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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 284 of 2015
IN
CRIMINAL APPLICATION No. of 2015.

Pushpalata Shankar Surve ..Applicant.

Vs

The State of Maharashtra and Anr ..Respondents.

Mr Anil Galgali i/by Sushant D. Chavan, adv.for applicant.

Mr Vidyadhar V.Gangurde for respondent no.2.

Mrs PP.Bhosale, APP for the State.

CORAM : A.R.JOSHI,J

DATE : 9th OCTOBER, 2015

PC. :

1) Heard rival submissions on this application for condonation of delay of 94 days in preferring application for leave to file appeal challenging the judgment and order dated 11.11.2014 passed by the learned Addl. Chief Judicial Magistrate, Pune in R.C.C.No. 1879/2009. For the reasons stated in the application, the delay of 94 days is condoned. Application is disposed of. Office to register the application for leave to file appeal.

2/5

2) Heard rival submissions on this application for leave to file appeal challenging the acquittal of respondent no.2 in the matter of offence punishable under section 494 of IPC. The impugned judgment and order was passed by learned Additional Chief Judicial Magistrate, Pune on 11th November, 2014. The case of the complainant/present applicant is that in the year 1976 she married with respondent no.2 and they had children out of said wedlock. Thereafter, in the year 1983 respondent no.2 contracted second marriage with one woman by name Uma @ Nirmala Babaji Kadam. The applicant knew this fact sometime in the year 2009 and then lodged a criminal complaint for taking action against respondent no.2, her husband, for offence under section 494 of IPC.

3) During the trial, the complainant examined five witnesses. PW no.1 is the applicant/original complainant. PW no.2 is the mother of present respondent no.2 i.e. the accused, PW no.3 is the son of the present applicant and respondent no.2. PW Nos. 4 and 5 are the persons from the school where the four children born out of second marriage of respondent

3/5

no.2, were studying. Though it was established before the trial Court that the children born out of the second wedlock of respondent no.2, give the name of their father as that of respondent no.2, still the trial Court was influenced by the submissions on behalf of respondent no.2 that there was no evidence of legal marriage entered into between respondent no.2 and another woman by name Uma. Apparently, the cohabitation of respondent no.2 with said woman Uma and birth of four children out of their wedlock, has not been disputed anywhere. As such in the considered view of this Court, a substantial question is required to be dealt in detail as to the solemnization of marriage by respondent no.2 during the subsistence of his first marriage with the present applicant/complainant. As such the case is made out by the applicant/complainant for grant of leave to file appeal. As such leave is granted. Application for leave is allowed and accordingly disposed of.

4) Appeal preferred by the present applicant be numbered.

4/5

Same is also admitted.

5) Instead of issuing process against respondent no.2 under section 390 of Cr.P.C. he is directed to appear before the trial Court on 20th October, 2015 with directions to the trial Court to release him on bail on his executing a P.R. bond in the sum of Rs.1000/- with one surety.

6) Call for R and P

7) After this order is passed, after admission of the appeal, both the learned counsel for the parties stated that there may be possibility of an amicable settlement and in that event they may be allowed to take up the appeal for expeditious disposal by way of compromise. Said liberty is granted.

(A.R.JOSHI, J.)

5/5

CERTIFICATE :-

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED ORDER.