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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 07.11.2023*  
*Pronounced on: 03.01.2024*

+ **CRL.M.C. 1082/2019 & CRL.M.A. 28506/2023**

..... Petitioner

Through: Ms. Malavika Rajkotia, Mr. Ramakant Sharma, Mr. Prateek Avasthi and Ms. Purva Dua, Advocates along with petitioner.

versus

..... Respondents

Through: Mr. Giriraj Subramaniam, Mr. Ravi Pathak, Mr. Akhilesh Tallur, Mr. Simarpal Singh Sawhney, Mr. Joy Banerjee and Mr. Siddhant Juyal, Advocates for respondent nos. 1 to 4.

+ **CRL.M.C. 1083/2019 & CRL.M.A. 4756/2020**

..... Petitioner

Through: Ms. Malavika Rajkotia, Mr. Ramakant Sharma, Mr. Prateek Avasthi and Ms. Purva Dua, Advocates along with petitioner.



versus

..... Respondents

Through: Mr. Giriraj Subramaniam, Mr. Ravi Pathak, Mr. Akhilesh Tallur, Mr. Simarpal Singh Sawhney, Mr. Joy Banerjee and Mr. Siddhant Juyal, Advocates for respondent nos. 1 to 4.

**CORAM:**  
**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

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### **SWARANA KANTA SHARMA, J.**

1. This judgment shall govern disposal of CRL.M.C. 1082/2019 and CRL.M.C. 1083/2019, which arise out of same set of facts and contentions and lays challenge to the same impugned order.

2. The instant petitions under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') have been filed on behalf of petitioner seeking setting aside of order dated 21.01.2019 passed by learned Additional Sessions Judge-03, South, Saket Courts, Delhi ('learned Sessions Court') in CR No. 313/2018 titled 'Kunal Bajaj vs. State & Anr.' and CR No. 437/2018 titled ' vs. State & Anr.', vide which the summoning order dated 30.08.2017 passed by learned Metropolitan Magistrate-04, South, Saket Courts, Delhi ('learned Magistrate') in CC No.37/1 was set aside.

### **ISSUE BEFORE THIS COURT**

3. While assailing the impugned order dated 21.01.2019, these petitions raise the following questions of law:

*"...a) Whether the learned Sessions Court is justified in dismissing the complaint under Section 494 and 109 of Indian Penal Code wherein the summons were issued by the learned MM after*



*coming to a definite conclusion that a prima facie case is made out to summon the accused persons on the basis of pleadings and documents on record to proceed under Section 494 against Respondent No. 1 and under Section 109 IPC against Respondent Nos.2, 3 & 4.*

*b) Whether the learned Sessions Judge exercising revisional jurisdiction is justified in interfering with the truthfulness or other wise of the allegation at the stage of summoning and delve deeper into the issue of proof of solemnization of marriage... ”*

### **FACTUAL BACKGROUND**

4. The petitioner herein had filed a complaint under Section 494 and 406 of Indian Penal Code, 1860 ('IPC') against the accused persons i.e. accused no. 1 Kunal Bajaj, accused no. 2 Gargi Bajaj (mother of accused no. 1), accused no. 3 (father of accused no. 1) and accused no. 4 Abheepsa Gupta (alleged second wife of accused no. 1). Accused no. 1 to 3 are persons of Indian origin and citizens of USA, and accused no. 4 is a citizen of India.

5. Brief facts of the case, as borne out from the complaint, are that the parties i.e. petitioner and accused no. 1 had met in New York, United States of America in the year 2000 where the petitioner was pursuing her studies and the accused no. 1 had started working with a company in its New York office. It is stated that accused no. 1 had relentlessly pursued the complainant for months and had finally proposed her for marriage. The accused nos. 1, 2 and 3 had persuaded the complainant's parents for the marriage of the accused no.1 with the complainant. The



marriage between the parties was solemnized on 30.11.2001 at Hyatt Regency Hotel, New Delhi according to Hindu rites and ceremonies. After their marriage, they lived in New York till 2003, when the accused no. 1 had decided to take up an assignment in India on short term basis. The assignment had, however, continued for about two years, after which the accused no. 1 did not want to go back to USA and had started working with various multinational companies on various projects and thereafter, had started his own business. For the first seven years of this relocation to India, the complainant and the accused had lived in complainant's parental home in Pitampura, Delhi and all their expenses had been paid by the complainant's parents, and thus, the accused husband had built his career business and financial standing by utilizing the resources of complainant's father. Therefore, in 2010, they had agreed to move out to a rented accommodation at Safdarjung Enclave, Delhi as by this time, business of the accused had taken up and he had started living a lavish lifestyle. It is alleged that the accused had bought a BMW car and had started making friends with young and single persons and had started ignoring the complainant. He had also begun to stay out till late and partying till wee hours of morning with his friends, most of whom were bachelors. Thereafter, in August 2009, the accused no. 1 had gone to USA without taking the complainant along, from 14.09.2009 to 30.09.2009. Upon his return, the complainant had noticed that he had become secretive and used to spent most of his time on phone at odd hours and would leave the room to attend phone calls. Thereafter, he had started spending most of his time away from



