* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRL.M.C. 2103/2011**

% *Judgment reserved on :11th July, 2011*
Judgment delivered on:26th July, 2011

O.P. GOGNE ..... Petitioner

Through: Petitioner in person.

versus

STATE (NCT OF DELHI) & ORS ..... Respondents

Through: NEMO.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

SURESH KAIT, J.

1. The instant case has been filed under Section 482 of the Cr.PC for setting aside the impugned judgment dated 20.04.2011 passed by Addl. Sessions Judge(North), Delhi dismissing the Revision Petition and for setting aside the order dated 05.07.2010 passed in Criminal Complaint No.97/J/10 by the Addl. Chief Metropolitan Magistrate dismissing the complaint under Section 200 of the Cr.PC.

2. The facts of the case in brief are that, on 08.01.2008 Respondent No. 2, who is the elder son of the Petitioner, told the petitioner and his wife that he wanted to marry his first cousin, namely, Minakshi. The petitioner and his wife both opposed the alliance since Respondent No.3 is the daughter of the brother of the wife of petitioner, therefore, both fall within the "degree of prohibited relationship" as defined in clause (g) (iv) of Section 3 of the Hindu Marriage Act, 1955.

3. After about six months, Respondent No. 2 again repeated the same proposal. The petitioner was shocked that his own son had betrayed his parents by expressing his intention to commit void act. When all the efforts failed to dissuade his son from the intended marriage with his first cousin and no care for the law despite he himself being a judicial officer in Delhi. Therefore, the petitioner having no other option has taken the legal course.

4. Accordingly, on 07.08.2009 a Civil Suit was filed seeking permanent injunction against the Respondent No. 2 and 3 and against the father and the mother of the Respondent No. 3 for restraining the Respondents from performing the marriage between Respondent No.2

and 3.

5. Vide order dated 17.08.2009, the Commercial Civil Judge, South District, Delhi rejected the plaint under Order 7 Rule 11(a) of the CPC.

6. The petitioner challenged the order dated 17.08.2009 the Commercial Civil Judge, South District, Delhi before the Addl. District Judge whereby vide order dated 16.02.2010 the appeal was allowed by setting aside the order of the learned trial court.

7. Accordingly, the petitioner appeared before the learned the Commercial Civil Judge, South District, Delhi on 26.02.2010. The ld. Trial court issued summons of the suit and notice of the application under Order 39 Rule 1 & 2 read with Section 151 of the CPC to Respondent Nos. 2 and 3 and their co-defendants who are the parents of the Respondent No. 3.

8. Since none appeared for the Respondent No. 2 and 3 and for their co-defendants, all the defendants were proceeded *ex-parte*. On hearing the petitioner on the application under Order 39 Rule 1 and 2 read with Section 151 of the CPC, the learned Commercial Civil

Judge, South District, Delhi allowed the application and passed an order on 31.03.2010 which reads as under:-

> "The defendant No.1 is hereby restrained from marrying defendant No.2 and defendant Nos.3 & 4 are hereby restrained from marrying defendant No.2 with defendant No.1 till the final disposal of the suit."

9. The story of the case took a turn from this point when the petitioner learnt on 04.05.2010 that Respondent Nos. 2 & 3 had solemnised their marriage in a church after converting their religion to Christianity on 17.11.2009. They secured the marriage certificate from the same date under Section 9.

10. Thereafter, the petitioner filed a complaint under Section 200 of the Cr.P.C. against the Respondent Nos. 2 & 3 which was dismissed by ACMM (North) vide order dated 05.07.2010 holding that no offence was made out; on the observation that:-

> "Section 66. False Oath, declaration notice or certificate for procuring marriage- Whoever, for the purpose of procuring a marriage or license of marriage intentionally:-
>
> Where an oath or declaration is required by this

Act, or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration or,

a) Where a notice or certificate is required by this Act, signs a false notice or certificate.

b) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable u/s 193 of the Indian Penal Code (45 of 1860) with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine."

