kaur to perform the

duty of Granthi, PW 3 Major Singh also fully corroborated version of complainant on all points. Thereafter the complainant closed her preliminary

evidence. I have appraised the evidence led by the complainant and facts of complaint. From the evidence led by the complainant as well as

documents on record, there are sufficient grounds to proceed against all the accused Nos. 1 to 17, as mentioned in the application u/s 495, I.P.C.

and therefore, all the accused are ordered to be summoned for 12-7-97 on PC/copy of complaint etc .....

23. It is relevant to note that the learned Magistrate has summoned all the petitioners/accused for the offence punishable u/s 494, I.P.C. Section

494, IPC 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.

24. A perusal of Section 494, IPC aforesaid will go to show that the offence thereunder is committed by either spouse, who remarries during

subsistence of a legal and valid marriage. The petitioner, other than petitioner No. 1/Sham Singh could not be summoned u/s 494, IPC. They could

be summoned only u/s 109, IPC, which provides for punishment for abetment to commit a crime. Section 109, IPC reads as under :-

109. Punishment of abetment if the act is committed in consequence and where no express provision is made for its punishment - whoever abets

any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the

punishment of such abetment, be punished with the punishment provided for the offence.

Explanation. - An act of offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in

pursuance of the conspiracy, or with the aid which constitutes the abetment.

25. The order of summoning the other petitioners (other than husband of the complainant) suffers from this grave illegality and the same cannot be

sustained in law.

26. It will appear from the perusal of the order of summoning that the learned Magistrate did not consider the case of the complainant regarding 17

petitioners, who were sought to be summoned as accused. It is quite apparent that the learned Magistrate did not apply the judicial mind to

consider the material placed before him while recording the finding that there were sufficient grounds to proceed against all the accused to summon

them for the offences u/s 494, IPC. The complaint and the summoning order would result in the abuse of process of the Court. Besides this, it may

be mentioned that the respondent-wife has implicated not only the entire family of her husband/Sham Singh but also the Mausai, Mausai of her

husband Sham Singh as also Balbir Singh and his wife Swinder Kaur on the allegation that Balbir Singh was the middleman to arrange the second

marriage. The evidence of the complainant against each of the petitioners individually was not properly considered by the learned Magistrate.

27. Resultantly, the impugned orders cannot be sustained in law and are liable to be quashed. The petition is allowed and the impugned complaint

(Annexure P1) and the summoning order (Annexure P2) are quashed.

28. Petition allowed.