



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 711 of 2022**

1. Suman Sharma, W/o Subhash Sharma, Aged About 57 Years, R/o Hig C- 109/a, Shailendra Nagar, Police Station City Kotwali, Raipur, District- Raipur, Chhattisgarh.
2. Soumya Sharma W/o Vidit Sharma Aged About 30 Years R/o 604, B Block , Wallfort City, Bhathagaon, Raipur, District : Raipur, Chhattisgarh
3. Vidit Sharma S/o Subhash Sharma Aged About 32 Years R/o 604, B Block, Wallfort City, Bhathagaon, Raipur, District Raipur, Chhattisgarh.

---- Petitioners**Versus**

1. State of Chhattisgarh, Through Police Station Mahila Thana, Raipur, District: Raipur, Chhattisgarh.
2. Superintendent of Police Raipur District Raipur Chhattisgarh.
3. Subhashini Sharma Alias Saniya, D/o Mohammad Mustaq Aged About 29 Years R/o House No. B- 5, Ashoka Park, Shankiarnagar, Raipur, District Raipur Chhattisgarh.

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For Petitioners	: Mr. Pankaj Singh and Mr. Sabyasachi Bahduri, Advocates
For State/Respondents No.1 & 2	: Ms. Akanksha Jain, Dyputy Advocate General and Ms. Abhyunnati Singh, Panel Lawyer
For Respondent No.3	: Mr. Malay Shrivastava, Advocate
Amicus Curiae	: Mr. Praveen Das and Mr. Neelabh Dubey, Advocates
Date of hearing	: 10.08.2023
Date of Order	: 22.09.2023



Hon'ble Shri Justice Rakesh Mohan Pandey

CAV Order

- 1) By way of this petition, the petitioners have sought the following relief:-

"It is, therefore, prayed that this Hon'ble Court may kindly be pleased to quash the FIR bearing Crime No.67/2021 dated 13.09.2021 registered at P.S. Mahila Thana, District Raipur against the petitioners under Sections 498-A read with 34 of the Indian Penal Code and also, all proceedings/processes consequential thereof and incidental thereto."

- 2) The petitioners have filed the present petition under 482 Cr.P.C. for quashing the FIR bearing Crime No. 67 of 2021 registered at Police Station - Mahila Thana Raipur, District Raipur dated 13.07.2021 for the commission of an offence punishable under Section 498-A read with 34 of the IPC, on the ground that the FIR lodged by the second wife/respondent No.3 against the petitioners and Subhash Sharma/husband is illegal and void.

- 3) Facts of the present case are that respondent No.3 who is the complainant, lodged a written complaint on 04.09.2021 against one Subhash Sharma and the present petitioners making the allegation that she was married to co-accused Subhash Sharma on 19.07.2018. It is further alleged that the co-accused Subhash was already married to petitioner No.1. It is further stated that she was abused and harassed, mentally and physically both by the petitioners and co-accused Subhash Sharma. In her complaint, she further stated that there are two issues from their wedlock, one is a girl child namely Subhanshi Sharma who was born on 08.07.2019 and another is a boy who was born on 30.11.2020. It is also stated in the written complaint that she belongs to the Muslim community, after marriage, her



husband Subhash Sharma used to stay for 8 to 10 hours a day along with her. He remained in jail for a considerable period for the commission of some offences. After release from jail, her husband Subhash did not visit her therefore, she went to his house, where the present petitioners abused her and called her using the word 'kept' and Rs.5,00,00,000/- was demanded by Petitioner No.1/wife of Subhash Sharma to give her the status of 'wife'. Petitioners No.2 and 3, the son and daughter-in-law of Subhash Sharma, also abused her and threatened the complainant of dire consequences. They also destroyed the household articles of the complainant. Thereafter, the matter was reported to the police. About marriage, it is stated that they performed marriage on 19.07.2018 at Arya Samaj Temple and Saptapadi was also performed in the presence of a priest thereafter they started staying together in a rented house situated at House No.304, Sunita Park at Raipur as husband and wife. On such complaint, the police registered the offence punishable under Section 498A of the IPC against the petitioners and Subhash Sharma on 13.09.2021.

- 4) Learned counsel for the petitioners would submit that the marriage of the complainant and Subhas Sharma was not valid as Subhash Sharma was already married to petitioner No.1 as per Hindu rites and rituals and petitioner No.1 is the legally wedded wife of Subhash Sharma therefore, the complaint lodged by the complainant is liable to be quashed. He would further submit that on the date of marriage, co-accused Subhash Sharma was in judicial custody, therefore, the claim of the complainant about marriage is false. It is also stated that there are general and omnibus allegations against the petitioners. He would also submit that there is a delay in the registration of the FIR. He



would next argue that there is a complaint against the complainant, made by Subhash Sharma and to counterblast the said complaint; the impugned FIR has been lodged. He would next submit that the complainant has lodged the FIR with an ulterior motive to wreak vengeance. The contention of counsel for the petitioners is that according to the decision rendered in the matter of ***Shivcharan Lal Verma v. State of Madhya Pradesh***, reported in (2007) 15 SCC 369, a three-judge bench of the Hon'ble Supreme Court was pleased to set aside the judgment of conviction and sentence under Section 498-A IPC imposed on one Kalindi mainly on the ground that the alleged marriage with another person during the subsistence of a valid marriage, is null and void, and has held as follows:-

"2.This matter had not been taken up for hearing for this length of time as the judgment of this Court holding Section 306 of the IPC to be unconstitutional, was under re-consideration by the constitution bench. The constitution bench finally disposed of the matter in criminal case No. 274 of 1984 and batch and set aside the earlier judgment of this Court and held that Section 306 is constitutionally valid. In view of the aforesaid constitution bench decision, two questions arise for consideration in this appeal. One, whether the prosecution under Section 498A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498A of the IPC....."