11. As was alleged by the Petitioner/Complainant that both the Respondent Nos. 2 & 3 had made false declarations and therefore, they were deemed to have committed the offence punishable under Section 193 IPC. The learned Trial Judge had put a query; As to how cognizance of offence punishable under Section 193 IPC could be taken without there being any complaint from the concerned authorities? When the offence under Section 193 IPC is committed in a Court, only then a complaint under Section 195 Cr.PC will be required and not otherwise. There is no bar for taking cognizance if the said

offence is committed at any other place. As the offence under Section 193 IPC is alleged to have been committed in a Church, bar of Section 195 Cr. P. C. is not applicable. The Trial Judge has perused the plaint as a whole and assumed that all the allegations are correct, whether any offence punishable under Section 193 IPC is disclosed or not on which, cognizance can be taken?

12. The word 'Christian' and the expression 'Indian Christian' are defined under the said Act in Section 3 which is reproduced as:-

> "the expression 'Christian' means persons professing the Christian religion;
> and the expression 'Indian Christian' includes the Christian descendants of natives of Indian converted to Christianity, as well as such converts.
>
> S.6 and 9 on the said Act provide as under:
> **S.6 Grant and revocation of licenses to solemnize marriage-** The State Government, so far as regards the territories under its administration, may, by notification in the Official Gazette, grant licenses to Ministers of Religion to solemnize marriages within such territories and may, by a like notification, revoke such licenses.
> **S.9 Licensing of persons to grant certificates of**

> **marriage between Indian Christians**- The State Government may grant a license to any Christian, either by name or as holding any office for the time being, authorising him to grant certificates or marriage between Indian Christians. Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the Official Gazette."

13. The Complainant argued before the Trial Judge that both the Respondent Nos.2 & 3 had not come within the meaning of the expression 'Indian Christians' and therefore, declaration by both respondents that their marriage would be solemnised under Section 6 & 9 of the said Act, was false.

14. Further submits that, the Complainant is a Hindu, his son i.e. Respondent No.2 could not become Indian Christian, unless and until Complainant himself converts to Christianity.

15. The Trial Judge has observed that no son can convert to Christianity unless and until his father also converts so. Finding no logic in this submission, in his considered view there was no such pre-condition for converting into Christianity.

16. Respondent Nos.2 & 3 were Baptised in Church and a certificate was also issued to this effect. Thus, both the Respondent Nos.2 & 3 are Christians after this Baptisation. The learned Trial Judge was of the view that both were 'Indian Christians' as well.

17. The learned Trial Judge as relied on their affidavits that their marriage would be solemnised under Section 6 & 9 of the said Act. Therefore, there was no falsity in declaring this fact. Even Rev.Victor Thomas also did not consider the declaration as false and he has not made any complaint in this respect.

18. The plea of the Complainant that both the Respondents fall within the degree of prohibited relationship and thus, could not marry with each other.

19. Keeping the aforesaid discussion into view the Trial Judge came to the conclusion that no offence punishable under Section 193 IPC was disclosed from the complaint, even if all the allegations were assumed to be correct.

20. The Complainant has relied upon the case of ***Harsh Khurana Vs. Union of India & Anr : 121 (2005) DLT 301 (DB)*** and

submits that his evidence would have been recorded under Section 200 Cr. P.C. However, learned Trial Judge was of the opinion that evidence of the Complainant can be considered only if the cognizance was taken and not otherwise. Since the Complainant had not disclosed any offence, of which cognizance could be taken, there were no question of examining the Complainant or his witnesses. Accordingly, the learned Trial Judge has dismissed his complaint.

