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MCRC-29637-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE B. P. SHARMA

ON THE 18th OF MARCH, 2026MISC. CRIMINAL CASE No. 29637 of 2024*MOHD. ARIF AHMAD JAHAGIR KHAN**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

*Shri Anil Khare - Senior Advocate assisted by Shri Harjas Singh Chhabra -
Advocate for the petitioner.*

Shri Aatmaram Bain - Deputy Government Advocate for the State.

Shri Naveen Vaswani - Advocate for the complainant through video conferencing.
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Reserved on : 12.02.2026

Pronounced on : 18.03.2026
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ORDER

By way of the present petition filed under Section 528 of *Bharatiya Nagarik Suraksha Sanhita, 2023* (corresponding to Section 482 of *Code of Criminal Procedure, 1973*), the petitioner seeks quashment of the order dated 16.05.2024 (*Annexure P/1*) passed by learned XVIII Additional Sessions Judge, Jabalpur (M.P.) in Criminal Revision No.110/2024. The petitioner has also assailed the order framing charges dated 25.10.2023 (*Annexure P/2*) passed by learned Judicial Magistrate First Class, Jabalpur in RCT No.4466/2022 (*State vs. Mohd. Arif Khan*), whereby charges have been framed against the petitioner for the offences punishable under Sections 498-A, 494, 342, 323 and 506 Part-II of the *Indian Penal Code*.



its face value, do not disclose any of the ingredients as mentioned in Section 498-A of IPC. It is further submitted that the question of implicating the petitioner under Section 494 of IPC does not arise as the petitioner is covered by Muslim Personal Law and as per the Personal Law, a *Mohammedan* may have as many as four wives at the same time, but not more. Thus, the question of implicating the petitioner under Section 494 of the IPC does not arise. Reliance is place on judgment in the case of *Venu Gopal Vs. Union of India (2015) SCC online Kerala 798* in which, it has been held that the application of Section 494 of IPC would be applicable when a Muslim man marries a fifth time, it is then he can be prosecuted under Section 494 of IPC. So far as Section 323 of IPC is concerned, there is no visible injury opined in the MLC report; except for the bald statement that the petitioner held her hand and hit her, there is no material on record to ascertain the commission of the said offence. So far as offence Section 342 of IPC is concerned, the same is not made out as none of the ingredients of the said offences are attracted. The complaint is totally silent on this aspect.

4. It is further contended that the petitioner pronounced 'Divorce' for the first time upon the complainant/respondent No.2 on 04.05.2022, and thereafter, on 29.05.2022, contracted a second marriage in accordance with Muslim rites and personal law. It is submitted that the complaint lodged by the complainant/respondent No.2 before the police authorities, alleging an incident dated 16.06.2022, on the basis of which FIR bearing Crime No.49/2022 came to be registered, is without any basis and has been filed as a counterblast. It is further contended that on 02.07.2022, the petitioner



pronounced 'Divorce' for the second time upon the complainant/respondent No.2, and on that basis, the Family Court, vide judgment and decree dated 14.11.2025, annulled the marriage between the petitioner and the complainant/respondent No.2. It is further submitted that *prima facie*, no cognizable offence is made out against the petitioner. It is, therefore, prayed that the aforesaid impugned orders be set aside and the petitioner be discharged from the said offences.

5. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgments of the Hon'ble Supreme Court in *Manju Ram Kalita vs. State of Assam, (2009) 13 SCC 330; Pinakin Mahipatray Rawal vs. State of Gujarat, (2013) 10 SCC 48; Mahalakshmi and Others vs. State of Karnataka, 2023 SCC OnLine SC 1622; and Abhishek Saxena vs. State of U.P., [Criminal Appeal No.3628 of 2023 (arising out of SLP (Crl.) No. 1431 of 2020)]*.

6. On the other hand, learned counsel for the State as well as learned counsel for the complainant opposed the prayer made by learned counsel for the petitioner. It is submitted by learned counsel for Respondent No.2/complainant that under Muslim Personal Law, unless a declaration is submitted, the provisions of the Muslim Personal Law (*Shariat*) Application Act, 1937 would not apply to the petitioner. It is contended that in the absence of such declaration, the petitioner is not entitled to have four wives at the same time, and therefore, the offence punishable under Section 494 of Indian Penal Code is made out against him. Learned counsel further submits that the petitioner has solemnized a second marriage with Smt.



on 29.05.2022 during the subsistence of his first marriage with Respondent No.2/complainant and had been pressurizing the complainant to give “*Khula*”. The statements of the complainant and other witnesses recorded during the investigation, along with the material collected by the prosecution, *prima facie* disclose the commission of offences punishable under Sections 498-A, 494, 342, 323 and 506 Part-II of Indian Penal Code. It is further contended that learned Judicial Magistrate First Class, Jabalpur, upon due consideration of the material available on record, has rightly framed the charges against the petitioner and learned XVIII Additional Sessions Judge, Jabalpur has also committed no illegality in affirming the said order in Criminal Revision No.110/2024. The grounds raised by the petitioner involve disputed questions of fact, which cannot be adjudicated in a petition under Section 528 of BNSS, 2023 (Section 482 of Cr.P.C., 1973), as the same can only be determined after the parties adduce evidence during the course of trial.

