

**Aniruddha Khanwalkar**

**v.**

**Sharmila Das & Others**

(Criminal Appeal No. 2272 of 2024)

26 April 2024

**[C.T. Ravikumar and Rajesh Bindal,\* JJ]**

### **Issue for Consideration**

Whether it is sufficient to make out prima facie case on the basis of allegations for summoning of the accused.

### **Headnotes**

- A. Magistrate vide order dated 12.03.2019 directed issuance of process against the respondents after recording preliminary evidence and being satisfied that a prima facie case was made out – Sessions Court partly allowed the revision against the order of magistrate setting aside the order to the extent of taking cognizance of the offence punishable under section 420 of IPC against the respondent no.1 and for the offence punishable under section 420 read with section 120-B of IPC against the respondent nos.2 and 3 – Appellant challenged the order of Sessions Court before High Court – High Court upheld the same – Appellant filed the appeal against the order dated 25.04.2023 passed by the High Court upholding the order of the Sessions Court – Appeal allowed. [Paras 2, 4, 5, 6, and 16]**
- B. Prima facie case is to be made out on the basis of allegations and pre-summoning evidence for summoning of an accused.**

**Held:** The Sessions Court held that no offence punishable under Section 420 read with Section 120-B, IPC was made out as the factum of earlier marriage of the respondent no.1 was clearly disclosed to the appellant. The Sessions Judge failed to appreciate the fact that certain events had taken place thereafter, namely, apprising the appellant about the decree of divorce having been passed and showing the forged copy thereof to him on mobile. The Learned Sessions Court

## Digital Supreme Court Reports

has considered the revision against the summoning order as if after trial the findings of conviction or acquittal was to be recorded. It was a preliminary stage of summoning. For summoning of an accused, prima facie case is to be made out on the basis of allegations in the complaint and the pre-summoning evidence led by the complainant. [Para 12.1]

### List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860, Hindu Marriage Act, 1955.

### List of Keywords

Issuance of process, Prima facie, Pre-summoning evidence, Summoning order.

### Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2272 of 2024

From the Judgment and Order dated 25.04.2023 of the High Court of M.P at Gwalior in MCRC No. 11184 of 2021

### Appearances for Parties

Gopal Shankarnarayanan, Sr. Adv., Ms. Astha Sharma, Nipun Saxena, Ms. Anju Thomas, Ms. Mantika Haryani, Ms. Aditi Gupta, Ms. Ripul Swati Kumari, Archit Adlakha, Ms. Soumya Saxena, Aditya Raj Pandey, Advs. for the Appellant.

Mukesh Kumar, Yashaswi S.K. Chocksey, Ankit Singh, Sushant Sagar, Advs. for the Respondents.

### Judgment / Order of the Supreme Court

#### Judgment

**Rajesh Bindal, J.**

Leave granted.

2. The complainant is before this Court challenging the order dated 25.04.2023<sup>1</sup> passed by the High Court of Madhya Pradesh at Gwalior

<sup>1</sup> Passed in Misc. Criminal Case No.11184 of 2021

**Aniruddha Khanwalkar v. Sharmila Das & Others**

*vide* which the order dated 11.01.2021 passed by the 4<sup>th</sup> Additional Sessions Judge, Shivpuri<sup>2</sup> quashing the summoning order dated 12.03.2019<sup>3</sup> passed by the Trial Court was set aside as far as Section 420, IPC is concerned against the respondent no.1/Sharmila Das and Section 420 read with Section 120-B, IPC against the respondent no.2/Usharani Das and respondent no.3/Sangita.

3. Briefly the facts as available on record are that the marriage of the appellant was solemnized with the respondent no.1 on 28.04.2018 in the presence of the respondent nos. 2 and 3. Having come to know that on the date, the respondent no.1 had solemnized marriage with the appellant, she was already married and had not obtained divorce from her first husband, the appellant filed a petition<sup>4</sup> under Section 11 of the 1955 Act<sup>5</sup> before Principal Judge, Family Court, Shivpuri (M.P.) seeking annulment of marriage between the appellant and the respondent no.1.
4. Subsequently, the appellant preferred a complaint<sup>6</sup> against the respondent nos.1, 2, and 3 in which the Magistrate *vide* order dated 12.03.2019, after recording preliminary evidence and being satisfied that a *prima facie* case was made out, directed issuance of process against the respondent no.1 for the offences punishable under Sections 494 and 420 read with Section 120-B, IPC, and against the respondent nos. 2 & 3 for the offence punishable under Section 420 read with Section 120-B, IPC.
5. The aforesaid order was impugned by the accused persons/ respondent nos. 1 to 3 by filing Revision Petition<sup>7</sup> before the 4<sup>th</sup> Additional Sessions Judge, Shivpuri which was partly allowed by the Sessions Court. The impugned order dated 12.03.2019 passed by the Magistrate was set aside to the extent of taking cognizance of the offence punishable under section 420 of IPC against the respondent no.1 and for the offence punishable under section 420 read with section 120-B of IPC against the respondent nos.2 and 3.