21. Being aggrieved by the order dated 05.07.2010 of Trial Judge, Complainant preferred the revision before the Sessions Judge. While considering the arguments of both the sides, learned Additional Sessions Judge has observed that the Petitioner seeks to prosecute the Respondents on the basis of their affidavits dated 17.11.2009, wherein by Clause 7, they declared that their marriage will be solemnised in accordance with under Section 6 & 9 of the Indian Christian Marriage Act, 1872, by St.Thomas Baptist Church, Khyber Pass, Civil Lines, Delhi-54.

22. According to the Petitioner, this declaration was false, to the knowledge of the Respondents as they were not Indian Christians and they had intentionally made such false declarations in order to procure

their marriage licence. However, on the perusal of the marriage certificate, it is evident that marriage between the Respondent Nos.2 & 3 was solemnised 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".

23. Learned Additional Sessions Judge has dealt with the issue that – Whether the Respondents are Indian Christians or not?

24. The definition of the Indian Christians as provided under Section 3 of the Act is not exhaustive definition. The language itself makes it clear that it is only an inclusive definition. Otherwise also, the expression 'Indian Christian' includes Christian descendants of natives of India converted to Christianity as well as such converts.

25. The learned Additional Sessions Judge came to the conclusion that any person of Indian origin, if converts to Christianity would be Indian Christian. It was not in dispute that the Respondents have converted to Christianity by getting themselves Baptised in the Church before their marriage. Finding no logical interpretation of expression 'Indian Christian' that only Christians descendants by

converts can be Indian Christian.

26. As per Section 66 of the Indian Christian Marriage Act, 1872 and Section 193 IPC provides prosecution of the person who gives false oath, declaration, notice or certificate for the purpose of procuring the marriage. In the present case, learned Additional Sessions Judge did not find that clause 7 of the affidavits of the Respondents was false declaration and hence, no ground are existed to proceed with the complaint.

27. Accordingly, learned Trial Judge has come to the conclusion while relaying upon the case of ***Santokh Singh Vs. Ijhar Hussain & Another : (1973) 2, SCC 406*** wherein it was decided that, the prosecution has to be ordered by the Court only in larger interest and administration of justice and not to gratify the feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecution 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. Finding no merit in the revision petition filed by the Petitioner, the learned Additional Sessions Judge upholds the order of ACMM and dismissed the revision

by the order dated 20.04.2011.

28. Being aggrieved from the said judgment passed by the learned Additional Sessions Judge on 20.04.2011, the Petitioner has challenged the order dated 05.07.2010 passed by learned ACMM (North) Delhi and the judgment passed by the learned Additional Sessions Judge on 20.04.2011, has filed the instant petition.

29. I note that in para 5 of the instant petition, the Petitioner has averred that he has been disgraced and his reputation harmed as he has suffered mental agony and social ignominy on account of the disgraceful and shameful act of the Respondent Nos.2 & 3.

30. Though, the Petitioner who is appearing in person has drawn the attention of this Court to the order dated 31.03.2010 passed by the learned Commercial Civil Judge: South District at Patiala House Courts, New Delhi whereby the learned Trial Judge has restrained the Defendant No.1 from marrying with the Defendant No.2 (therein) and the Defendant Nos.3 & 4 were also restrained from marrying Respondent No.3 with Respondent No.2 (herein) till the disposal of that suit.

31. I note that the date of the marriage is 17.11.2009, much before the restrain order passed by the learned Commercial Civil Judge, therefore, this order has no relevance while deciding the present petition.

32. Petitioner has relied upon the case of ***Shivjee Singh Vs. Nagendra Tiwary & Ors : 2010 (3) JCC 2238***. The Petitioner has raised the issue that on filing the complaint case, the Trial Judge was bound to examine the complainant and witnesses as to see whether there exists sufficient ground for proceedings against the accused. Non-examination of the witnesses would vitiate the proceedings. In para No.6 of the case, **Shivjee Singh (supra)** has observed that:-

