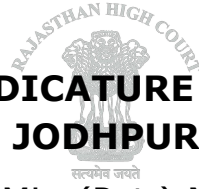




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 1154/2019



-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
- 2.

-----Respondents

For Petitioner(s) : Mr. Navneet Poonia
For Respondent(s) : Mr. AR Choudhary, PP
Ms. Aasu Devi

HON'BLE MR. JUSTICE KULDEEP MATHUR

ORDER

Reportable

07/05/2024

By way of filing the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has prayed for the following relief:

"It is, therefore, most humbly and respectfully prayed that this Misc. petition may kindly be allowed and the ORDER DATED 05.01.2019 learned Sessions Judge, Merta (Rajasthan) in criminal revision petition no. 171/2018 (CIS No. 171/2018) AND order dated 25.07.2018 passed by learned Special Civil Judge, Degana titled as Meera Versus Bhanwar Lal may kindly be quashed and set aside and the petitioners may kindly be discharged from the offences alleged against him."

Drawing attention of the Court towards the complaint submitted by respondent No.2 against the present petitioner for the offences under Sections 498-A, 406, 323, 494, 497 IPC and



the statements of the complainant – respondent No.2 recorded under Section 200 Cr.P.C., learned counsel for the petitioner submitted that there is no allegation against the petitioner that he had solemnized a second marriage with one by performing essential religious ceremonies. Learned counsel submitted that as a matter of fact, the complainant – respondent No.2 in her statements recorded under Section 200 Cr.P.C. has clearly stated that her husband is not married with Raju Devi.

Learned counsel submitted that the complainant-respondent no.2 has lodged a complaint for the offences punishable under Section 494 IPC against the petitioner, long after 20 years of commission of the alleged crime only with a view to harass and humiliate the present petitioner.

Per contra, learned counsel for the complainant – respondent No.2 has vehemently submitted that the police during investigation had found that the petitioner has committed an offence under Section 494 IPC. The question whether the second marriage of the petitioner is a valid one or not is a question of fact, which is to be determined by the trial court. Learned counsel for the complainant – respondent No.2 submitted that even if it is presumed that the petitioner is keeping as per the customs of *Nata* marriage, then also he is guilty of committing the alleged crime. Learned counsel submitted that the present criminal misc. petition thus deserves to be dismissed being devoid of any merit.

Heard.

It is not in dispute before this Court that the impugned FIR has been lodged by the complainant – respondent No.2 after





about 20 years from commission of the alleged offence. It is also not in dispute before this Court that in the complaint submitted by respondent No.2 and in her statements recorded under Section 200 Cr.P.C., there is no allegation against the petitioner of having solemnized a second marriage with Smt. _____ by performing the essential ceremonies in accordance with Hindu Marriage Act, 1955.

It is settled law that the offence punishable under Section 494 IPC would be made out against any person if he/she solemnizes a marriage during the lifetime of either the husband or wife; as the case may be. The mere fact of a man and a woman living together as husband and wife would not be considered as an offence punishable under Section 494 IPC if they have not performed of a valid marriage in accordance with the existing law.

In the present case, there is nothing on record to establish that the petitioner is living with _____ after performing ceremonies of hindu religion with an intention to declare their relation as "husband-wife" under a valid marriage. It is also to be noticed that even if it is presumed that the petitioner has performed *Nata marriage* with _____, then also there is nothing on record to establish as to whether the same was done by following the marriage ceremonies required by the personal law governing the parties or by following the essential ceremonies for a *Nata* marriage.

In view of aforesaid discussion, the present criminal misc. petition is allowed. The order impugned dated 5.1.2019 passed by learned Sessions Judge, Merta in Cr.Revision No.171/2018 so also the order impugned dated 25.7.2018 passed by learned Sr. Civil



Judge and Additional Chief Judicial Magistrate, Degana in Cr.Case No.357/2018 are quashed and set aside. The criminal proceedings pending against the petitioner before learned Sr. Civil Judge and Additional Chief Judicial Magistrate, Degana in Cr.Case No.357/2018 for the offence under Section 494 IPC are hereby quashed and set aside.

Stay application and all pending applications if any stand rejected.

(KULDEEP MATHUR),J

437-TarunGoyal/-