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2 In Criminal Revision No. 155 of 2019

3 Complaint Case bearing Case No. 7798 of 2019

4 Case No. RCSHM/34/2019

5 Hindu Marriage Act, 1955

6 The Court of Judicial Magistrate First Class, Shivpuri (M.P.) under Sections 495, 420, 468, 471 and 506 read with Section 34, IPC

7 Criminal Revision No. 155 of 2019

**Digital Supreme Court Reports**

6. The appellant challenged the order of Sessions Court before the High Court. The same was upheld. It is against the aforesaid two orders, the appellant is before this Court.
7. Learned counsel for the appellant submitted that both the parties namely the appellant and the respondent no.1 came in contact through a matrimonial site (name withheld) and thereafter meetings were held at Visakhapatnam on 09.03.2018 and 10.03.2018 in the presence of the respondent nos.2 and 3. The respondent no.1 was earlier married as was even disclosed by her on the matrimonial site. At the time of meeting the appellant was shown a smudged copy of the divorce order passed in favour of the respondent no.1 on mobile phone. On the document, the date could not be clearly seen as the copy of the order was not clear. It was stated that the order is pending signatures of the Judge. Thereafter, the marriage of the parties was solemnized on 28.04.2018. The respondents dishonestly misrepresented that they are not financially well, and thereby induced the appellant to part with ₹ 2 lakhs and bear the entire expenses of the marriage.
  - 7.1 On 16.06.2018, when respondent no.1 visited the doctor for a checkup, she was found to be pregnant. She wanted to undergo an abortion, but when confronted by the appellant, the reason therefore she told that she had not yet obtained divorce from her previous marriage. The document which was shown to him on mobile phone was forged. This shows that the consent for marriage was obtained dishonestly. The appellant was taken aback. When confronted, the respondent no.1 threatened him of filing false cases, which may lead to his dismissal from Government service besides tarnishing his image.
  - 7.2 As the appellant was in shock, he was left with no option but to file complaint with the police on 08.07.2018. However, no action was taken on the complaint. Thereafter, the appellant preferred criminal complaint before the Magistrate on 20.07.2018.
  - 7.3 Immediately after coming to know about the filing of the criminal complaint by the appellant, the respondent no.1 approached the Family Court, Panvel on 25.07.2018 where the Divorce Petition filed by her first husband under Sections 13(1)(i) and 13(1) (i-a) of the 1955 Act was pending for more than 6 months. The respondent no.1 filed an application seeking conversion

**Aniruddha Khanwalkar v. Sharmila Das & Others**

thereof to a divorce by mutual consent under Section 13-B of the 1955 Act. After accepting the application the divorce was granted on the same day.

- 7.4 In the complaint filed by the appellant he led both documentary and oral evidence. Based on the evidence produced by the appellant, a prima facie case was established. Consequently, the Magistrate issued process against the respondents to face trial under Sections 494, 420, read with Section 120-B, IPC.
- 7.5 Aggrieved by the same, the respondents preferred Revision Petition before the Sessions Judge. However, without there being any valid reason, the Sessions Judge set aside the summoning order with reference to respondent no.1 under Section 420 of IPC and with reference to respondent nos.1 and 2 under Section 420 read with Section 120-B of IPC; and confirmed the order of Trial Court with reference to summons issued against respondent no.1 under section 494 of IPC.
- 7.6 Challenge was made by the appellant to the aforesaid order before the High Court raising the contention that the Court without appreciating the facts of the case, which are self-speaking, dismissed the Revision Petition. The impugned order deserves to be set aside, as a prima facie case is made out showing that the appellant had been dishonestly induced by the respondent nos.1, 2 and 3 to believe that the respondent no.1 had obtained divorce by showing him a forged order of divorce from earlier marriage knowing well that it had not yet been dissolved as on the date of marriage with the appellant, and thereby dishonestly induced him to marry respondent no.1. The respondents are liable to face trial under Section 420 read with Section 120-B, IPC for the reason that all of them had conspired with each other to dishonestly induce the appellant into marrying respondent no.1 and parting away with huge amount.
8. On the other hand, learned counsel for the respondents submitted that even on the basis of the pleaded facts and the material produced by the appellant before the Magistrate, no offence under Section 420, IPC can be made out. It cannot be said to be a case of criminal conspiracy and no offence of cheating is made out against the respondents. There is no error in the orders passed by the Sessions Court or the High Court. There was no concealment or cheating at

**Digital Supreme Court Reports**

the behest of the respondents as they had clearly disclosed all the facts to the appellant from the very beginning. The appeal deserves to be dismissed.