> "6. We have considered the respective submissions. By its very nomenclature, Cr.P.C. is a compendium of law relating to criminal procedure. The provisions contained therein are required to be interpreted keeping in view the well recognized rule of construction that procedural prescriptions are meant for doing substantial justice. If violation of the procedural provision does not result in denial of fair hearing or causes prejudice to the parties, the same has to be treated as directory notwithstanding the use of word `shall'. Chapter XIV of Cr.P.C. enumerates

conditions for initiation of proceedings. Under Section 190, which forms part of the scheme of that chapter, a Magistrate can take cognizance of any offence either on receiving a complaint of facts which constitute an offence or a police report of such facts or upon receipt of information from any person other than a police officer or upon his own knowledge, that such an offence has been committed. Chapters XV and XVI contain various procedural provisions which are required to be followed by the Magistrate for taking cognizance, issuing of process/summons, dismissal of the complaint, supply of copies of documents and statements to the accused and commitment of case to the Court of Sessions when the offence is triable exclusively by that Court. Sections 200, 202, 203, 204, 207, 208 and 209 Cr.P.C. which form part of these chapters and which have bearing on the question raised in this appeal read as under:

200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under Sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under Sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall record his reasons for so doing.

204. Issue of process.- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrates having jurisdiction.

(2) No summons or warrant shall be issued against the accused under Sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under Sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of Section 87.

207. Supply to the accused of copy of police report and other documents. - In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:

(i) the police report;

(ii) the first information report recorded under Section 154;

(iii) the statements recorded under Sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding there from any part in regard to which a request for such exclusion has been made by the police officer under Sub-section (6) of Section 173;

(iv) the confessions and statements, if any, recorded under Section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-section (5) of Section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in Clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in Clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.- Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under Section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:

(i) the statements recorded under Section 200 or Section 202, or all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under Section 161 or Section 164; (iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

209. Commitment of case to Court of Session when offence is triable exclusively by it.- When in a case

> instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-
>
> (a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;
>
> (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;
>
> (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;
>
> (d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

Section 202 (3) of Cr. P. C. is qualified by the word 'his'. This implies that the Complainant is not bound to examine all the witnesses named in the complaint or whose name is disclosed in response to the order passed by the Magistrate. Vice-a-versa the Magistrate is also required to inquire into the detailed discussions on the merits or de-merits of the case. He has to see only whether there exists sufficient ground for proceeding against the accused or not.

33. The Petitioner has referred another case of ***M/s.Morgan***

Tectronics (P) Ltd & Ors Vs. State & Anr: 2007 (1) JCC (NI) 69; wherein in para No. 5, it has been observed that mandate of Section 200 Cr. P. C. was to be followed by the learned MM, which provides compulsory examination of the complainant and the witnesses present, if any, on oath and on the basis of the pre-summoning evidence, the Magistrate has to be decide as to whether the cognizance of the offence is to be taken and summons are to be issued to the accused persons or not. Further observed that this is an unambiguous mandatory procedure prescribed under Section 200 Cr. P.C. and has been so held as well by catena of judgments, such as ***M/s.Gopi Nath & Sons Vs. State of Himachal Pradesh & Ors : 1981 Crl. L J 175; Mohd. Abdul Kadir Choudhury Vs. State of Assam & Anr. : 1989 Crl. L J 1888.*** Same view was taken by this Court in a case of ***Ranbir Singh Kharab Vs. Smt.Santosh: 2007 (1)JCC (NI) 65***.

34. No doubt, under Section 202(3) of Criminal Procedure Code, the magistrate is bound to examine the complainant and witness before issuing summons. Simultaneously, the magistrate is also duty bound to go through the complaint. If after going through the complaint, the magistrate is of the opinion that no case is made-out

from the complaint, then the magistrate, need not resort to the further procedures, prescribed in the Code.

35. In the instant case, the magistrate, after going through the complaint, was of the opinion that no offence is made-out. Therefore, he has rejected the complaint.