home and when he was in home, he used to remain busy on phone or computer and would neglect the complainant. Between March-June, 2010, he had started visiting lawyers for dissolution of his marriage. The complainant had also come to know that he had been maintaining a personal HDFC bank account without telling her. She had also come to know that accused no. 1 had hidden the identity of accused no. 4 Abheepsa Gupta, and had disclosed her as his cousin Saumya Bhushan (the complainant/petitioner had also filed, alongwith the complaint, the telephone bills of accused no. 1 to prove numerous phone calls of long duration between him and Abheepsa Gupta). On 18.10.2011, the accused no. 1 had gone to celebrate his birthday to Bombay, leaving behind the complainant whose birthday was on 19.10.2011. Thereafter, on numerous occasions, the accused no. 1 had gone for a vacation, without the complainant. On 04.02.2012, when the accused no. 1 had met with an accident, the complainant had been on his side and had looked after him. However, the very next day, he had again invited his friends to watch Super Bowl. It is stated that she had later come to know in 2013, when the accused had moved out of their matrimonial home, that the FIR and insurance claim papers showed that besides him, there was another girl in the car when the accident had taken place. She had also come to know that he had given the name of the complainant/petitioner herein as the name of girl who was in the car at the time of accident whereas she was at home all this while. She had later come to know that accused no. 1 was in a relationship with Ms. Abheepsa Gupta i.e. accused no. 4. On 09.01.2013, the accused no. 2 and 3 had visited



matrimonial home at Safdarjung Enclave and had helped the accused no. 1 to pack all the suitcases, after which he had left the matrimonial home and had abandoned her. Eventually, she had come to know that the accused no. 1 was in relationship with accused no. 4 and he had moved into the house of accused no. 4 at Chittranjan Park, Delhi and thereafter he had gone to Jaipur, Rajasthan for vacation with accused no. 4 and had stayed at Le Meridien Hotel. In June 2013, they had moved in a new apartment at Sarvodya Enclave. Accused no. 4 had also bought furniture and electronics from UAE, in August 2013, for their apartment of Sarvodya Enclave (the petitioner had also filed various pictures of their vacation and hotel bills where they stayed, alongwith the complaint).It is stated that in July 2014, the accused no. 1 and 4 had relocated to Mumbai and had started residing in a property near Bandra. He had also maintained Delhi residence with accused no. 4 at her house in CR Park. It is further stated that accused no. 1 had proposed marriage to accused no. 4 in Paris for which he had especially travelled to Paris in July, 2015. Thereafter, the accused no. 1 and 4 had got married in presence of local pundits and their family and friends including the rest of the respondents/accused persons, and they had gone for their honeymoon to Sri Lanka (the complainant had also filed on record, the pictures of alleged wedding of accused no. 1 and 4). In February 2016, the accused no. 1 had celebrated the news of pregnancy of accused no. 4 by gifting Amazon gift card to her for her baby shopping, and details of gift card were filed by the complainant alongwith the complaint. In June, 2016, the complainant found out that the address of accused no. 4 is the same



as that of accused no. 1, as reflected from their income affidavit and bank statements. In June, 2016, the accused no. 1 and 4 had moved to a bigger apartment in Bandra. It is stated that the neighbours and the security guards acknowledge them as a married couple and the same may be proved by a video recording of a security guard confirming that the respondent no. 1 and respondent no. 4 are a married couple. The daughter of accused no. 1 and 4 was born on 05.09.2016. The birth certificate of their daughter clearly names accused no. 1 as the father. It is further stated that in December 2016, accused no. 4 had posted a query on a Facebook group 'Mommy Network' and had posted the name of accused no. 1 as her husband. Thus, the present complaint was filed under Section 200 of Cr.P.C. and it was alleged that accused no. 1 was guilty of offence by bigamy, and accused nos. 2, 3 and 4 were guilty of abatement of offence of bigamy.

6. The statement of complainant CW-1 was recorded before the learned Magistrate on 30.08.2017, after which the learned Magistrate had proceeded to issue summons in the case. The order dated 30.08.2017 passed by learned Magistrate, *vide* which the accused persons/respondents were summoned in the present complaint case, reads as under:

“...Briefly stated the case of the complainant is that she had married the prospective accused no. 1 Kunal Bajaj on 30.11.2001 according to Hindu rites and ceremonies. During the subsistence of her marriage, prospective accused no. 1 got married to prospective accused no. 4 Abheepsa Gupta in the month of October 2015 and from their relationship a child namely Ananta Bajaj was also born on 05.09.2016. It is further the case of the complainant that prospective accused no. 2 and 3





namely Gargi Bajaj and \_\_\_\_\_, who are the parents of prospective accused no. 1 had also willfully abetted the said 2nd marriage of prospective accused no. 1.

