(1960) 05 MP CK 0002

Madhya Pradesh High Court (Indore Bench)

Case No: None

Sushila Devi	APPELLANT
Vs	
Sharda Devi	RESPONDENT

Date of Decision: May 24, 1960

Acts Referred:

- Penal Code, 1860 (IPC) - Section 109, 494, 496

Citation: (1961) CriLJ 819

Hon'ble Judges: H.R. Krishnan, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

H.R. Krishnan, J.
This is an application in revision from the concurrent orders of the Magistrate and the sessions judge dismissing applicant''s prayer firstly that the complaint against her under Sections 494 496 and 109, I.P.C. filed by the non-applicant "through her son Tejsingh", should be dismissed; secondly that she should in the special circumstances of the case have been exempted trom personal attendance u/s 540A of the Cri. Pro, Code. these questions often arise in criminal courts and it will be convenient to set out the general principles that should be applied in such cases.

2. The facts of the case are simple and straightforward. The non-applicant filed a complaint against the applicant and Kishansingh Rajput to the following effect. Kishansingh had married the non-applicant years ago and has a son by her, For a few years the present applicant and Kishansing had been working as a school master and a teacher in the same town viz. Ratangarh they married though already there was another wife namely the complainant. The complaint was filed in accordance with the proviso to Section 198 Cr.P.C. through the son Tejsingh.

3. Appearing on the issue of bailable warrants they prayed, firstly the complaint was not; lodged in proper form and should have been dismissed, and if the case were to proceed at all, both the accused should be exempted from personal appearance and allowed, to appear through pleader.

4. In support of the first contention it is urged, while the Magistrate has jurisdiction to permit: the complaint by somebody other than the complainant, in case she is a pardanashin lady, the present complaint is not by Tejsingb on behalf of his mother, but one by the mother herself through Tejsingh. Therefore the Magistrate has committed an error of law in granting leave to Tejsingh. It is certainly difficult to understand what is meant. As a rule, a complaint under Sections 494 and 496 should be by the person aggrieved.

Exceptionally, the court can grant leave to a authorised person to file a complaint on behalf of the aggrieved person. Here the Magistrate has proceeded on the factual assumption that the complainant is a pardanashin lady in which event, of course, the first proviso to Section 198 is automatically attracted. The complainant is a Rajput woman of the old school, and in that caste the woman of the old school ought not to be compelled to appear in public.

the real objection urged by the applicants that this is not a complaint by Tejsingh "acting on behalf of his mother" but it is in form a complaint by the mother herself acting "through marfat her son Tejsingh". Frankly, this is mere quibbling, and typical of arguments that are advanced from time to time in our courts. After all a rule of procedure is not an incantation or mantra thaf must be recited precisely in a particular pitch at the risk of the singer going to the wrong world.

It is a principle of fair play and Convenience which must be understood and applied in a broad common sense manner. When the complainant is a Pardanashin lady and does not want to appear, the court ought not compel her to do so and had therefore necessarily to permit somebody else to conduct the case on her behalf, It really makes no difference whether the person who is granted leave to act on behalf of the complainanl says either that he is complaining on her behalf or comes into the picture with the verified complaint "through, him", I. therefore, find no sub-stances in the first ground.

5. Coming to the second ground it is urged that in view of the recent decisions of the different High Courts u/s 540A, Cri.P.C. courts should be generous in. exempting accused persons from personal appearance. It is unnecessary to set out the rulings at length because the principle is sound and unexceptional. The question is whether tills is an appropriate case for its exercise. Personal appearance is the rule in criminal cases of a serious nature, involving moral turpitude, and punishable with imprisonment for some length of time.

On the other hand, where the offence is punishable with fine only, and involves, no moral turpitude, the exemption should be the rule unless, of course, it is to the interest of the accused himself, in view of the question of identification, to appear in person. No doubt it is conceivable that (even in a case of murder not involving a question of identity) personal appearance can be dispensed with till the very last stage without very serious consequence to either party in that particular case. However, that would result in the impression that a serious Criminal case is a picnic or show in which the accused can take part by proxy merely by briefing a lawyer. That certainly is not the intention of law nor is it sound public policy.

6. Whenever personal appearance is insisted upon, there is some harassment to the accused the courts have to see that this harassment is no out of proportion to the seriousness of the allegations, the severity of the possible punishment on conviction, and the very nature of the allegations themselves as they stand out in the prima facie case. While no hard and fast rule can be laio down, courts are expected to exercise their discretion in this regard, after seeing the full picture.

Certain general criteria can also be indicated. For example other conditions being the same a paidanashin woman should if, possible, be spared the inconvenience and embarrassment of compulsory personal appearance; but that does not arise here, the applicant being a school teacher accustomed to move about in public. The next test will be a question of status; highly placed public functionaries, or very busy captains of industry and the like should not, unless the prima facie case is serious, be compelled to attend.

This also does not arise here. The third test is whether the distance to the Court from the home of the accused is so great that the harassment will be excessive. Obviously the accused person ought not to be dragged again and again from one distant place to another unless the seriousness of the charge calls for this inconvenience. The learned Counsel for the applicant took time, and has reported that Ratangarh, where the applicant lives and works, is about 34 miles by the bus route from Neemuch city where the court sits.

It is certainly slightly inconvenient for a person to go by bus on every date, but I would not call this a disproportionate incidental harassment in the circumstances of this case. Yet another test is whether the prima facie case is such that conviction would result in a punishment so severe that incidental harassment of compulsory attendance might not be disproportionate and excessive. The present one is not a case of ordinary altercation or trespass or even of the hurt but one of bigamy and abuse of the form of marriage.

Either offence is punishable with imprisonment of seven years and a compulsory fine. So the rulings in which compulsory personal attendance have been held to be excessive harassment in cases of charges of trespass or defamation or the like, have no application hero. The case as it stands is a serious one. If it results in conviction the punishment is

likely to be a term of substantive sentence. It is also clear that it is not a case in which there is no moral turpitude.

7. All things considered, I am not prepared to find that the learned Magistrate has exercised his discretion wrongly. Accordingly I dismiss the complaint. Further I note that already about a year and half have been used up in these preliminaries. I would advise the Magistrate to proceed with the case promptly.

8. The application is summarily dismissed.