

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

* * *

CRIMINAL PETITION No. 7542 OF 2021

Between:

- 1.
- 2.

Petitioners/Accused Nos.1 and 2

VERSUS

1. The State of Telangana, through the Police, WPS North Zone, Represented by the Public Prosecutor, High Court Buildings, Hyderabad.
- 2.

Respondents

ORDER PRONOUNCED ON: 14.08.2026

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : Yes

N. TUKARAMJI, J

*** THE HON'BLE SRI JUSTICE N. TUKARAMJI**

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1. The State of Telangana, through the Police, WPS North Zone,
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! Counsel for the petitioners

: Mr. Khaja Vizarath Ali, learned
counsel for the petitioners.

^Counsel for respondents

: Mr. Surepalli Prashanth, learned
Assistant Public Prosecutor,
appearing for respondent No.1-
State.

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> HEAD NOTE:

? Cases referred

Sarla Mudgal, President, Kalyani & Ors. v. Union of India & Ors., (1995) 3
SCC 635;

Mohd. Arif Ahmad Jahagir Khan v. The State of Madhya Pradesh,
2026:MPHC-JBP:22473;

Khursheed Ahmad Khan v. State of U.P. & Ors., (2015) 8 SCC 439

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335,

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

CRIMINAL PETITION No. 7542 OF 2021

DATE: 14.08.2026

Between :

... Petitioners/Accused Nos.1 and 2

AND

The State of Telangana, through the Police WPS North Zone,
Represented by the Public Prosecutor, High Court for the State
of Telangana, Hyderabad, and another.

... Respondents.

ORDER

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the proceedings against the petitioners in C.C. No. 8380 of 2021, pending on the file of the learned XV Metropolitan Magistrate, Hyderabad.

2. The petitioners are arrayed as Accused Nos. 1 and 2 in the aforesaid Calendar Case and are facing prosecution for the offence punishable under Section 494 of the Indian Penal Code, 1860(for short, 'IPC').

3. Heard Mr. Khaja Vizarath Ali, learned counsel for the petitioners and Mr. Surepalli Prashanth, learned Assistant Public Prosecutor, appearing for

respondent No.1-State. No representation for respondent No.2/de facto complainant.

4.1. The prosecution case, in brief, is that the marriage between the de facto complainant and Accused No.1 was solemnized on 28.02.2009 in accordance with Muslim rites and customs. It is alleged that Accused No.1 and his mother, who is Accused No.3, subjected the de facto complainant to mental cruelty by demanding additional dowry and by blaming her for not conceiving. Consequently, she lodged a complaint, which was registered as FIR No.147 of 2015 on the file of the Women Police Station, Begumpet, for the offences punishable under Sections 498-A and 420 read with Section 34 of the IPC and Sections 4 and 6 of the Dowry Prohibition Act, 1961 (for short, 'DP Act').

4.2. It is further alleged that, during the subsistence of the said marriage, Accused No.1 contracted a second marriage with Accused No.2 on 24.05.2015. Based on the said allegation, Crime No.65 of 2021 was registered for the offence punishable under Section 494 of the IPC. Upon completion of the investigation, the Investigating Officer filed a charge sheet. Aggrieved thereby, the present criminal petition has been filed seeking quashing of the criminal proceedings against the petitioners/Accused Nos. 1 and 2.

5.1. Learned counsel for the petitioners contends that the marriage between petitioner No.1 and respondent No.2/de facto complainant had already been dissolved in accordance with Muslim Personal Law (Shariat) prior to the alleged second marriage. It is, therefore, contended that, in the absence of a subsisting and valid first marriage, the essential ingredients of Section 494 of the IPC are not attracted, and consequently, the subsequent marriage contracted by petitioner No.1 is not rendered an offence under the said provision.

5.2. According to the learned counsel, the subsequent marriage is valid under Muslim Personal Law. It is further contended that the Investigating Officer failed to consider the documentary evidence relating to the alleged dissolution of the first marriage and, despite the same, mechanically proceeded to file the charge sheet. It is also submitted that the learned Magistrate mechanically took cognizance of the alleged offence without considering the legal effect of the prior dissolution of marriage or the applicability of Muslim Personal Law to the facts of the case.

