

Pushpabai Vs. Pratapsingh

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Court : Madhya Pradesh

Decided On : Mar-30-1998

Reported in : II(1999)DMC526

Judge : N.K. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 494

Appeal No. : Criminal Revision No. 9 of 1994

Appellant : Pushpabai

Respondent : Pratapsingh

Advocate for Def. : Jaisingh, Adv.

Advocate for Pet/Ap. : T.M. Panjwani, Adv.

Disposition : Revision allowed

Judgement :

N.K. Jain, J.

1. The order impugned is passed in revision by the IIInd Addl. Sessions Judge, Kannad, setting aside the order of the Trial Magistrate framing charge against the respondent under Section 494, Indian Penal Code. The respondent thus stands discharged of the said offence.

2. The respondent is the husband of the appellant. The applicant-wife filed a complaint against the respondent alleging commission of offence of bigamy under Section 494, Indian Penal Code. The applicant-complainant examined 3 witnesses including herself in evidence before charge before the Trial Court. The learned Magistrate on consideration of that evidence was of the view that a case is made out against the accused which if left unrebutted would warrant his conviction under Section 494, Indian Penal Code. He, therefore, by his order dated 12.8.1992 framed charge under Section 494, Indian Penal Code against the respondent-accused. In revision, however, the learned A.S.J. quashed the charge and discharged the respondent-accused by his order impugned, the relevant portion of which reads thus:

'xxx xxx xxx xxx xxx xxx'

3. Having heard learned Counsel for the parties and gone through the evidence recorded before charge, I am clearly of the view that the learned A.S.J. exceeded his revisional powers in discharging the respondent.

4. In *Kanwal Ram*, AIR 1966 SC 614, referred too by the learned A.S.J., what the Apex Court has held is this:

'In a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies constituting it, must be proved. Admission of marriage by the accused is not evidence of it for the purpose of proving marriage in an adultery or bigamy case.'

5. Obviously, the test laid down by the Supreme Court in *Kanwal Ram* (supra), is for the purpose of holding the accused guilty or otherwise at the conclusion of the trial. The ratio in that decision has no application for the purposes of framing of charge. The learned A.S.J. was wholly incorrect in laying down the preposition that unless the 'Pandit' who solemnised the second marriage is examined, no charge under Section 494, Indian Penal Code can be framed against the accused person. Such a preposition is not warranted in law. For the purposes of framing a charge in a warrant case instituted otherwise than on police report what is required is that there should exist ground for presuming that the accused has committed an

offence triable by the Magistrate concerned. The Magistrate has to only satisfy that by the evidence led before him a prima facie case which the accused should be called upon to answer has been made out. At this stage, the standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly applied. In the instant case the complainant besides herself has examined two witnesses to depose of the alleged second marriage by the respondent-accused. The learned Magistrate having considered the said evidence and framed the charge, it was not open for the Sessions Court below to have interfered with the said order unless it is perverse or on the face of the record incorrect or foolish, perfunctory or glaringly unreasonable. No such thing exist in the instant case and no interference could, therefore, have been made by the Sessions Court in revision.

6. The order impugned suffers with another infirmity. It is now well settled that a Court is not competent in a warrant case to discharge the accused without examining all the witnesses named by the prosecution. Although it is not incumbent on the Magistrate to summon every person named as a witness by the complainant, he is not, however, justified in discharging an accused person without examining all the witnesses named in the complaint. So, in the instant case, while the Magistrate was empowered to frame charge even without examining all the witnesses named in the complaint, it was not open either for the Magistrate or for the Sessions Court in revision to record an order of discharge without examining all such witnesses. The Sessions Court below should not have, therefore, discharged the accused without directing the Magistrate to first examine all the witnesses named in the complaint.

7. This revision thus succeeds and is allowed. The impugned order passed in revision by the learned A.S.J. is set aside and that of the Trial Magistrate is restored. The case shall now go back to the Trial Magistrate for proceeding further in accordance with law.