From the allegations, there is sufficient material on record to proceed against accused no. 1 for the offences U/s 494 IPC and against accused no. 2, 3 and 4 for the offences U/s 109 r/w 494 IPC.

Issue summons to all the accused persons on filing of PF for 05.12.2017...”

7. The accused persons i.e. the respondents herein had preferred revision petitions i.e. CR. No. 313/2018 and 437/2018, challenging the summoning order dated 30.08.2017, and the learned Sessions Court was pleased to set aside the summoning order, *vide* impugned order dated 21.01.2019. The relevant portion of the impugned order reads as under:

“...14. For the offence of section 494 IPC, proof of solemnization of second marriage in accordance with essential religious rites for the offence of section 494 IPC, proof of solemnization of second marriage in accordance with essential religious essential religious rites applicable to parties is sine qua non. Said requirement is absolutely essential and must for conviction for the offence of bigamy. Ever the purpose of summoning, there has to be some evidence though feeble or infirm, regarding second marriage having been performed by rituals i.e. some evidence to the performance of essential ceremonies governing the parties in the form of photographs, videography or the examination of any eye witness has to be there for proceeding against a person for the offence of bigamy under section 494 IPC. The evidence in the form of photographs or some documents showing the parties to



be in relationship akin to marriage is not sufficient even to proceed against the accused u/s 200 Cr.PC.

15. It is a settled principle of law that to attract the penal provision of law u/s 494 IPC, it must be shown that the subsequent marriage was solemnized upon due performance of essential ceremonies upon which only, a marriage becomes a valid marriage. In this regard a distinction has to be drawn between the first marriage, the subsistence of which gives the complainant a right to file a complaint u/s 494 IPC, and a second marriage, which can be said to be bigamous for the purpose of section 494 IPC. In the case of first marriage, it has to be proved that the marriage was legally valid i.e. (1) there were no legal impediment to the contracting of such marriage; and (2) that the marriage was performed according to the minimum ceremonies necessary for its validity.

16. In case of first marriage, if the marriage is not found to be valid according to either of aforementioned two tests, no offence of bigamy will be made out. But in case of second marriage, it is not necessary that the marriage should be otherwise valid according to law apart-', from the fact that the spouse is living. For example, the fact that the parties to the second marriage are within prohibited degree, will not prevent the marriage being bigamous. However, it is necessary that the ceremonies, essential to a marriage, are duly performed. Thus, while the absence of legal impediments is required for determining the validity of the first marriage, the impediment are not to be considered for treating the second marriage as bigamous. Merely going through certain ceremonies, with the intention that parties be taken to be married, will not make the ceremonies prescribed by law or approved by any established custom. Hence, mere living in live-in relationship with a person will not be sufficient to attract Section 494 IPC unless there is some satisfactory evidence of the performance of ceremonies of a valid marriage.

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18. However, in the instant case, there is no iota of oral or documentary evidence led by the complainant regarding performance of ceremonies like Saptapadi around the sacred fire, which is essential and mandatory as per the requirement of Section 7 of Hindu Marriage Act for performance of a Hindu marriage. In view thereof, I am of the considered view that material on record before the Trial Court was not at all sufficient to summon the revisionists for the offence of bigamy or abetment for bigamy. In the opinion of this Court, the impugned order suffers from grave illegality and infirmity and is not legally sustainable. Accordingly, both the revisions stand allowed and the impugned order dated 30.08.2017 is set aside. The complaint is accordingly, dismissed under Section 203 Cr.P.C...”

### **ARGUMENTS ADDRESSED BEFORE THIS COURT**

8. **Learned counsel for the petitioner**, who assails the correctness of the impugned order, argues that the learned Sessions Court erred in holding, without even trial, that there was no oral or documentary evidence led by the complainant regarding performing of ceremonies like *Saptapadi* around the sacred fire, by ignoring the testimony of the complainant and documentary evidence which clearly shows that second marriage has been duly performed according to Hindu rites and ceremonies. It is submitted that the photograph of the second marriage and birth of a child from the second marriage is a pivotal piece of evidence ignored by the learned Sessions Court. It is further argued that learned Sessions Court has ignored the fact that the learned Magistrate had to only *prima facie* form an opinion, on the material brought on record during inquiry, to summon the accused person. It is also stated that at the stage of



inquiry under Section 200 of Cr.P.C, pre-summoning evidence has to be examined to ascertain the truthfulness of allegation made in the complaint and the Court is not supposed to look into the question of sufficiency of evidence for the purpose of conviction of accused. Learned counsel further relies upon the cross-examination dated 13.09.2023 of respondent Kunal Bajaj, conducted in HMA No. 343/2013 i.e. in the divorce proceedings, and submits that the respondent Kunal Bajaj had accepted in his cross-examination that respondent “Abheepsa Gupta is the mother of his daughter”. It is argued that whether essential ceremonies of the marriage were gone into or not by the accused is a matter of trial and thus, the learned Magistrate had rightly summoned the respondents and therefore, the impugned order be set aside.

