
(2018) 07 DEL CK 0493

Delhi High Court

Case No: Criminal M.C. 3946 OF 2015

Pankaj Sharma

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision: July 4, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Indian Penal Code, 1860 - Section 34, 114, 120B, 294B, 323, 403, 406, 420, 494, 495, 498A, 506
- Code of Criminal Procedure, 1973 - Section 156(3), 200, 202, 397, 397(3), 482

Citation: (2018) 07 DEL CK 0493

Hon'ble Judges: R.K.GAUBA, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.K.GAUBA, J

1. The petitioner is aggrieved by the order dated 13.08.2015 of the Court of Sessions in criminal revision no. 25/2015 which had been presented by him

to question the correctness, legality and propriety of the order dated 18.04.2015 of the Metropolitan Magistrate in complaint case no. 405/01/2014.Ã,

The said order dated 18.04.2015 had been passed by the Metropolitan Magistrate declining the prayer of the petitioner for direction to the police for

registration of first information report (FIR) on the basis of his application to that effect in the context of the complaint that had earlier been made by

him to the station house officer of police station Vijay Vihar alleging, inter alia,Ã, that the private respondents herein had committed offences

punishable under Sections 403/406/420/494/495/506/120B/34 of Indian Penal Code, 1860 (IPC). The Metropolitan Magistrate treated the said

petition seeking direction under Section 156 (3) Cr.P.C. as a criminal complaint and decided to take cognizance thereupon calling upon the petitioner,

by the order dated 18.04.2015 to adduce "pre-summoning evidence" which would be in the nature of inquiry under Sections 200/202 Cr.P.C.,

The Court of Sessions declined to interfere in the said order passed by the Metropolitan Magistrate in his judicial discretion and consequently

dismissed the revision petition under Section 397 Cr.P.C.,

2. The petitioner seeks to invoke the jurisdiction of this Court primarily under Section 482 Cr.P.C read with Article 227 of the Constitution of India to

pray for the aforesaid orders of the courts below to be set aside.

3. It may be noted here that the prime allegations on the basis of which the petitioner sought the criminal law to be set in motion are that the private

respondents had approached him and his family proposing the marriage of the second respondent with him, representing her as a spinster and a good

match. He alleges that believing the representations made respecting the second respondent, the marriage was eventually solemnized on

14.04.2012. He attributes certain acts of commission and omission on the part of the second respondent and members of her family who are the

other private party respondents in the petition giving rise to certain matrimonial disputes. It is his case that he had later come to know by certain

documents received through courier that the second respondent had earlier been married to one Mr. Sundeep Bhai Dhanji Bhai Makwana. He

would, thus, allege that marriage ceremony undergone with him on 14.04.2012 was in the nature of bigamous relationship, the factum of previous

marriage having been concealed. He alleges cheating and misappropriation of certain property belonging to him by the private respondents and also

certain acts having been committed amounting to criminal intimidation, all such offences allegedly having been committed pursuant to criminal

conspiracy or by acts indulged in by common intention.

4. The Metropolitan Magistrate declined to issue a direction to the police for registration of the FIR, referring in this context to judgment of this Court

in *M/s Skipper Beverages Pvt. Ltd. vs. State* 2002 Cr.L.J. NOC 333 (Delhi), and also noting that the application for such direction had been moved

in the wake of FIR No. 111/2014 having been lodged by the second respondent at police station Gatholidia, Gujrat alleging offences punishable under

Sections 498A/323/294B/114 IPC. The Sessions Court, in its revisional jurisdiction, found no illegality or impropriety in the said approach of the

Metropolitan Magistrate and, in that context, referred to another ruling of this Court in *Sh. Subhkaran Luharuka & Ors. vs. State (Govt. of NCT of*

Delhi) & Ors. in Cr.L.M.C. 6122-23/2005 dated 09.07.2010.

5. Against the above backdrop, the question arose as to whether the petitioner having availed of the remedy of revision should be allowed to have

recourse to the petition at hand as a substitute for virtually seek a second revisional challenge or scrutiny which is clearly barred under Section 397 (3)

Cr.P.C.

6. This Court in almost similar fact-situation, taking note of the decisions of the Supreme Court reported as *Krishnan Vs. Krishnaveni*, (1997) 4 SCC

241; *Rajinder Prasad Vs. Bashir*, (2001) 8 SCC 522 and *Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr.*, (2005) 2 SCC 571 and,

following similar view taken by a learned single judge of this Court in *Surender Kumar Jain vs. State & Anr.*, ILR (2012) 3 Del 99 in absence of a

special case being made has earlier declined by order dated 03.07.2018 to interfere by the ruling in Cr.L.M.C. 164/2018 *Ajay Maini vs. The State Govt.*

of NCT of Delhi & Ors. in exercise of extraordinary jurisdiction under Section 482 Cr.P.C.

7. There are no special circumstances made out in the case at hand for the revisional court's view to be disturbed. As rightly observed by the

courts below, the inquiry magistrate would have the necessary jurisdiction to order probe by the police if a certain aspect requires such investigation

when the case reaches the stage of Section 202 Cr.P.C.

8. The petition is dismissed. ã,