9. Heard learned counsel for the parties and perused the relevant referred record.
10. The appellant and the respondent no.1 came in contact through a matrimonial site. The appellant was already divorced whereas the respondent no.1 had uploaded her status as “process of divorce is under consideration.” After initial conversation, the appellant along with his family members were invited to visit Visakhapatnam, where they had interaction with the respondents. At the time of the meeting the appellant was told that the respondent no.1 was earlier married at Mumbai and the divorce had already taken place. On being asked about the copy of the decree of divorce it was stated that the same is pending for signature of the Judge concerned and will be provided in due course. The respondents had shown to the appellants an unclear photocopy of the decree of divorce which was believed to be true. On 11.03.2018, the appellant gave his consent for the marriage. Date was fixed as 28.04.2018. The respondents pointed out that their financial condition was not good to come to Gwalior for the marriage along with their other relatives. As a result, the appellant booked tickets for the respondents and their relatives from Visakhapatnam to Gwalior and vice-versa, and also gave ₹ 2 lakhs cash to the respondents as expenditure for marriage.
11. On 16.06.2018, on account of some medical complication the appellant as well as the respondent no.1 rushed to the clinic of a lady doctor in Shivpuri (Madhya Pradesh), where couple resided after their marriage. The doctor disclosed that the respondent no.1 was pregnant. The joy of the appellant knew no bounds whereas the respondent no.1 was very sad. The message was even conveyed to the family members of the appellant as well as the respondent no.1. The respondent nos.2 and 3 were not happy. The appellant was surprised with the reaction. Later, when the reason was asked by the appellant from respondent no.1, he was told that she is yet to get divorce from her previous husband. It was a shock of life for the appellant. It was nothing else but cheating by showing a fake decree of divorce. It was for this reason only that the respondent no.1 wanted to get the pregnancy aborted. The appellant felt cheated.

**Aniruddha Khanwalkar v. Sharmila Das & Others**

When he told that he would take action against the respondents, he was threatened with criminal cases of various matrimonial offences, which he claimed to have been filed.

12. Written complaint was filed by the appellant to the Superintendent of Police of Shivpuri, Madhya Pradesh on 07.07.2018 and to the Station in-Charge, Physical Shivpuri on 08.07.2018. However, no action was taken. It was thereafter, that the complaint was filed in the court before the Magistrate on 20.07.2018. The Trial Court after recording the preliminary evidence summoned the respondent no.1 to face trial under Sections 494 and 420 read with Section 120-B, IPC and the respondent nos.2 and 3 to face trial under Section 420 read with Section 120-B, IPC.
  - 12.1 The aforesaid order was challenged by the respondents before the Additional Sessions Judge. The Sessions Court held that no offence punishable under Section 420 read with Section 120-B, IPC was made out as the factum of earlier marriage of the respondent no.1 was clearly disclosed to the appellant. The Sessions Judge failed to appreciate the fact that certain events had taken place thereafter, namely, apprising the appellant about the decree of divorce having been passed and showing the forged copy thereof to him on mobile. The Learned Sessions Court has considered the revision against the summoning order as if after trial the findings of conviction or acquittal was to be recorded. It was a preliminary stage of summoning. For summoning of an accused, *prima facie* case is to be made out on the basis of allegations in the complaint and the pre-summoning evidence led by the complainant.
13. In a challenge by the appellant to the aforesaid order in the quashing petition, the High Court dismissed the petition without recording any reasons.
14. Considering the material on record, in our opinion the approach of the Learned Sessions Court and the High Court in setting aside the summoning order against the accused persons i.e. respondent nos.1, 2 and 3 under Section 420 read with Section 120-B IPC is not legally sustainable.
15. For the reasons mentioned above from the facts as pleaded in complaint and the evidence led by the appellant, *prima facie* case

**Digital Supreme Court Reports**

was made out for issuing process against the respondents to face trial for the offence punishable under Section 420 read with Section 120-B, IPC, for which they were summoned.

16. The appeal is accordingly allowed. The impugned orders passed by the High Court and the Sessions Court are set-aside and that of the Magistrate is restored. It is made clear that nothing said above shall be taken as final opinion on merits of the controversy. The Trial Court shall decide the case on its own merits on the basis of the evidence led by the parties.

*Headnotes prepared by:*  
Himanshu Rai, Hony. Associate Editor  
(*Verified by:* Shadan Farasat, Adv.)

*Result of the case:*  
Appeal allowed