9. **Learned counsel for the respondents**, who seeks to sustain the order passed by the learned Sessions Court, argues that the complainant in her complaint only makes a bald and vague assertion that the respondent Kunal Bajaj had “*got engaged and married by a local pundit in front of close family and friends*” without disclosing any details of the manner in which the alleged offence was committed or providing any evidence to support the same. It is argued that even assuming that the learned Magistrate at such stage is to only carry out a preliminary enquiry, the complaint lacks even the basic averment that the offence under Section 494 of IPC, along with its ingredients, has been committed. It is further argued that petitioner relies upon alleged ‘admissions’ of the respondent Kunal Bajaj to support the assertion that he has a child with another woman,



however, birth of a child in itself is no proof of the offence of bigamy. It is also contended that it is a settled principle of law that an essential ingredient of the offence of bigamy is the solemnization of the second marriage in accordance with essential religious rites applicable to parties; and mere admissions of the accused would not be sufficient for this purpose. Learned counsel also submits that summoning of an accused in a criminal matter is a serious offence and for summoning of an accused in a case filed otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute the essential ingredients of the offence and whether there are sufficient grounds for proceeding against the accused. Therefore, it is prayed that present petitions be dismissed since there is no infirmity in the impugned order inasmuch as it dismisses the complaint on the ground that the essential ingredients of the offence are wholly absent in the complaint and the statement of the complainant.

### **ANALYSIS AND FINDINGS**

10. This Court takes note of the fact that the core issue, raised in these petitions, is as to whether the petitioner could sufficiently establish that a valid marriage had taken place between the accused no. 1 and 4 i.e. marriage by performing necessary rites and ceremonies, for the purpose of summoning the accused persons for committing offence under Section 494 read with Section 109 of IPC.



*i. Section 494 of IPC: The Law and the Essentials*

11. Section 494 of IPC, which defines the offence of ‘bigamy’ reads as under:

“494. Marrying again during life-time of husband or wife.

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

12. The essential ingredients of Section 494 of IPC, as enlisted by the Hon’ble Apex Court in case of *Gopal Lal v. State of Rajasthan* (1979) 2 SCC 170, are as under:

“3. The essential ingredients of this offence are:

- (1) that the accused spouse must have contracted the first marriage
- (2) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and
- (3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed.”



*ii. Stage to Prove Performance of Essential Ceremonies while Solemnizing Second Marriage*

13. There is no dispute on the proposition that performance of essential rites and ceremonies such as *saptapadi* in case of a Hindu marriage, is *sine qua non* for establishing the guilt of bigamy under Section 494 of IPC, as has been argued by learned counsel for respondent while relying on several judgments of the Hon'ble Apex Court.

14. However, this Court cannot loose sight of the fact that the present case is at the stage of summoning of accused, and not at the final stage after trial when the Court has to ultimately consider as to whether the complainant has been able to prove her case beyond reasonable doubt which would include proof of performance of essential ceremonies while solemnizing the second marriage.

15. At the stage of summoning of an accused, it is crucial to refrain from prematurely adjudging the entire case with a sense of finality. Adjudicating and appreciating all the facts and circumstances, in their finality, at the summoning stage would be a deviation from the procedural intent of Cr.P.C. under Sections 200-204, as it could prematurely pre-determine the outcome of a case, without a comprehensive and conclusive examination of facts during the course of trial where both parties have the opportunity to present their arguments and evidence in a more detailed and structured manner.

16. By nature, the summoning stage involves a cursory examination of the facts and the evidence presented by the



complainant, and the Court is required, at this juncture, to determine whether there exists a plausible case that warrants further examination and a trial. This assessment is primarily based on the face value of the evidence, without delving into a comprehensive analysis of it. It is crucial to acknowledge that the summoning stage is not intended for a comprehensive and conclusive assessment of all facts and legal intricacies related to the case.

17. In summary, the stage of summoning serves as a threshold inquiry, and the Court's role at this stage is to determine whether there is enough *prima facie* evidence to summon the accused to appear before the Court and face the proceedings, and a more comprehensive evaluation of facts is to be done only during the subsequent phases of proceedings i.e. during the course of trial.