7. This Court has bestowed its anxious consideration to the rival submissions advanced by learned counsel for the parties and has carefully examined the complaint, the material placed on record and the law governing the exercise of inherent jurisdiction under Section 482 of CrPC, 1973 (Section 528 of BNSS, 2023).

8. The inherent jurisdiction of this Court under Section 482 Cr.P.C. is required to be exercised sparingly and with great circumspection, only in cases where the allegations, even if taken at their face value, do not disclose the commission of any offence, or where continuation of the proceedings



would amount to abuse of the process of law. This principle has been consistently reiterated by Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, and *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4.

9. On perusal of the record, it is seen that the marriage between the petitioner and Respondent No.2/complainant was solemnized on 27.12.2002 in accordance with Muslim customs. Thereafter, on 04.05.2022, the petitioner pronounced 'divorce' for the first time. Subsequently, on 29.05.2022, the petitioner contracted a second marriage in accordance with Muslim rites and rituals. It is further revealed from the record that on 17.06.2022, Respondent No.2/complainant lodged a complaint with the police, which was registered as Crime No.49/2022 at Police Station Mahila Thana, Jabalpur and after completion of the investigation, charge sheet came to be filed. It is also borne out from the record that on 02.07.2022, the petitioner pronounced 'divorce' for the second time to Respondent No.2. On the basis of the 'divorce' pronounced by the petitioner in accordance with Muslim personal law, the Family Court, Jabalpur, vide judgment dated 14.11.2025 passed in RCSA No.120/2022, annulled the marriage between the petitioner and Respondent No.2 on the basis of the "*Talaq*" pronounced on 02.07.2022.

10. So far as the offence punishable under Section 494 of IPC is concerned, the said provision criminalizes bigamy where a person, having a spouse living, contracts another marriage during the subsistence of the first marriage and such subsequent marriage is void on that account. In other



words, for the offence under Section 494 IPC to be attracted, it is essential that the second marriage must be void by reason of the subsistence of the earlier marriage. However, the applicability of Section 494 IPC is subject to the personal law governing the parties. Under Muslim Personal Law, a Muslim male is permitted to have more than one wife at a time, subject to the conditions recognized by the personal law. The Hon'ble Supreme Court in *Sarla Mudgal vs. Union of India, 1995 AIR 1531* has taken note of the position that Muslim Personal Law recognizes polygamy, and in *Khursheed Ahmad Khan vs. State of U.P. 2015, (8) SCC 439*, the Apex Court again observed that Muslim law permits plurality of marriages though it may be regulated by law in certain contexts. The reliance placed on *Surajmani Stella Kujur vs. Durga Charan Hansdah, 2001 AIR SCW 711* would also not advance the case of the complainant, as in the said case the parties were governed by tribal customary law where the permissibility of polygamy was not established.

11. Thus, in the present case, where the parties are governed by Muslim Personal Law which permits a Muslim male to have more than one wife. Thus, even if the allegations of the complainant are accepted at their face value, the act of the petitioner in contracting a second marriage would not satisfy the essential ingredients of Section 494 of IPC and continuation of the prosecution for the said offence would amount to an abuse of the process of the Court. Therefore, a second marriage contracted by a Muslim male during the lifetime of his first wife is not treated as void merely on the ground that the first marriage is still subsisting. In view of this legal position,



the essential ingredient of Section 494 of IPC, namely that the subsequent marriage must be void on account of the subsistence of the first marriage is not fulfilled in the present case. Consequently, even if the allegations made by the complainant are taken at their face value, the act of the petitioner in contracting a second marriage would not constitute an offence punishable under Section 494 of IPC. In *Venugopal K (Supra)*, the Kerala High Court examined the broader issue relating to the constitutional implications of polygamy under Muslim Personal Law and the scope of Section of 494 IPC. Neither of the said decisions lays down that a second marriage contracted by a Muslim male, governed by Muslim Personal Law, would *ipso facto* constitute the offence of bigamy. On the contrary, the applicability of Section 494 IPC depends upon whether the second marriage is void by reason of the subsistence of the first marriage. In the present case, the parties are admittedly governed by Muslim Personal Law, which recognizes the permissibility of plurality of marriages. Therefore, the essential ingredient of Section of 494 IPC, namely that the second marriage must be void on account of the subsistence of the earlier marriage, is not satisfied. Consequently, continuation of the proceedings against the petitioner for the said offence (Section 494 of the IPC) cannot be sustained in law.

12. However, so far as the other offences alleged against the petitioner are concerned, the allegations and the material collected during investigation *prima facie* disclose the commission of those offences and therefore they are required to be examined by the trial Court in accordance with law.



13. With the aforesaid, this petition under Section 528 of BNSS, 2023 (Section 482 of CrPC, 1973) stands **partly allowed** and **disposed of**.

14. It is clarified that the observations made herein are confined only to the adjudication of the present petition under Section 482 of Cr.P.C., 1973 (Section 528 of BNSS, 2023) and shall not be construed as an expression on the merits of the case. The trial Court shall independently appreciate the evidence adduced before it and decide the matter in accordance with law.

15. Pending application(s), if any stands closed.

16. A copy of the order be transmitted to the trial court concerned.

(B. P. SHARMA)
JUDGE

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