5.3. Learned counsel further submits that no offence under Section 494 of the IPC can, in any event, be maintained against petitioner No.2, who is alleged to be the second wife of petitioner No.1/Accused No.1. Thus, according to the petitioners, continuation of the criminal proceedings, notwithstanding the prior dissolution of the first marriage, would amount to an abuse of the process of law. It is also contended that the petitioners are

being subjected to undue prejudice by the continuation of the proceedings and, therefore, the criminal proceedings in the Calendar Case are liable to be quashed.

6. Learned Assistant Public Prosecutor opposed the petition and submitted that, on the basis of the police report and the allegation that petitioner No.1 contracted a second marriage during the subsistence of his first marriage, the police conducted the investigation and filed the charge sheet. It is contended that the factual aspects relating to the existence and subsistence of the first marriage, as well as the other disputed aspects of the case, are matters to be considered by the trial Court at the appropriate stage. Therefore, according to the learned Assistant Public Prosecutor, interference by this Court at the present stage would not be warranted. Accordingly, dismissal of the petition is sought.

7. I have carefully considered the rival submissions and perused the material available on record.

8. The point that arises for consideration is whether the allegations contained in the charge sheet coupled with material collected during investigation constitute the offence punishable under Section 494 IPC?

9. For better appreciation, Section 494 IPC is extracted hereunder:

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.

10. A plain reading of the above provision makes it clear that the offence of bigamy is attracted only when the statutory ingredients stipulated therein are cumulatively satisfied. The essential requirements are: (i) that the accused has a husband or wife living; (ii) that the earlier marriage is legally valid and subsisting at the time of the subsequent marriage; (iii) that the accused contracts another marriage; and (iv) that such subsequent marriage is void by reason of its having been contracted during the lifetime and subsistence of the earlier marriage. Thus, the subsistence of a legally valid first marriage, coupled with the legal invalidity of the subsequent marriage on that very ground, constitutes the foundational basis for the invocation of

Section 494 IPC. Unless these essential ingredients are established, the penal provision cannot be attracted.

11. The expression “void” occurring in Section 494 IPC is of particular significance. As explained by the Hon’ble Supreme Court in *Sarla Mudgal, President, Kalyani & Ors. v. Union of India & Ors.*, (1995) 3 SCC 635, the provision is attracted where the second marriage is rendered void because of the subsistence of the first marriage. The Supreme Court identified the necessary ingredients of Section 494 as: (1) having a husband or wife living; (2) marrying again; (3) the subsequent marriage being void; and (4) such voidness arising by reason of the subsistence of the earlier marriage.

12. In the present case, however, the material available on record, as relied upon by the prosecution itself, prima facie demonstrates that the matrimonial relationship between petitioner No.1 and respondent No.2 had already come to an end under the law applicable to the parties before the alleged second marriage was contracted. The question of whether a Muslim marriage subsisted on the date of the alleged second marriage must necessarily be determined with reference to the personal law governing the parties and the legally recognised mode by which that marriage was dissolved.

13. Section 2 of the *Muslim Personal Law (Shariat) Application Act, 1937* expressly provides that, in questions relating to marriage and dissolution of

marriage, including recognised forms of dissolution such as *talaq*, *khula* and *mubaraat*, the rule of decision, where the parties are Muslims, shall be the Muslim Personal Law (Shariat). Accordingly, where the material before the Court establishes that the first marriage had been validly dissolved in accordance with the law applicable to the parties before the alleged second marriage, the necessary foundational fact of a subsisting first marriage would be absent.

14. The consequence is significant. Once the legally effective dissolution of the first marriage is established, the parties cease, from the legally operative date of such dissolution, to stand in the relationship of husband and wife for the purposes relevant to Section 494 IPC. Therefore, if petitioner No.1 had no legally subsisting spouse on the date on which the alleged second marriage was contracted, one of the indispensable ingredients of Section 494 IPC would be absent. The prosecution cannot sustain a charge of bigamy merely by demonstrating that a prior matrimonial relationship had once existed; it must establish that such relationship continued to subsist in law at the time of the subsequent marriage.

15. There is, in addition, a separate and equally material aspect arising from the personal law governing the parties. Where the parties are admittedly governed by Muslim Personal Law, the mere subsistence of a Muslim marriage does not, by itself, render a subsequent marriage contracted by a Muslim male void on the ground of the subsistence of the

earlier marriage. The legal question under Section 494 IPC is not simply whether there was an earlier marriage, but whether the subsequent marriage was void by reason of the subsistence of that earlier marriage.