- 5) On the other hand, counsel for respondent No.3 would submit that from a bare reading of the written complaint, it is quite clear that the complainant was married to Subhash Sharma on 19.07.2018 and they followed Saptapadi and the marriage was performed in the presence of a priest. Thereafter, the complainant and Subhash Sarma were staying in rented accommodation. Later on, two children were born from their wedlock therefore there would be a presumption of valid



marriage. He would further submit that the impugned FIR cannot be quashed on the ground that the FIR/complaint made by the second wife is not tenable. He would also submit that there are serious allegations in respect of cruelty, harassment, ill-treatment and demand of dowry against the petitioners as well as co-accused Subhash Sharma. He has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Rajinder Singh v. State of Punjab*** reported in **(2015) 6 SCC 477**, wherein it is held that in the absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC and has held as follows:-

"19. In Reema Aggarwal v. Anupam, (2004) 3 SCC 199, in construing the provisions of the Dowry Prohibition Act, in the context of Section 498A, this Court applied the mischief rule made immortal by Heydon's case and followed Lord Denning's judgment in Seaford Court Estates Ltd. v. Asher, where the learned Law Lord held:

"...He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature."

(at page 213)

The Court gave an expansive meaning to the word 'husband' occurring in Section 498A to include persons who entered into a relationship with a woman even by feigning to be a husband. The Court held:

"18....It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition



of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

- 6) Before coming to the facts of the present case, it would be appropriate to take note of the judgments rendered by the Hon'ble Supreme Court in the matter of **Shiv Charan Verma** (supra) and **Rajinder Singh** (supra). A Three Judges Bench of the Hon'ble Supreme Court in the matter of **Shiv charan Verma** (supra) has held that marriage with another person during the subsistence of the valid marriage, is null and void and the Hon'ble Court set aside the order of conviction under Section 498-A of the IPC, whereas, in the matter of **Rajinder Singh** (supra), it is held that in the absence of definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC.
- 7) At this stage, Mr Praveen Das and Mr Neelabh Dubey, Advocates were requested to assist the Court. They made a submission that if any issue is decided in a previous judgment by a bench of equal strength, conflicting views in the subsequent judgment should not come in the way on the pretext that the issue has not been raised or considered in the previous judgment and in this situation; the previous judgment should be followed.
- 8) Learned counsel for the State would support the contention made by Mr. Das and Mr. Dubey.



- 9) Mr. Malay Shrivastava would submit that the marriage between the complainant and Subhash Sharma was solemnized according to the Hindu rites and rituals and a petition has been filed by the petitioner No.1 before the learned Family Court under Sections 11 and 12 of the Hindu Marriage Act to declare the marriage between complainant and Subhash Sharma null and void which establishes that there was a valid marriage between Subhash Sharma and the complainant. He would further submit that a copy of the application under Sections 11 and 12 of the Hindu Marriage Act has been filed as Annexure-P/5 with the petition. He also submits that there are serious allegations against the petitioners and Subhash Sharma as the complainant was subjected to cruelty, in connection with the demand of dowry, and mental and physical harassment which finds corroboration from the contents of FIR.
- 10) I have heard learned counsel for the parties and perused the documents annexed with the petition.
- 11) From a perusal of the FIR, it manifests that the marriage between the complainant and Subhash Sharma was solemnized on 19.07.2018 and the same is supported by Annexure-P/5 of the petition which is an application under Section 11 and 12 of the Hindu Marriage Act, filed by the petitioner No.1 before the learned Family Court for declaring the marriage between the Subhash Sharma and complainant/respondent No.3 as null and void. Undisputedly, there are two issues from the wedlock of the complainant/respondent No.3 and Subhash Sharma. Besides the facts of the present case, there are conflicting views of the Hon'ble Supreme Court in the subject matter of the present case



and both the cited judgments have been rendered by a bench of equal strength, therefore, in the opinion of this Court, the aforesaid judgments cited by the respective parties are conflicting, however, to avoid any further confusion and to maintain consistency, I deem it appropriate to refer this issue for decision by the larger bench of this Court to answer the following question:

'Whether the complaint/FIR lodged by the second wife for commission of offence punishable under Section 498-A of the IPC would be tenable or not?'

- 12) The Registrar (Judicial) is directed to place this matter before Hon'ble the Chief Justice for the constitution of the larger bench for consideration of the above-stated issue.

Sd/-

(Rakesh Mohan Pandey)
Judge