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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1003 OF 2014

Mr. Ramnath Lochan Mourya & Ors.	..Applicants
Vs.	
The State of Maharashtra & Anr.	..Respondents

Mr. Prashant Aher for Applicants.
Mr. Shreeram Shirsat for Respondent No.2.
Mrs. Sangeeta D. Shinde, APP for Respondent No.1-State.

CORAM: A.S. GADKARI, J.
DATE : 17th July 2015.

P.C.

Heard learned Counsel for the Applicants, the learned Counsel for the Respondent No.2 and the learned APP for State.

2 This is an Application filed under Section 482 of Cr. P.C. thereby challenging the order dated 19th January 2012 passed by the Learned Metropolitan Magistrate, 10th Court, Mumbai of issuance of process against the applicants who are the original accused nos.2,3 and 4 in the private complaint filed by the respondent no.2 herein who is the legally wedded wife of the original accused no.1 in the private complaint namely Rajkumar Mourya.

3 It is the contention of the learned Counsel for the applicants that if the complaint read as it is, does not make out any prima facie case at all against the applicants herein. He further contended that the complaint is silent about the presence of the applicants at the time of second marriage of the accused no.1 Rajkumar Mourya and therefore Section 109 of Cr. P.C. cannot be said to have attracted in the present case inter alia abating Section 494.

4 By now it is the settled position of law and in particular the Supreme Court in the case of Indian Oil Corporation Vs. NEPC India Ltd. [(2006) 6 SCC 736] has laid down the principles of quashing of complaint under Section 482 of Cr. P.C. and held that the High Court should not invoke inherent jurisdiction where a prima facie case is made out.

5 I have perused the complaint and the allegations made against the petitioners and I am of the opinion that a prima facie case has been made out by the complainant against the petitioners herein. The defence of the applicants who are the accused in the present case cannot be tested at this stage as roving enquiry into the defence of the applicants cannot be entertained while seeking quashing of a complaint under Section 482 of Cr. P.C.

6 As stated hereinabove, and in view of ratio laid down by the Supreme Court, a prima facie case has been made out for issuance of process for the offence punishable under Section 494 read with Section 109 of Cr. P.C.

7 In that view of the matter, the Application being devoid of merits, is accordingly dismissed.

(A.S. GADKARI,J.)