

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL WRIT PETITION NO.3310 OF 2013

Sunil Vishnu Gaikwad	.. Petitioner
Vs.	
The State of Maharashtra & Anr.	.. Respondents

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Mr.R.B. Raghuwanshi i/b. Mr.Ratnesh Dube, Advocate for the
Petitioner.
Mr.V.B.K. Deshmukh, A.P.P. for Respondent No.1 – State.
Mrs.Vandana S. Gaikwad, Respondent No.2 – present in person.

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CORAM : M. L. TAHALIYANI, J.

DATED : FEBRUARY 3, 2015.

P.C. :

This writ petition is challenging the order passed by the Judicial Magistrate, directing the issuance of process against the petitioner for the offence punishable under Section 494 read with Section 109 of the Indian Penal Code (IPC). The petitioner is admittedly husband of the respondent no.2 Vandana Gaikwad. The petitioner and respondent no.2 were married in the year 2001. There was some discord between the petitioner and respondent no.2, they started living separately.

2 The allegations in the complaint are that on 9th January, 2009, the petitioner got married to one Ambika at Shani Temple Alandi, Taluka- Khed, District – Pune. It was alleged that this incident was seen by the relatives of the respondent no.2 namely Rajendra Vamanrao Bhosale and Dilip Vishnu Thigale. They reported the incident to the respondent no.2. She made inquiries from other villagers and came to the conclusion that the petitioner got married to the accused no.2 Mrs.Ambika Gaikwad at Shani Temple, Alandi on 9th January, 2009. Thereafter, she filed the private complaint in the Court of Judicial Magistrate, Rajgurunagar on 15th November, 2010. The learned Judicial Magistrate had sent the complaint for police inquiry under Section 202 of the Code of Criminal Procedure. Police had made detailed inquiries and had recorded a number of statements and had come to the conclusion that there was no marriage between the petitioner and the accused no.2 Ambika. Most of the witnesses during the course of police inquiry have stated that no such incident had occurred. Statement of wife of the priest who allegedly performed the marriage, was also recorded. She had stated in her statement that her husband is suffering from paralysis since long and he was not engaging himself in any ceremonies. On receipt of this report from the police, the learned Magistrate considered the statement of the complainant on oath and ignored the police report. He issued process

against the petitioner and other co-accused to answer the charge for the offences punishable under Sections 494 and 506 read with Section 34 of the IPC.

3 The learned counsel Mr.Raghuvanshi has submitted on behalf of the petitioner that there was no material at all to issue process against the petitioner. It was brought to my notice that the statement of Rajendra Bhosale, *prima facie*, indicate that he has seen the petitioner and one girl with floral garlands. There is no other material establishing that there could be any incident of marriage between the petitioner and Ambika. The other witness had not seen what is stated by Rajendra Bhosale. Admittedly, rests of the statements are negative. The police report is also negative.

4 The respondent no.2 is heard in person. It is submitted by her that she had made detailed inquiry and she is sure that Ambika is staying with her husband at Lonavala. However, she was not able to point out any material which could be translated in to evidence at the time of trial.

5 For all these reasons, I have come to the conclusion that the petition deserves to be allowed.

6 Hence, I pass the following order:

:: ORDER ::

- (i) The petition is allowed.
- (ii) The proceedings pending against the petitioner in the Court of Judicial Magistrate First Class, Rajgurunagar vide Criminal Case No.393 of 2010, for the offences punishable under Sections 494 and 506 read with Section 34 of the Indian Penal Code shall stand quashed.
- (iii) His bail bonds, if any, stands cancelled.
- (iv) The writ petition is disposed of accordingly.

(JUDGE)