16. This distinction was recently considered directly by the Madhya Pradesh High Court in *Mohd. Arif Ahmad Jahagir Khan v. The State of Madhya Pradesh*, 2026:MPHC-JBP:22473. The Court held that Section 494 IPC applies only where the subsequent marriage is void because of the subsistence of the earlier marriage and that its applicability is subject to the personal law governing the parties. The Court noted that Muslim Personal Law recognises the permissibility of plurality of marriages for a Muslim male and consequently held that a second marriage contracted by a Muslim male during the lifetime of his first wife is not treated as void merely because the first marriage continues to subsist. On that reasoning, the essential ingredient of Section 494 IPC, that the subsequent marriage must be void by reason of the subsistence of the earlier marriage, was held to be absent.

17. The aforesaid position is also consistent with the observations of the Hon'ble Supreme Court in *Khursheed Ahmad Khan v. State of U.P. & Ors.*, (2015) 8 SCC 439. While that case arose in the context of a statutory service rule governing government servants, rather than a prosecution under Section 494 IPC, the Supreme Court recognised that Muslim Personal Law permits plurality of marriages, while at the same time holding that polygamy is not an integral or obligatory religious practice immune from statutory

regulation. The decision, therefore, supports the proposition that the permissibility of a plurality of marriages under personal law and the State's power to regulate such marriages are distinct legal questions.

18. The decision in *Sarla Mudgal* (supra) must likewise be understood in its proper factual and legal context. The Supreme Court there was concerned principally with a Hindu husband who, while his first Hindu marriage remained undissolved under the Hindu Marriage Act, converted to Islam and contracted another marriage. The Court held that such conversion did not dissolve the subsisting Hindu marriage and that the subsequent marriage was void for the purposes of Section 494 IPC. The ratio, therefore, does not justify treating every second marriage contracted by a Muslim male governed by Muslim Personal Law as an offence under Section 494 IPC; rather, the decisive inquiry remains whether the subsequent marriage is legally void by reason of the subsistence of the earlier marriage.

19. Applying the above principles to the facts of the present case, the prosecution case suffers from a fundamental legal infirmity. First, the material relied upon by the prosecution itself indicates that the marriage between petitioner No.1 and respondent No.2 had already been dissolved before the alleged second marriage was contracted. If that dissolution was legally effective under the personal law governing the parties, there was no subsisting first marriage on the relevant date and, consequently, the first foundational ingredient of Section 494 IPC was absent. Secondly, even

assuming, for the sake of argument, that the first marriage continued to subsist on the date of the alleged second marriage, the mere fact of such subsistence would not, in the case of a Muslim male governed by Muslim Personal Law, by itself establish an offence under Section 494 IPC. The prosecution would still have to demonstrate that the subsequent marriage was void because of the subsistence of the first marriage. Where the governing personal law permits a Muslim male to contract a plurality of marriages, the subsequent marriage is not rendered void merely on account of the continued existence of the earlier marriage. This essential statutory ingredient is, therefore, not satisfied on the facts alleged.

20. The Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, recognised that the High Court may exercise its inherent jurisdiction to prevent abuse of the process of law, including where the allegations, even if taken at their face value and accepted in their entirety, do not disclose the commission of an offence. The principles in *Bhajan Lal* therefore provide an appropriate basis for interference where the prosecution is legally deficient at its very foundation.

21. In view of the foregoing discussion, the continuation of the prosecution against the petitioners for the offence punishable under Section 494 IPC cannot be sustained. The prosecution is unable to establish the indispensable statutory foundation of the offence, namely, the existence of a legally subsisting first marriage at the relevant time and, in any event, the

voidness of the subsequent marriage by reason of such subsistence. Accordingly, the essential ingredients of Section 494 IPC are not satisfied on the facts of the present case. Permitting the prosecution to continue in the absence of those foundational ingredients would amount to an abuse of the process of law. Consequently, the criminal proceedings, insofar as they relate to the alleged offence under Section 494 IPC, deserve to be quashed.

22. Resultantly, the Criminal Petition is allowed and the proceedings against petitioner Nos. 1 and 2/Accused Nos. 1 and 2 in C.C. No. 8380 of 2021, pending on the file of the learned XV Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed. Pending miscellaneous applications, if any, shall stand closed.

Date: 14.08.2026

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N.TUKARAMJI, J