

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.5777 of 2014

Shantabai Bhaurao Hivrale.

.. Applicant.

Versus

Bhaurao Uttamrao Hivrale
And Another.

.. Respondents.

Shri. N.C. Garud, Advocate, for applicant.

Shri. U.U. Dhawale, Advocate, for respondent Nos.1 & 2.

CORAM: T.V. NALAWADE, J.

DATE : 17th AUGUST 2015

ORDER:

1) The application is filed under section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to file appeal against the order made in R.T.C. No.63/2002 which was pending before the Judicial Magistrate, First Class, Rahuri. The Judicial Magistrate has acquitted the respondents. Heard learned counsel for the applicant/complainant and seen the record.

2) The present applicant, complainant, is wife of respondent No.1 Bhaushaeb. Allegations are made that Bhausaheb had married second wife and respondent No.2 Sow. Mangal is the second wife of Bhausaheb. In the private complaint the present applicant has contended that the marriage took place on 27-5-2001. In the body of the complaint she did not mention names of persons who had witnessed the marriage though she had given list of witnesses in the complaint. She has examined persons like real brother Ambadas and others to show that they had seen the marriage though from some distance.

3) The nature of evidence given by the applicant shows that it is not probable that the witnesses were present when the marriage of respondent No.1 and 2 took place at a particular place. It can be said that on the basis of information collected complaint was filed and she has no personal knowledge about the said marriage.

4) To prove the offence punishable under section 494 of the Indian Penal Code it is necessary to prove that all the ceremonies which are required to be performed for

the marriage are performed. There is no such evidence on the record.

5) Learned counsel for the applicant submitted that there is record to show that the second wife has one issue from respondent No.1 and this circumstance can be considered. He submitted that in the voters' list and the ration card name of respondent No.2 is shown as the wife of respondent No.1. This circumstance cannot help the complainant to prove the second marriage. Factum of second marriage is required to be proved which is not proved in the present matter and there is no convincing material. This Court has gone through the record and the record shows that even the procedure required for filing private complainant as a warrant case was not followed which was expected to be followed. Nothing can be achieved by granting leave to file appeal.

6) In the result, the application is rejected. Leave is refused.

Sd/-
(T.V. NALAWADE, J.)

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