36. Admittedly, marriage has taken place between the Respondent Nos.2 & 3 in a Church on 17.11.2009 under Section 6 & 9 of the Indian Christian Marriage Act, 1872. This marriage has not been challenged either of the parties or the Bishop of the Church on the ground that the declaration made in the affidavits before Church was false.

37. The two Courts below have come to the conclusion that in the complaint, no case is made out by the Petitioner and the Petitioner has no *locus* in the present case.

38. On the issue of *Locus*, the Petitioner has referred to the case of ***Manohar Lal Vs. Vinesh Anand : AIR 2001 SC 1820*** and has relied upon the para No.5 as has been observed by the Supreme Court that to pursue an offender in the event of commission of an offence, is

to sub-serve a social need. Society cannot afford to have a criminal escape his liability since that would bring about a State of social pollution, which is neither desired nor warranted and this is irrespective of the concept of *locus*. Further observed that doctrine of *locus-standi* is totally foreign to criminal jurisprudence.

39. No doubt, if any offence is committed in society, then the doctrine of *locus standi* comes into existence, not in vice-versa.

40. Admittedly, Respondent No.2 is the son of the Petitioner who is a Judicial Officer in Delhi Judicial Service. Both the Respondent Nos.2 & 3 married on 17.11.2009 after converting to Christianity. Since then, the Respondent Nos.2 & 3 are happily living their married life.

41. The Petitioner herein felt great dishonour out of this marriage and therefore, he is continuously dragging the aforesaid couple and fighting with tooth and nail.

42. In my view, if the honour and reputation of the Petitioner has been spoiled by this marriage, then his honour and reputation would not come back by separating the couple. This type of thinking is

spoiling the broad thinking of new generation and at times it leads to honour-killing. If the Courts start supporting this type of Issues, it would amount to support the 'KHAP' *dictat*. The Courts are not meant to gratify the feelings of personal revenge or vindictiveness or to serve the ends of a private party.

43. According to Section 3 of the Christian Marriage Act, 1872;

> "…… the expression 'Christian' means persons professing the Christian religion;
>
> and the expression 'Indian Christians' includes the Christian descendants of native of India converted to Christianity, as well as such converts ……"

Had this marriage being within the Hindus than this marriage would have come under the *sapindas* relations which is prohibited under the Hindu Marriage Act, which is not the position in this case. Presumingly, this comes under the *sapinda* relations even then this marriage would have been void and if any issue thereto which affects any person, like the Petitioner, the position would have been different.

44. In my view, 'Indian Christians' are those who being Indian nationals converted to the religion of Christianity. The

Respondents have rightly converted as per the Section 3 of the Act. Therefore, after conversion into Christianity the marriage does not fall under the '*sapinda'* relationship. As such, the respondent No.2 has not committed any offence, being Government servant.

45. There is no dispute as regards to the law in the cases referred to by the Petitioners, but the crucial point involved in the instant petition is that whether the Petitioner has any *locus standi* or not, hence the judgments referred to by the Petitioner are of no help to him.

46. Keeping the aforesaid discussion into view, I do not find any *locus standi* of the Petitioner and any merit in the petition. Further, there is no infirmity in the order dated 05.07.2010 passed by the ACMM (North) Delhi and the judgment dated 20.04.2011 passed by the learned Additional Sessions Judge, therefore, I am not inclined to interfere with the aforesaid two verdicts given by two Courts below.

47. The petitioner has been judicial officer in Delhi, now legal practitioner. He should have been more careful while indulging in such type of frivolous case. Thus, he has unnecessarily wasted the time of the Courts.

48. Therefore, while dismissing the present Criminal M.C. No.2103/2011, I impose a costs of ₹10,000/- to be paid by the Petitioner in favour of the Advocates Welfare Fund, Bar Council of Delhi.

49. The Registrar General of this Court shall ensure the realisation of the above costs from the Petitioner.

SURESH KAIT, J

JULY 26, 2011
RS/Mk