

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

S.B. Criminal Miscellaneous (Petition) No. 1498/2019

Balu Lal S/o Shri Madhu Daroga, Aged About 42 Years, R/o
Salampura , P.s. Sadar , Bhilwara

-----Petitioner

Versus

1. State, Through Pp
2. Smt. Asha W/o Balu Lal Daroga D/o Bhanwar Lal Daroga,
R/o Malola, P.s. Pur Distt. Bhilwara

-----Respondents

For Petitioner(s)	:	Mr. PS Solanki, Adv.
For Respondent(s)	:	Mr. Vikram Singh Rajpurohit, PP Mr. Ramesh Chandra Purohit, Adv.

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

27/04/2026

1. Instant Criminal Misc. Petition under Section 482 Cr.P.C. has been filed on behalf of the petitioner assailing the order dated 21.01.2019, passed by learned Additional Sessions Judge (Women Atrocity Cases), Bhilwara in Criminal Revision No.04/2018 whereby learned Revisional Court dismissed the revision and affirmed the order dated 04.12.2017 passed by learned Judicial Magistrate No.1, Bhilwara in Criminal Case No.219/2008 rejecting the petitioner's application under Sections 245 and 256 of Cr.P.C.
2. Brief facts of the case are that the complainant-respondent No.2 submitted a complaint before the learned Judicial Magistrate No.1, Bhilwara, inter alia alleging that her marriage was solemnized with the petitioner on 23.04.2000 as per Hindu rites and customs. Out of the said wedlock, a daughter was born. It

was further alleged that after the marriage, the petitioner started subjecting the complainant to mental and physical cruelty. During her pregnancy, the petitioner allegedly ousted her from the matrimonial home, and since then she has been residing at her parental house. It was also alleged that the petitioner subsequently performed a second marriage with one Seema on 09.06.2006.

3. The learned trial Magistrate forwarded the complaint under Section 156(3) Cr.P.C. to Police Station Sadar, Bhilwara, for investigation, whereupon FIR No.157/2006 was registered for offences punishable under Sections 498A and 494 of the IPC and investigation was commenced. After completion of investigation, the police submitted a negative final report. Thereafter, the complainant-respondent No.2 filed a protest petition, in which statements of two witnesses were recorded. The learned trial Court, after hearing the arguments, took cognizance against the petitioner for the offence punishable under Section 494 of the IPC and issued summons.

4. Thereafter, the petitioner filed an application under Sections 245 and 256 of Cr.P.C. before the learned trial Magistrate, stating that since the complainant and her counsel are not appearing in the proceedings, he be acquitted in view of the provisions of Section 256 of Cr.P.C. The learned trial Magistrate, vide order dated 04.12.2017, rejected the said application. Aggrieved thereby, the petitioner preferred a revision petition before the learned Additional Sessions Judge (Women Atrocity Cases), Bhilwara, who, vide order dated 21.01.2019, dismissed the

revision petition and affirmed the order dated 04.12.2017. Hence, the present Criminal Misc. Petition has been filed.

5. Learned counsel appearing on behalf of the petitioner submits that the learned Courts below have committed a grave error in passing the impugned orders. It is contended that during investigation, statements of complainant and her witnesses were recorded by the Police and reached to the conclusion that no offence under Section 498A IPC is found to be made out, however, offence under Section 494 IPC was found proved, but since the said offence is non-cognizable in nature, therefore, Police submitted a negative final report in the matter. It is further submitted that subsequently, on the protest petition, cognizance was taken and vide order dated 04.12.2017, charge for the offence under Section 494 IPC was framed against the petitioner by the trial Court without following the procedure prescribed under Sections 244, 245, and 246 of the Cr.P.C. It is further submitted that the learned Courts below failed to consider that the learned trial Court had taken cognizance against the petitioner for the offence under Section 494 IPC and, vide order dated 29.08.2008, directed the complainant to produce the list of witnesses. It is submitted that the learned trial Court did not direct the Assistant Public Prosecutor to contest the case on behalf of the complainant. It is contended that since the complainant and her counsel failed to appear on the dates of hearing, the petitioner is entitled to the benefit of Section 256 Cr.P.C., which empowers a Magistrate to acquit the accused in a summons case if the complainant fails to appear on the appointed date, unless the Court decides to adjourn the case. It is submitted that in the present case, neither the

complainant nor her counsel appeared before the trial Court however, despite this, the learned trial Court rejected the petitioner's application. In such circumstances, it is submitted that the impugned orders are per se illegal and deserve to be quashed and set aside.

6. Per contra, learned State Counsel and learned counsel appearing on behalf of the complainant-respondent No.2 have opposed the submissions made by the counsel for the petitioner. It is submitted that the Courts below have passed detailed orders, and the same does not warrant any interference by this Court.

7. I have considered the submissions made by the counsel for the parties and perused the impugned orders.

8. Provisions of Section 256 Cr.P.C. reads as under :

256. Non-appearance or death of complainant.

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

9. Perusal of the impugned orders passed by the trial Court as well as the Revisional Court would reveal that the only ground raised by the petitioner for his discharge from the offence under

Section 494 IPC is that the complainant and her counsel are not participating in the proceedings. Except this, no other ground has been raised by the petitioner. While framing charge for the offence under Section 494 IPC against the petitioner, the learned trial Court followed the due procedure of law, and no legal right of the petitioner has been infringed in any manner. During investigation, Police found offence under Section 494 IPC proved against the petitioner, but since the said offence is non-cognizable in nature, FR was submitted by the Police before the competent Court. Subsequently, on the protest petition, cognizance was taken against the petitioner for offence under Section 494 Cr.P.C. It has rightly been observed by learned Courts below that the provisions of Section 256 Cr.P.C. are not applicable to the present proceedings, as the petitioner is facing warrant trial for offence under Section 494 IPC, which instituted other than police report. Thus, this Court does not find any infirmity and perversity in the impugned orders passed by learned courts below.

10. Two Courts of competent jurisdiction have dismissed the prayer of the petitioner and gave concurrent finding, one is the learned Magistrate Court, who dismissed the petitioner's application under Sections 245 & 256 Cr.P.C. and second learned Revisional Court, who dismissed the revision petition. Thus, the orders impugned do not warrant any interference in exercise of this Court's inherent powers under Section 482 Cr.P.C.

11. The Hon'ble Supreme Court in the case of ***Deepti alias Arati Rai Vs. Akhil Rai & Ors. [(1995) 5 SCC 751]***, has observed that a second revision petition is barred under Section 397(3) of the Code of Criminal Procedure (Cr.P.C.) after the first

revision has been dismissed by the Sessions Court and inherent powers under Section 482 Cr.P.C. cannot be used to circumvent this statutory bar of second revision as it would amount to allowing a second revision in the garb of a petition seeking quashing of orders.

12. Accordingly, both the impugned orders dated 21.01.2019 & 04.12.2017 are affirmed. The Criminal Misc. Petition is dismissed. Stay application and pending application(s), if any, also stand dismissed.

13. Record of the Courts below be sent back forthwith.

(ANIL KUMAR UPMAN),J