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

CRIMINAL APPEAL NO. 31 OF 2015

Jayshri w/o Jivanrao Navhat,
Age: 41 years, Occu: Household,
R/o. Kothalwadi, Tq. Kalamb,
Dist. : Osmanabad,
At Present R/o. Pangri,
Tq. Washi, Dist. Osmanabad

..APPELLANT
(Orig. Complainant)

VERSUS

1. Jivanrao s/o Rambhau Navhat,
Age: 45 years, Occu: Driver
2. Kusumbai s/o Rambhau Navhat,
Age: 39 years, Occu: Household
3. Rukhminbai s/o Rambhau Navhat,
Age: Major, Occu: Household
4. Bhimrao s/o Rambhau Navhat,
Age: Major, Occu: Agri.
5. Latabai w/o Bhimrao Navhat,
Age: Major, Occu: Household
6. Nandubai w/o Shivaji Suryawanshi,
Age: Major, Occu: Household
7. Jankabai w/o Narhari Gavhane,
Age: Major, Occu: Household
8. Vitthal s/o Narhari Gavhane,
Age: Major, Occu: Agri.
9. Suman w/o Vitthal Gavhane,
Age: Major, Occu: Household
10. Ramchandra s/o Karbhari Gavhane,
Age: Major, Occu: Agri.,

All R/o. Kothalwadi, Tq. Kalamb,
Dist. Osmanabad

..RESPONDENTS
(Orig. Accused)

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Mr V. P. Sawant, Advocate for appellant;

CORAM : N.W. SAMBRE, J.

DATE : 23rd March, 2016

ORAL ORDER :

The present appeal is by the original complainant under Section 372 of Code of Criminal Procedure against the judgment of acquittal delivered in Regular Criminal Case No. 283 of 2008, a complaint case filed by the present appellant against respondents-accused for offence punishable under Section 494 read with Section 109 of the Indian Penal Code. The facts as are necessary in deciding present appeal are as under:

The respondent-accused No. 1 was married with appellant-complainant in 1994 as per the Hindu rituals. It is then claimed that the accused No. 2 to 7, though were aware about the said marriage, have gathered in temple and got married accused No. 1 with the accused No. 2 on 4th May, 2003. Specific role is attributed to each of the accused in the said complaint.

2. In view of above, as the complaint by the present complainant was not accepted by the Police Station, Kalamb, a complaint case was filed. Of all of the total accused, accused No. 7 – Mandakini, accused No. 10 – Narhari, accused No. 10 Narhari, accused No. 17 Raghunath were expired. Accused Nos. 6, 8, 14 and 16, since remained absent, hence they were deleted.

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3. In view of above, the case was tried as against accused Nos. 1 to 5, 7, 9, 11 to 13 and 15.

4. The learned Judicial Magistrate First Class, Washi, Dist. Osmanabad, by an order dated 19th November, 2014, acquitted all the accused persons for offences punishable under Section 494 read with Section 109 of the Indian Penal Code. As such present appeal.

5. Learned Counsel appearing on behalf of appellant would urge that the learned Magistrate committed an error by not appreciating evidence as was brought on record, so as to infer the conviction of the respondents-accused persons. He would then submit that the nature of evidence as was brought on record was not sufficient enough to draw inference to conviction and as such, sought reversal of the acquittal order and further prayed for conviction of the accused.

6. The complainant is examined in all two witnesses, whereas the accused have not examined any witness. The complainant, who was examined at Exh. 147 has claimed that she married with accused No. 1 some 20 years back and started residing together, which issue was proved by the complainant as same was not disputed by the accused persons in their statement under Section 313 of the Code of Criminal Procedure.

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7. It is then claimed by the complainant that the accused persons have participated in the marriage of accused No. 1 with accused No. 2 some 14 years back. She narrated about the rituals which were followed and the role played by each of accused persons. She claimed that she came to know the alleged marriage on very same day. It is then required to be inferred from the evidence of the complainant, who was examined at Exh. 147 that she was not eye-witness to the incident but relied upon hearsay information received from a person.

8. Witness No. 2 – Subhash Shrirang Ghule who was examined at Exh. 169 has claimed that accused No. 1 and 2 have married on 4th May, 2003 in Mahadeo Temple in the afternoon hours. He then narrated that there were around 25 peoples present in the marriage ceremony, however, he was unable to identified accused persons. He also claimed that he has never met accused persons any time before and was unable to narrate the names of the accused persons. According to him, he never narrated the details of persons who were present in alleged second marriage and it is Tukaram, who narrated names of 15 to 16 persons who were noted herein and mentioned in the complaint. In the cross-examination of the said witness, he has admitted that he has never met accused persons any time before and from his evidence it could be hardly inferred that he was personally present at the time of marriage. The person, from whom source of names of accused was disclosed, namely Tukaram was not examined by the complainant.

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9. In view of above, there is hardly any material to infer the involvement of the accused persons in crime in question punishable under Section 494 read with Section 109 of the Indian Penal Code.

10. As such, present appeal fails and stands dismissed.

(N.W. SAMBRE, J.)

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