18. While observing so, this Court remains guided by the observations of Hon'ble Apex Court in case of *K. Neelaveni v. State (2010) 11 SCC 607* wherein it has held that in case of an offence under Section 494 of IPC, it is a matter of trial as to whether the essential ceremonies of the marriage were performed or not. The relevant portion of the decision reads as under:

“14. It has to be borne in mind that while considering the application for quashing of the charge-sheet, the allegations made in the first information report and the materials collected during the course of the investigation are required to be considered. Truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. **Essential ceremonies of marriage were gone into or not is a matter of trial.**”

15. From what we have said above, we are of the opinion that the High Court erred in holding that the





charge-sheet does not reveal the ingredients constituting the offences under Sections 494 and 406 of the Penal Code.”

(Emphasis supplied)

19. Also having regard to the position of law that burden of proof rests upon the complainant to prove existence and solemnization of such bigamous marriage, this Court having gone through the case file, notes that if it is clear from the record that the accused no. 1 and 4 intended to celebrate and enter into a matrimonial alliance in their minds and celebrated a form of marriage, and afterwards, they cohabited as husband and wife and from their union, a female child was born, and the birth certificate of their biological daughter mentions the name of accused as her father, which will be a strong foundation for the complainant wife to invite and maintain action against the accused husband, and should be afforded opportunity to prove on record that the second marriage was solemnized between her husband i.e. accused no. 1 and accused no. 4 and their act fell within the purview of offence of bigamy.

***iii. Material on Record in the Present Case***

20. The details indicated in the petitioner's complaint have already been noted in the preceding paragraphs. This Court also observes that in her testimony, CW-1, the petitioner in this case, stated as follows:

“I am the complainant and wife of accused no. 1 Sh Kunal Bajaj. We got married on 30.11.2001 according to Hindu Rites and ceremonies at Hyatt Regency, Bhikaji Cama Place, New Delhi. During the subsistence



of my marriage with accused no 1, the accused no 1 my husband got married to another woman namely Abheepsa Gupta accused no 4 in October 2015. The accused no 1 has a daughter from this relationship namely 'X' Bajaj born on 05.09.2016. The accused no 2 & 3 my parents in law despite knowing that accused no1 already married to me have supported and connived together with accused no 1 for remarrying again with accused no 4. The accused no 1 committed the Act of bigamy U/S 494 IPC and accused no 2 & 3 who are my parents in law have supported and abetted in the said Act / Crime. The accused no 4 is also guilty of the crime while she was aware that accused no 1 is already married to me, she (accused no 4) married to accused no 1. The accused no 1,2 and 3 have also inflicted mental and physical cruelty upon me.

I rely upon Ex. CW1/1 to Ex CW1/18 and Ex CW1/19 is my complaint which bear my signature at point A.”

21. In the present case, the petitioner who is also the legally wedded wife of accused no. 1, has testified before the learned Trial Court that the accused no. 1 was married to accused no. 4 in a ceremony performed by a local priest, in presence of his friends and family members. The petitioner had also filed on record, alongwith the complaint, a photograph as Annexure C-13 which as per her was of the marriage ceremony of the accused no. 1 and 4.

22. This Court has also gone through the cross-examination dated 13.09.2023 of respondent Kunal Bajaj, conducted in HMA No. 343/2013 i.e. in the divorce proceedings, which has been filed on record by the petitioner. At the outset, though this Court notes that the impugned order was passed in the year 2019 and the aforesaid cross-examination relates to the year 2023, however, the



respondent/accused no. 1 Kunal Bajaj himself does not deny the factum of his relationship with accused no. 4 Abheepsa Gupta, and of her being the mother of his daughter, and he having mentioned his name as her father in her birth certificate. The birth certificate of the daughter of the accused no. 1 was also filed by the petitioner as annexure C-17 alongwith the complaint before the learned Magistrate.

23. In this Court's opinion, accused no. 1 who has fathered a child and admits being biological father of the daughter born from the union between him and accused no. 4 and has further categorically admitted in the cross-examination dated 13.09.2023 that accused no. 4 is the mother of his biological daughter, thus accepts his relationship with the mother of the child also. **Though, accused no.1 has taken a plea that he is in a mere live-in-relationship with the accused no. 4, the issue as to whether he is living in a live-in relationship without any ceremony of marriage or intention of projecting to the world that he and accused no. 4 are husband and wife and are raising a daughter born from their union can necessarily be decided only during trial.**

24. This Court has also gone through the contents of the complaint which was filed by the petitioner before the learned Magistrate in which it was alleged that the petitioner had come to know that accused no. 1 and 4 had shifted to an apartment in Bandra, Mumbai in June, 2016 and **their neighbours as well as the security guards in the society used to acknowledge them as a married couple. Along with the complaint, the petitioner had also annexed a video**



**recording of a security guard confirming that accused no. 1 and 4 were a married couple.** Therefore, it does emerge from the averments made in the complaint that accused no. 1 and 4 were in fact projecting themselves as husband and wife to the world at large and they were being identified as a married couple by their neighbours or other persons present/living/working in the society in which they were residing together.

