

**Criminal Revision**Present: **The Hon'ble Justice Ashim Kumar Roy**

Judgment on: 10.03.2010

**C.R.R. No. 3477 of 2009****With****CRAN No. 3545 of 2009****Mehjabin @ Guddi & Ors.****versus****State & Anr.****Point:****QUASHING:** Correctness of the questions of facts whether be considered at the stage of quashing-

Code of Criminal Procedure, 1973 S. 482.

**Fact:** The petitioner by filing the instant application prayed for quashing of a proceeding initiated under Section 495 of the Indian Penal Code on the ground that they are absolutely innocent and have been falsely implicated in the said case.

**Held:** The grounds which have been urged in support of this application for quashing, are all pure question of facts and the correctness of the same cannot be gone into by this Court in exercise of its revisional jurisdiction without the trial on evidence. (Paragraph – 4)

For Petitioners : Mr. Moinak Bakshi

For State : Mr. Kashem Ali Ahmed

The Court: The present petitioners' who have been arraigned as accuseds under Section 495 of the Indian Penal Code in connection with a case instituted on a complaint, have moved this Court for quashing of the same.

2. Heard the Learned Advocate appearing on behalf of the petitioners as well as the Learned Advocate appearing on behalf of the State. Perused the materials on record. However, none appears on behalf of the complainant and it appears from the affidavit of service filed in Court that although the copy was sent to him but the same has returned unserved.

3. The learned advocate appearing on behalf of the petitioners urged the following points in support of the prayer for quashing;

(a) The petitioners are absolutely innocent and have been falsely implicated in the aforesaid case.

(b) The petitioner no. 1, after getting her previous marriage dissolved, married the complainant.

(c) The factum of her previous marriage was known to the complainant as he was a co-accused in the case which was instituted by the former husband of the petitioner no. 1. The complainant is a close relative of the petitioner no. 1, therefore, he cannot plead his ignorance about her past life.

(d) The allegation made in the complaint does not make out any offence punishable under Section 495 of the Indian Penal Code.

4. The grounds which have been urged in support of this application for quashing, are all pure question of facts and the correctness of the same cannot be gone into by this Court in exercise of its revisional jurisdiction without the trial on evidence. The claim of the petitioners that the previous marriage of the petitioner no. 1 was very much within the knowledge of the complainant as because he was an accused in a criminal case instituted by her former husband and that apart the complainant being a close relative of the petitioner no. 1, he cannot plead his ignorance about her past life, are essentially the defence of the accused persons and is a matter of

trial. The further contention of the petitioners that they are absolutely innocent and have been falsely implicated in the case maliciously for wrecking vengeance on them is also a question of fact and can only be taken into consideration during the trial. I find from the copy of the decree for dissolution of nika that such order was passed without hearing her former husband.

5. For the reasons stated above, I do not find any merit in this criminal revision and the same stands dismissed.

6. I make it clear that it will remain open to the petitioner to raise all the points taken in this criminal revision for quashing of the complaint at the appropriate stage of the trial.

7. In view of the dismissal of the revisional application itself, connected application being CRAN No. 3545 of 2009 is also disposed of.

8. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

**( Ashim Kumar Roy, J. )**