

IN THE COURT OF MS. ANJU BAJAJ CHANDNA
ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE NDPS
(NORTH) DELHI

C.R NO.05/11

O.P Gogne S/o late Sh Valaiti Ram
 R/o B4/3116, Vasant Kunj, N Delhi 16

PETITIONER

versus

1 Vishal Gogne s/o Sh O.P Gogne
 R/o C-81, Saket Court Complex,
 Saket N. Delhi 17

2 Minakshi Dhir d/o Mohinder Chand Dhir
 presently residing at C-81, Saket Court Complex,
 Saket N. Delhi 17

RESPONDENTS

DATE OF INSTITUTION: 7.8.2010
DATE OF TRANSFER TO THIS COURT: 8.2.2011
ORDER RESERVED ON: 6.4.2011
DATE OF ORDER: 20.4.2011

JUDGMENT

1. The present revision is directed against the order of Ld A.C.M.M. dt. 5.7.2010 thereby dismissing the complaint of the petitioner.
2. The brief facts giving rise to the present revision are that petitioner filed a complaint u/s 200 Cr.PC against the

respondents alleging offences u/s 193 IPC read with section 66 of Indian Christian Marriage Act, 1872(hereinafter referred to as 'the said Act'). The respondents are related to the complainant in the manner that respondent no. 1 is his son and respondent no. 2 is the wife of respondent no. 1. The grievance of the petitioner has been that respondents were related to each other being first cousins and fall within the degrees of prohibited relationships and thus could not marry each other under Hindu Law. The marriage was opposed by the petitioner and he even filed a civil suit for injunction against the respondents seeking restraint order. The court of Civil Judge rejected the plaint and thereafter appeal was preferred and the appellate court restored the suit granting relief to the petitioner. Thereafter, petitioner came to know that respondents have married each other on 17.11.09 by converting to Christianity. The marriage was solemnized at St. Thomas Baptist church, Khyber Pass, Civil Lines, Delhi and certificate to this effect was granted by Rev. Victor Thomas (Pastor) of the said church.

3. The petitioner filed the complaint on the ground that

affidavits/declaration furnished by the respondents at the time of marriage was false to the effect that their marriage would be solemnized u/s 6 & 9 of the said Act. In para 7 of their affidavits dt. 17.11.09 both the respondents have declared that their marriage will be solemnized in accordance with u/s 6 & 9 of Christian Marriage Act 1872, which they knew to be false as under these provisions only the marriage between Indian Christians could have been solemnized. Since both the respondents were not Indian Christians, they could not have made such declaration. The petitioner therefore sought prosecution of the respondents u/s 193 IPC read with Section 66 of the Indian Christian Marriage Act 1872.

4. The Ld A.C.M.M vide the impugned order dismissed the said complaint holding that respondents are Indian Christians and declaration in their affidavits cannot be considered as false declaration, hence no offence as alleged made out from the complaint.
5. The petitioner pleaded in the present petition that respondents do not fall within the definition of Indian Christians as provided u/s 3 of the said Act and the

interpretation taken by the trial court is erroneous. The observations given by Ld ACMM are erroneous as well as outside his jurisdiction. It is prayed that impugned order be set aside and trial court be directed to record the statement of complainant and his witnesses and to proceed further with the complaint.

6. I have heard arguments on the petition advanced by the petitioner himself and by Ld counsel Sh Pawan Kumar Aggarwal on behalf of respondents. I have also given due consideration to the judgments cited by both the sides in support of their arguments.
7. The petitioner seeks to prosecute the respondents on the basis of their affidavits dt. 17.11.09, wherein by clause 7, they declared that their marriage will be solemnized in accordance with u/s 6 & 9 of the Indian Christian Marriage Act 1872, by St. Thomas Baptist Church, Khyber Pass, Civil Lines, Delhi 54. According to the petitioner, this declaration is false to the knowledge of respondents as they were not Indian Christians and they have intentionally made such false declaration in order to procure their marriage. However, on perusal of the

marriage certificate , it is evident that marriage between the respondents was solemnized under Section 6 & 9 of the said Act as it has been specifically mentioned therein. Therefore, the declaration to this effect in the affidavits of the respondents cannot be termed as wrong or false.

8. Now coming to the point whether the respondents are Indian Christians or not, the definition of Indian Christian as provided u/s 3 of the Act is not the exhaustive definition, the language itself makes it clear that it is only inclusive definition. Otherwise also, the expression 'Indian Christian' includes Christian descendants of natives of India converted to Christianity as well as such converts. It is clear that any person of Indian origin if converts to Christianity, would be an Indian Christian. It is not disputed that respondents have converted to christianity by getting them baptised in the church before the marriage. The arguments of the petitioner that only Christian descendants of converts can be Indian Christians is not the logical interpretation of the expression Indian Christian.

9. Section 66 of the Indian Christian Marriage Act 1872 and

Section 193 IPC provides prosecution of the persons who give false oath, declaration, notice or certificate for the purposes of procuring the marriage. In the present case, I do not find that clause 7 of the affidavits of the respondents was false declaration and hence no ground existed to proceed with the complaint. The judgments cited by the petitioner are not applicable to the present case.

10. There is no substance in the complaint and therefore same was rightly dismissed by Ld ACMM. It appears that to satisfy his personal feelings, the petitioner has filed the complaint seeking prosecution of the respondents. There is no justification in the complaint case filed by the complainant.
11. It is well settled that prosecution has to be ordered by the court only in the larger interest of administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that court should direct

prosecution (**relied upon Santokh Singh Vs Ijhar Hussain & another,(1973) 2, supreme court cases 406.)**

12. In view of aforesaid discussions, I find no ground to interfere with the order of Ld ACMM. The complaint disclosed no offence against the respondents and has been rightly dismissed.
13. Finding no merit or substance, I dismiss the revision.
14. Copy of order alongwith trial court record be sent back to the trial court.
15. Revision file be consigned to record room.

ANNOUNCED IN THE OPEN COURT
ON 20.4.2011

(ANJU BAJAJ CHANDNA)
ADDL. SESSIONS JUDGE
DELHI