25. **Another averment made in the complaint relates to query/comments posted by accused no. 4 on a Facebook group called as Mommy Network wherein she has acknowledged accused no. 1 as her husband by commenting “give reference of my hubby, Kunal Bajaj”. In support of the same, the complainant had filed Annexure C-18 i.e. the screenshot of comments on Facebook.** Thus, the same reflects that accused no. 4 was representing herself and accused no. 1 as a married couple even on social media platforms.

26. In these facts and circumstances, the determination of whether *saptapadi* was performed or not, while performing the second marriage, is a matter that requires thorough examination during the course of trial. Further, whether any other acceptable form of marriage between the accused no.1 and 4 as per their customs etc. was performed or not cannot be decided without leading evidence and trial. **The complexity of issues such as the validity of marriage and performance of rituals should be reserved for comprehensive scrutiny during the trial proceedings, where evidence can be presented, cross-examined, and evaluated in a more elaborate**



**manner.** Restricting the opportunity to prove one's case during the course of trial, by not summoning the accused when a prima facie case is made out in face of evidence produced before the Court, would be contrary to the principles of justice that underpin our legal system.

*iv. Victim Cannot Be Left Remediless In Case His/Her Legally Wedded Wife/Husband Marry During Their Lifetime And They Are Not In Possession Of Proof Of Saptapadi Especially In Absence Of Offence Of Adultery*

27. This Court, while deciding the present case, also remains conscious of the fact that the current legal landscape in our country does not recognize adultery as an offence. The Hon'ble Apex Court in case of *Joseph Shine v. Union of India* (2019) 3 SCC 39 had struck down Section 497 of IPC which made adultery an offence and provided for its punishment. It is also relevant to note that the new criminal laws have recently been enacted and given assent by the Hon'ble President of India, and the Bharatiya Nyaya Sanhita, 2023, which replaces the Indian Penal Code, 1860, also does not make adultery an offence.

28. It will be a peculiar situation now when a wife, whose husband is living with another woman as her husband and from whose union a child has also been born, can neither initiate a prosecution for offence of adultery, nor is she being allowed to initiate prosecution for offence of bigamy, despite producing evidence to show that some



kind of marriage ceremony had taken place and that a child had been born from the relationship of her husband and another woman i.e. his second wife and the birth certificate of child mentions his name as her father, only because she could not prove at the very initial stage that such second marriage was solemnized after performing *saptapadi*.

**29. In essence, the absence of law making adultery an offence cannot provide individuals with a blanket immunity, in a sense that they can marry other persons in secrecy during subsistence of their first marriage, and then argue that the first partner must prove that such second marriage was solemnized after performing essential rites and ceremonies, even for summoning such an accused for the offence of bigamy, and since adultery no longer remains an offence, such a partner would remain immune from any legal consequences.**

**30. Thus, in such a situation, the Courts cannot afford to leave individuals without a legal remedy, especially those wives or husbands, whose partners have entered into another marriage.**

31. The fundamental and formal requirements of marriage under the Hindu Marriage Act, 1955 essentially require fulfillment of the conditions under the relevant sections of the Act.

32. In the present case, a photograph was filed on record, which as per the petitioner, was of performance of ceremony of marriage. The same could not have been disregarded at the stage of summoning when the other persons and the priest could have been summoned during trial to prove the marriage between accused no.1 and 4.



33. **Since a second marriage during subsistence of first legally valid marriage will generally be a clandestine marriage performed by a priest, the nature of such clandestine act is capable of producing difficulties in proving whether persons were married by following all the rituals or they were married by any other form of legally accepted marriage.**

34. **Whether such a marriage in absence of first valid marriage would have been irregular marriage also should be taken note of by the Courts. In view of principle of monogamy in our country's law, the issue becomes crucial in cases of a second marital union.**

*v. Offence of Bigamy: Breaching the Bonds of Matrimony*

35. **The offence of bigamy, in this Court's opinion, is an offence against conjugal right of the victim concerned. The offence of bigamy has been subjected to criminal penalties since these offences have been considered to be against the fundamental institutions of society i.e. family and institution of marriage. Section 494 of the IPC reflects a legislative intent grounded in the protection of the institution of marriage within the dynamic framework of contemporary society.**

36. **Though many persons may not agree that threat to the institution of marriage can be foundation to justify criminal sanction against a person who does not respect or abide by its norms, this Court, however, notes that the offence of bigamy by its special nature gives rise to special problems for the victim concerned. Bigamy i.e. getting married to another person while**



being legally married to one is a serious prohibited behaviour. While people in today's era may or may not agree to the relevance of institution of marriage, but once legally married, the duty and the obligation by virtue of solemnization of marriage gives both the parties a new social and legal status. The solemnity of institution of marriage has been respected by law as is evident by Section 494 of IPC.

