

CT Case No. 157/2024

RXXXXXX GXXX Vs. SXXXXXggarXXX & Ors.

PS Madhu Vihar

28.01.2026

ORDER

1. The present matter pertains to a complaint filed under section 200 of the Code of Criminal Procedure, 1973 (“CrPC”) and the complainant seeks summoning of the proposed accused persons. Vide this order, the issue of summoning of proposed accused is decided.
2. Briefly stated, the allegations of the complainant are that the marriage was solemnized between the complainant and the accused no. 1 on 22.01.2022 as per Hindu rites and ceremonies at Hotel Rishabh, Opposite Dhyanchand Stadium, Civil Lines, Jhansi, U.P. in a simple manner with limited guests from each side and no dowry articles were exchanged between the parties. Complainant and the accused no. 1 stayed together as husband and wife at the house of the parents of the complainant i.e., matrimonial home Flat No. 49, Kailash Apartments, Plot No. 45, I.P. Extension, Patparganj, Delhi- 110092. The marriage between the complainant and the accused no. 1 was duly consummated. The alleged accused no. 2 is the father of the accused no 1, alleged accused no. 3 is the brother of the accused no. 1, alleged accused no. 4 is the mother of the accused no. 1. alleged accused no. 5 is the real sister of the accused No. 1 and alleged accused no. 6 is the brother-in-law of the accused No. 1 and husband of accused no. 5.
 - 2.1. It is alleged that accused no. 2-5 hatched a criminal conspiracy with the accused no. 1 since accused no. 1 was lawfully married to her first husband namely Mr. Ankur Garg and the said marriage was never dissolved or annulled, but it is still subsisting. Accused persons

deceived the complainant about the accused no.1's first marriage stating that it was dissolved. The complainant during his courtship period has explicitly told the accused persons that his previous marriage has already been dissolved due to some temperamental differences between the complainant and his first wife. Similarly, the accused persons also stated that the divorce of the accused no. 1 has already been granted, and no legal formalities was pending in any court of law and the same was mentioned in the biodata which was given by the accused no. 2. Moreover, the accused no. 1 in her matrimonial profile on Shaadi.com had explicitly mentioned that she was divorced.

2.2. It is also alleged that on 20.06.2022 complainant heard a conversation between the accused persons that the legal formalities for dissolving her previous marriage had not been completed. The accused persons intentionally hid the fact that her divorce from previous husband had not been granted at the time of their marriage. Accused no. 1 did not file the second motion. Thus, the first marriage of the accused was never dissolved, and the said marriage has never been dissolved or annulled but is still valid and subsisting. Hence, the marriage between the accused no.1 and the complainant is void-ab-initio/ a bigamous marriage.

2.3. It has also been alleged that on 06.11.2022, accused no.1 and her family members physically assaulted the complainant. Thus, the present complainant under Section 200 CrPC alleging commission of offences under Sections 494/495/496/420/406/506/120B of the Indian Penal Code, 1872 ("IPC") has been filed by the complainant.

3. The complainant was allowed to lead pre-summoning evidence (PSE) as per the mandate of Section 200 CrPC. In PSE, complainant examined himself as CW-1 in support of his allegations. Complainant reiterated

the contents of his complaint in his testimony. Further, a neighbour of the complainant was also examined as CW-2 in PSE who deposed qua the incident pertaining to 06.11.2022. Thereafter, PSE was finally closed on 23.07.2024.

4. I have heard the arguments and perused the record. It has been submitted on behalf of the complainant that the complainant was assured that the first marriage of the accused no.1 has ended and based on her biodata and online profile, complainant was made to believe that she is a divorcee. There is clear evidence available against the accused persons that they committed the alleged offences. Therefore, the proposed accused persons be summoned for the offences committed by them.
5. It is well settled legal position that at the stage of summoning an accused for any offence, the court is duty bound to carefully analyze the material available before it in the form of testimony of complainant and his witnesses in the light of relevant provisions of law. The court cannot be a silent spectator and needs to be circumspect while summoning an accused for a criminal offence so that it does not become an instrument of oppression and needless harassment of any citizen in the hands of a private complainant. Observations made by Hon'ble Supreme Court in *Pepsi Foods Ltd. vs. Special Judicial Magistrate, (1998) 5 SCC 749 at page 760*, serve as the guidelines for this court while exercising its power to summon an accused:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary

evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

6. Recently, somewhat similar facts came up before the *Hon'ble High Court of Delhi in Pooja Sharma Bajaj v. Kunal Bajaj, 2024 SCC OnLine Del 38 (Neutral Citation 2024:DHC:21)* wherein it was observed and held as under:

“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.”

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.

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.

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.

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.

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.”

7. In the light of aforesaid guiding principles, the Court will now examine the material available on record to ascertain whether there are sufficient grounds to proceed further against the proposed accused persons or not.
8. CW-1 deposed on oath in consonance with the averments made in the

complaint. It was also stated that the alleged accused no.1 performed second marriage with the complainant even after her first marriage was still subsisting, making the complainant believe that her first marriage has ended. It is also the allegation that all the accused persons hatched a criminal conspiracy in inducing the complainant to marry the accused no.1. All the alleged accused persons were well-aware about the factum of subsistence of first marriage of accused no.1. The other accused persons instigated the accused no.1 to perform the second marriage. In support of the allegations, complainant has relied upon proof of his marriage with the accused no.1, matrimonial profile of accused no.1 and other case related documents pertaining to accused no.1 and her first husband.

9. This Court also used Section 202 CrPC which can be an imperative tool in such kind of situations and directed the SHO concerned to conduct a pin-pointed investigation (not the investigation as envisaged under Chapter XII CrPC) regarding the existence of first marriage of accused no.1. As per the report filed by the concerned IO, the alleged accused no.1 claimed that the complainant was very much aware about subsistence of her first marriage with her first husband. She also claimed that no marriage as such took place between her and the complainant. She also provided a pen-drive to the consisting audio recording of conversation amongst her, her father and the complainant.
10. This Court has carefully scrutinised the report filed by the IO and also played the audio recording. As per the audio recording, father of the accused no.1 i.e., the alleged accused no. 2 informed the complainant that they have already obtained from the Hon'ble High Court and they can go ahead. Further, they have been granted divorce, and everything has been done. Hence, *prima facie* inducement on the part of the alleged accused no.2, father of the accused no.1 is evident.

11. Thus, from the perusal of the complainant, appreciation of the testimony of CW-1 recorded in PSE, documents relied upon, and report filed in terms of Section 202 CrPC, there is merit in the allegations made by the complainant. **Thus, *prime facie*, an offence punishable under Section 496 IPC is made out and there is sufficient material on record to proceed against accused no.1 Pooja Agarwal for the offence u/s 496 IPC. Prima facie is also made out against accused no. 2 Rakesh Kumar Agarwal for the offences u/s 496/120-B IPC.**

12. **No offence is made out against the other alleged accused persons as *prima facie* there is nothing on record against them at this stage.**

Accused persons i.e., accused no.1 and 2 be summoned accordingly on filing of PF.

**(UDBHAV KUMAR JAIN)
JMFC-04/SHD/KKD
28.01.2026**