

Rohitash Kumar Vs. Smt. Kiran Devi

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Court : Rajasthan

Decided On : Oct-28-1985

Reported in : 1985(2)WLN697

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Criminal Revision Petition No. 312 of 1984

Appellant : Rohitash Kumar

Respondent : Smt. Kiran Devi

Disposition : Petition dismissed

Judgement :

Guman Mal Lodha, J.

1. This is a criminal revision petition under Section 397, read with Section 401, Cr.P.C. against the orders of the Munsif & Judicial Magistrate, Nawalgarh dated 6-7-1982 and 28-4-1984 in complaint case No. 439 of 1982 Kiran Devi v. Arvind Kumar whereby the process has been ordered to be issued against the petitioners for the offences under Sections 494 and 120B IPC.

2. The facts, in brief, are that, Smt. Kiran Devi, aged 26 years, filed a complaint in the Court of Munsif & Judicial Magistrate, Nawalgarh, alleging therein that she is duly wedded wife of Arvind Kumar s/o Bhajanram, adopted son of Bholuram but,

Arvind Kumar knowing it well has conducted the second marriage with Pratima alias Prem Lata d/o Jagrainsingh, the petitioner No. 2, who is real brother of Rohitash Kumar, IPS, the petitioner No. 1.

3. Smt. Kiran Devi in this complaint mentioned that on the demand by Arvind Kumar, her parents have already given huge amount of Rs.22,000/-approximate in addition to the golden and silver ornaments, and have helped him in getting education upto B. Com. and M. Com. But, now when he has become Lecturer and all the brothers of Arvind Kumar have become Gazetted Officers and influncial persons, they have illegally and unlawfully got conducted the second marriage of Arvind Kumar.

4. It was also mentioned that Rohitash Kumar, the real brother of Jagram Singh who is father of Pratima alias Prem Lata aged about 10-12 years as alleged in the complaint, has been married with the accused, at Jaipur. The members of the marriage procession protested against this and returned from the marriage procession because of this illegal action of second marriage of Arvind Kumar. The second marriage of Arvind Kumar was conducted in lieu of dowry in the form of cash and scooter, etc. It was also mentioned that the accused Arvind Kumar is enjoying with the new wife Pratima alias Prem Lata while the complainant who is earlier wife, has been starving.

5. On a perusal of the record particularly the evidence recorded Under Section 202, Cr.P.C., it was revealed that the brides (Pratima's) parents and uncle etc., particularly, Rohitash Kumar, IPS, who is real brother of Jagram Singh whose daughter Pratima was married to Arvind Kumar, and Smt. Patasi w/o Jagram Singh the mother of bride (Prem Lata), were all in conspiracy in conducting the second marriage amounting to the offence under Section 494 IPC, as they were knowing it very well that Arvind Kumar has already a married wife Smt.Kiran Devi, still they by the use of influence of police got conducted the second marriage of Arvind Kumar inspite of the protest and opposition by the kinsman and relatives in their community.

6. An application was, therefore, moved by the complainant Smt. Kiran Devi, to also issue process against the petitioners and others. The Munsif & Judicial

Magistrate, Nawalgarh, vide order dated 6-7-1982, issued process against the petitioners, so also Arvind Kumar and two others, for the commission of offences under Sections 494 & 120B IPC. The learned Magistrate, vide order dated 28-4-1984 directed that non-bailable warrants be issued against the petitioners.

7. Before this Court, Shri A.K. Gupta, the learned counsel for the petitioners, challenged the orders on the ground that under Section 319, Cr.P.C. no cognizance can be taken against the petitioners unless the evidence is recorded. Shri Gupta placed reliance upon the judgment of this Court in Sheoram Singh v. State of Rajasthan 1982 RLR 550. Shri Gupta argued that there is no evidence at all in support of the allegations that these petitioners were having any knowledge of marriage of Arvind Kumar with Smt. Kiran Devi. Lastly, Shri Gupta argued that in any case, the learned Magistrate should not have issued non-bailable warrants in the facts and circumstances of the case.

8. Shri M.M. Ranjan, the learned counsel, appearing on behalf of Smt. Kiran Devi, the non-petitioner No. 2, has opposed this review petition.

9. I have carefully considered the submissions of the learned counsel for the parties. Basically the present one is case where, the learned Magistrate has taken cognizance Under Section 204 read with Section 190 Cr.P.C. and I am of the opinion that the mention of Section 319 Cr.P.C. both in the application as well as the order is an error of inexactitude. Such an error cannot vitiate the order itself because by mentioning particular Section which may be wrong, the nature of the order cannot be altered and changed, and this view cannot be taken merely on this basis. It is established that if an order can be sustained, the mere mention of wrong law or statute, of wrong provisions would not vitiate it. This proposition of law is so patent and Shri Gupta could not contest it as proposition of law.

10. So far as the bar under Section 198 Cr.P.C. is concerned, I am of the opinion that the application of Smt. Kiran Devi, dated July 6, 1982 in which the prayer was mentioned for issuing process against the petitioners also, would constitute a complaint by the aggrieved party under Section 198 Cr.P.C. and, therefore, even on that ground, the review petition cannot succeed.

11. So far as the evidence is concerned, I have gone through the entire record in the form of the evidence, and I am of the opinion that the statement of Smt. Kiran Devi read with statement of other witnesses, amply shows that prima facie the allegation is proved that the petitioners were having knowledge that Arvind Kumar was already married to Smt. Kiran Devi and it was for this reason that the members of the marriage procession which was initially meant for the marriage of elder brother of Arvind Kumar, namely, Vishambhar, and was utilized, had boycotted the procession when Arvind Kumar has become bride-groom suddenly. It has also come into evidence that the members of the marriage procession protested against the dramatic development because when Smt. Kiran Devi was already there present, Arvind Kumar should not have married second time and they have boycotted it. But, still Rohitash Kumar IPS, and others, as per the allegations in the evidence, utilized rather misused the office and authority of the police and by show of police force, this marriage was conducted. The above allegation prima facie certainly constitutes the offence of conspiracy under Sections 494 & 120B IPC and I am of the opinion that it cannot be said that this is a case of no evidence so far as Rohitash Kumar, Jagram Singh and Patasi, the petitioners who have come before this Court, are concerned.

12. It is also to be noticed that the allegations if proved, are of quite serious nature because Rohitash Kumar was holding the office of Superintendent of Police and, therefore, he was supposed to be the protector of law rather becoming an abettor of offence himself, and that too to misusing his authority and office of the senior rank of Superintendent of Police which aggravates the offence, if proved.

13. With the above observations, the revision petition has got no merit and is hereby dismissed.

14. However, so far as the question of issue of non-bailable warrant against the petitioners is concerned, it is directed that if Rohitash Kumar and other two petitioners produce themselves before the Munsif & Judicial Magistrate, Jhunjhunu where the complaint came as reported to have been transferred as per the information conveyed by Shri Ranjan, on November 18, 1985, and produced two sureties and personal bond of Rs. 20,000/- each, then the non-bailable warrants

which have been issued against them would stand cancelled. In case they fail to produce themselves on the above date and submit personal sureties and bonds then, the non-bailable warrants which have already been issued against the petitioners would be served and executed against them.

15. The above modification is being made in view of the peculiar facts and circumstances of the case and because, Shri Ranjan fairly submits that the object of the prosecution is not persecution and he will have no objection if this modification is made.

16. The office should send the record along with copy of this judgment, to the lower court i.e., M.M. Jhunjhunu forth with per special messenger.

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