37. In acknowledging the evolving perspectives on relationships in contemporary society, it is undeniable that a significant number of individuals no longer prioritize or hold in high regard the institution of marriage. The preference for live-in relationships, which is legally permissible in our country, is reflective of these changing societal norms.

38. While recognizing and respecting the legal standing of live-in relationships and the individuals who opt for this lifestyle, it is crucial to strike a balance that ensures legal protection for those who have committed to the sanctity and values of marriage. In this context, the critical consideration lies in safeguarding the rights and well-being of spouses who have embraced the solemnity and significance of the marital bond. Although legal provisions exist to protect individuals in live-in relationships, such safeguards must not come at the expense of the legal rights and protection afforded to spouses who are lawfully married.

39. The criminal law framework has to extend adequate protection to these spouses who have willingly entered into the sacred commitment of marriage, ensuring that their legal rights





are upheld and preserved even as societal norms undergo transformations.

*vi. Bigamy's Echo: Assessing its Social Repercussions*

40. The law cannot be powerless to stop, punish or limit clandestine marriages and unions when the first wife or husband are alive and the valid marriage subsists, as now a spouse performing a second clandestine marriage would not also be liable to punishment for adultery as it is no more an offence.

41. Such an approach will give rise to disquieting proportions; the doctrine of incompleteness in the manner of solemnization, and the accused taking shelter under the same, should be considered as a defiance of law. The harmful social consequences, if such acts are left unpunished, will involve social undesirability and instability, making intervention by the law necessary.

42. The doctrine of incompleteness, when invoked by the accused to evade legal consequences, represents a challenge to the very essence of established legal principles. **This is not just a matter of procedural irregularity but a deliberate attempt to exploit legal technicalities.** Neglecting to penalize such acts can have far-reaching and adverse social consequences.

43. **While moral justifications of such acts cannot be a ground in all cases to invite action by criminal law,** the science of criminal law or criminal law procedure on this type of conduct connected with



**one valid marriage and one clandestine marriage** can have serious repercussions on the society.

44. **This Court understands that penalizing threats to marriage is difficult for a Court of law since the concept of public morality is in a constant state of fluctuation. Moral standards in marital and sexual unions have changed.** It is the function of the Court to assess, in light of the circumstances of a case, whether or not there was solemnization of marriage, as the solemnization of marriage itself is a subject matter of offence of bigamy. **The potential invalidity of the second marriage, on account of skipping of a ceremony, will not alter the fact that there was a double marriage.** It is not desirable for the larger good of the society that criminal law should part company with matrimonial law on this aspect.

45. **As societies evolve, the legal landscape surrounding matrimonial laws has undergone changes reflected in various court judgments. While these legal developments have addressed certain loopholes in the law, they may, however, inadvertently permit the prohibited conduct of bigamy.** It is noteworthy that contemporary judgments have not necessarily approached live-in relationships with the same perspective as they might have done many years ago.

46. **The gravity of the offense of bigamy, which mandates the solemnization of a previous valid marriage and the conduct of a spouse to get married to another person during the lifetime and**



existence of the first valid marriage, is both dangerous for society and for the victim spouse.

*vii. Preserving The Principle Of Monogamy Under Hindu Law*

47. At times, all the case laws and the existing law may not deal with a particular situation of a given case in hand. **Monogamy, considered a fundamental value and way of life under Hindu Law, governs citizens adhering to this legal system. The Hindu Marriage Act explicitly rejects the concept of polygamy, reinforcing the principles of monogamous unions. While advocating for the abolition of the crime of adultery, it is crucial to avoid misconstruing this stance as an endorsement of practices that involve abandoning a legally wedded spouse, contracting a new marriage, and seeking refuge in the absence of adultery as a criminal offense. The intent is not to condone such actions but to navigate the legal landscape with a nuanced perspective. The Hindu Law and the Courts dealing with the same have long preserved the principle of monogamy.**

48. **Preserving the sanctity of monogamy does not negate the possibility of evolving legal interpretations or adapting to changing societal norms. However, any reform must be approached cautiously to ensure that it aligns with the foundational principles of Hindu Law and does not inadvertently compromise the essence of monogamous unions. Thus, while contemplating changes to legal frameworks, it becomes**



**imperative to strike a delicate balance between upholding traditional values and responding to the evolving dynamics of contemporary society.**

*viii. Burden of Proof in Bigamy*

49. The aspect of burden of proof is of great importance in the practical administration of criminal justice system. The central issue in such cases is leading evidence that the accused, while being lawfully married, had performed the ceremony of marriage with another person.

