

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____/2024
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO.5290/2024)

RAJNISH KUMAR BISWAKARMA

APPELLANT(S)

VERSUS

STATE OF NCT OF DELHI & ANR.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. The appellant is shown as accused in First Information Report (FIR) registered at the instance of the second respondent for the offences punishable under Sections 498A, 406 read with Section 34 of the Indian Penal Code, 1860 (for short, the IPC'). Prior to registration of the FIR on 8th May, 2019, the appellant-husband filed a petition under Section 12 of the Hindu Marriage Act, 1955 seeking a declaration of nullity of his marriage with the second respondent. A writ petition was filed earlier by the appellant for quashing the First Information Report. In November, 2020 the said petition was withdrawn. Thereafter, on 23rd June, 2021, a decree of nullity was passed by the

Family Court. Thereafter, the present writ petition was filed for quashing.

3. By the impugned order, the said writ petition has been dismissed. All that the High Court has recorded is that the decree of nullity which was an ex-parte decree has been challenged by the second respondent. The High Court directed that the decree of nullity as well as appeal preferred by the second respondent shall be placed before the Trial Court. The High Court goes further and states that the Trial Court shall take into account the aforesaid documents while hearing the arguments on charge. There were various grounds urged in the writ petition in support of the prayer for quashing including the ground that the act of filing FIR after the appellant filed a petition seeking declaration regarding nullity of marriage was an abuse of process of law. The High Court has not considered the merits of the writ petition in which, a prayer for quashing the First Information Report has been made.

4. Learned ASG appearing for the State firstly submitted that the contentions raised by the appellant can always be considered by the Trial Court while framing charge; Secondly, he submitted that challenge to the FIR must be at the inception. Thirdly, earlier writ petition was withdrawn and fourthly, all submissions are available to the

appellant before the Trial Court.

5. We have also heard learned counsel appearing for the second respondent.

6. To say the least, the High Court has committed a gross error by directing the Trial Court to consider the decree of nullity and appeal preferred by the second respondent at the time of framing of charge. The submission of the learned ASG is that by relying upon the said documents which are not part of charge-sheet, the appellant can always pray for discharge. In the case of State of Orissa vs Debendra Nath Padhi, (2005) 1 SCC 568, this Court has reiterated the well-settled law that while considering the prayer for discharge, the Trial Court cannot consider any document which is not the part of the charge-sheet. Contrary to law laid down by this Court, the High Court has directed the Trial Court to consider the documents which are not part of the charge-sheet at the time of framing of charge. Thus, the directions given by the High Court are completely illegal.

7. It is pertinent to note that the High Court has not even gone into the merits of the challenge in FIR under Section 482 of the Cr.P.C. Therefore, we are constrained to observe that the order of the High Court is completely illegal.

8. We also reject the argument canvassed by learned ASG that prayer for quashing FIR can be made before the High Court at the earliest. At any stage of the proceedings, an accused can adopt remedies either under 482 of the Cr.P.C. or Article 226 of the Constitution of India for quashing the First Information Report and proceedings started thereupon on the ground of abuse of process of law and any other available ground. Whether the challenge can be entertained or not is a matter of discretion for the High Court. However, we cannot countenance an argument that prayer for quashing FIR must be rejected only on the ground that the same has not been challenged at the inception.

9. Therefore, we set aside the impugned order dated 7th November, 2023 and restore the Writ petition (Criminal) No.696 of 2022 to the file of the High Court of Judicature at Delhi. The restored petition shall be listed before the Roster Bench of the High Court on 17th December, 2024 in the morning. The parties who are represented today shall be under an obligation to appear before the Roster Bench on that day and no further notice shall be served.

10. On that day the High Court shall fix a date for hearing of the writ petition. Till the disposal of the writ petition, interim order dated 10th April, 2024 will continue to operate.

11. We make it clear that all questions are left open to be decided by the High Court.

12. A copy of this order shall be forwarded by the Registry to Registrar Judicial of the Delhi High Court who shall ensure that the petition is listed before the Roster Bench as directed above.

13. The appeal is partly allowed on above terms.

14. Pending application(s), if any, shall stand disposed of.

.....J.
(ABHAY S.OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
NOVEMBER 21, 2024.

ITEM NO.9

COURT NO.5

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) No.5290/2024

[Arising out of impugned final judgment and order dated 07-11-2023 in WPCRL No. 696/2022 passed by the High Court of Delhi at New Delhi]

RAJNISH KUMAR BISWAKARMA

Petitioner(s)

VERSUS

STATE OF NCT OF DELHI & ANR.

Respondent(s)

Date : 21-11-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. Vivek Sharma, Adv.
Mr. Vikas Sharma, Adv.
Mr. Prashant Chaudhary, Adv.
Mr. Ram Kumar, Adv.
Mr. Rajeev Kumar Jha, Adv.
Mr. Devendra Singh, AOR

For Respondent(s) Mr. Satya Darshi Sanjay, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mrs. Meera Patel, Adv.
Mr. Akshay Amritanshu, Adv.
Mr. Bhuvan Kapoor, Adv.
Mr. B K Satija, Adv.

Mr. Lal Singh Thakur, Adv.
Mr. Syed Mehdi Imam, AOR
Mr. Tabrez Ahmad, Adv.
Mr. Sudhir Teotiya, Adv.
Mr. Himanshu Vats, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is partly allowed in terms of the signed
order.

Pending application(s), if any, shall stand disposed
of.

(KAVITA PAHUJA)
AR-cum-PS

(AVGV RAMU)
COURT MASTER (NSH)

[Signed order is placed on the file]