50. While burden of proof refers to evidentiary burden of adducing evidence at a particular stage of trial and obligation of establishing guilt or innocence of an accused on the basis of entire evidence having been presented, **it will be contrary to the general spirit of Indian law at the stage of summoning itself in a case of bigamy filed by a wife, to prove beyond reasonable doubt that all ceremonies required for solemnization of a marriage were performed by the accused while marrying to the second partner, and will amount to over-technical approach and against the judicial precedents.**

51. At the stage of summoning, it is proof of existence of a state of things, as in the present case - the second marriage between accused no. 1 and 4, and a *prima-facie* presumption has to be drawn by the Trial Court and the accused would have right to displace this



presumption by producing evidence or cross-examination of the complainant.

**52. At this stage, to burden the complainant, who is the victim wife, would amount to encumbering her unfairly with duty of proving second marriage of her husband which was allegedly a clandestine marriage of which she had been able to procure one photograph with great difficulty.**

*viii. Need to Balance Technicalities of Law with Practicalities of Life*

**53. In this Court's view, the law has to live in reality, and a law and its application sans practicality and being alive to realities of life cannot be a good law.** If parties i.e. the accused no. 1 and 4 got married to each other, though not being capable of marrying to each other, and continue to live as husband and wife to the disadvantage of the wife who is lawfully married, and in face of such evidence on record including the birth certificate of their daughter, to let go and permit the husband to escape his liability towards the first wife, on the sole ground that at the very initial stage the first wife could not give sufficient proof of solemnization of second marriage in accordance with essential rites and ceremonies, it will be a travesty of justice since the husband can easily dodge the law by stating, when caught, that he is not lawfully married to another woman though he continues to live with her, begets the child who is nurtured by them



as parents and whose birth certificate mentions the name of the father as accused husband.

**54. Therefore, to insist that all the ceremonies of marriage, as performed for the purpose of a valid marriage, must be proved for the purpose of even summoning the accused for offence of bigamy will put the first wife into a situation where though she knows that her husband is living with another woman after performing some kind of marriage ceremony, and are living and projecting themselves as husband and wife, but still she can take no action against him since one of the ceremonies of marriage could not be proved by her. In any case, it cannot be expected that the husband of a wife will get married for the second time, during the subsistence of earlier marriage, after informing her first wife or in her presence so that she can collect evidence of his second marriage and the ceremonies performed therein.**

55. It will be a cumbersome burden on a woman to be asked to first prove every ceremony of the second marriage of the husband, even before issuing summons.

56. Learned Sessions Court, at the stage of summoning, also could not have disregarded the fact that in the peculiar facts and circumstances of the case, the police assistance was not available to the petitioner, as for reasons best known to her an application under Section 156(3) of Cr.P.C. was not filed so that the police could have assisted in collecting evidence regarding the second marriage which could have proved its validity or its factum.



57. Thus, this Court takes cognizance of the fact that the inability of one partner to prove performance of *saptapadi* by the other partner while marrying for the second time during subsistence of first marriage, at the stage of summoning itself, especially when the other partner may have solemnized such marriage with the third person in secrecy, should not be exploited as a clever tactic to circumvent the legal consequences of committing offence of bigamy. While legal proceedings do involve strategic elements, such smart maneuvers should not be allowed to compromise the principles of fairness and justice.

58. As held by the Hon'ble Apex Court, in cases involving allegations of bigamy, the Courts have to delve into the substantive issues, such as whether essential ceremonies were performed or not while marrying for the second time, only during the course of trial. **The mere inability of one partner, either a wife or a husband, to prove performance of *saptapadi qua* the second marriage at the summoning stage should not be misused as a loophole to evade legal consequences.**

59. Legal proceedings must remain guided by the pursuit of justice and the goal to protect legal rights of all citizens. Therefore, the Courts must remain vigilant against any attempts to exploit procedural nuances for tactical advantages that may compromise the fairness and integrity of the legal process.



**THE DECISION**

60. Thus, in view of the foregoing discussion and the reasons recorded in the preceding paragraphs, this Court is inclined to set aside the impugned order dated 21.01.2019 passed by learned Additional Sessions Judge-03, South, Saket Courts, Delhi in CR No. 313/2018 and 437/2018. In view thereof, the summoning order dated 30.08.2017 passed by learned Metropolitan Magistrate-04, South, Saket Courts, Delhi in CC No.37/1 is upheld.

61. Accordingly, the present petitions alongwith pending applications are disposed of in above terms.

62. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

63. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**JANUARY 3, 2024/zp**