

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

CRIMINAL WRIT PETITION NO. 119 OF 2005

1. Pandurang s/o Nagnath Malwade,
age 56 yrs, Occ. Agriculturist.
2. Sow Shila w/o Pandurang Malwade,
age 45 yrs, Occ. Household and
Agriculturist.
- Both Resident of Bori, Tq. & Dist.
Latur.
3. Sow Nirmala w/o Magan Pachphule,
age 45 yrs, Occ. Household & Agriculturist,
4. Balaji s/o Magan Pachphule,
age 21 yrs, Occ. Labour.

Both R/o Yelamwadi, Tq. Mohal,
District. Solapur.

..Petitioners..

VERSUS

1. Surekha w/o Umakant Kasole,
age 28 yrs, Occ. Household,
R/o Basweshwar Chowk,
Sampate Niwas, Kava Naka,
Tq. & Dist. Latur.
2. The State of Maharashtra,
(Copy to be served through PP
High Court of Judicature at
Bombay, Bench at Aurangabad.)Respondents..
(R-1 orig complt)

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Advocate for Petitioners : Smt S L Pansambal h/f V D Gunale
Advocate for Respondent 1 : Mr A N Nagargoje
APP for Respondent 2: Mr P G Borade
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CORAM : V.K. JADHAV, J.**Dated: August 22, 2016**

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ORAL JUDGMENT :-

1. Being aggrieved by the order of issuance of process passed by the 4th Judicial Magistrate First Class, Latur dated 16.12.2003 under section 494 read with section 109 of the Indian Penal Code below Exh.1 in RCC No.720/2003 and confirmed by the learned 2nd Additional Sessions Judge, Latur by its judgment and order dated 13.1.2005 in Criminal Revision Application No.51/2004, the original accused nos. 9,10,15 and 17 respectively preferred this writ petition.

2. Brief facts, giving rise to the present writ petition, are as follows :-

Respondent No.1 filed a private complaint against accused nos. 1 to 46 under section 494, 109 of Indian Penal Code and said case is registered as R.C.C. No.720/2003. It has alleged in the complaint that, original accused no.1 is husband and accused no.2 is his second wife. Though complainant's marriage with accused no.1 is performed in the year 1985 and she

begotten one son and one daughter out of that wed-lock, accused no.1 had performed second marriage with accused no.2 by subjecting the complainant with cruelty on account of non-fulfillment of certain unlawful demands. After recording verification statement of the complainant, the learned Judicial Magistrate First Class, Latur by order dated 16.12.2003 issued process against all the accused persons as aforesaid. Being aggrieved by the same, the present petitioners approached the Sessions Court and the learned 2nd Additional Sessions Judge, Latur by its impugned Judgment and order dated 13.1.2005 dismissed the Criminal Revision Application No.51/2004. Hence, this writ petition.

3. The learned counsel for the petitioners submits that, in the complaint most particularly in paragraph No.3 of the complaint there are allegations against the present petitioners to the extent that they have attended the said marriage and thrown rice on the couple. Learned counsel submits that, mere presence at the commission of a crime even with the awareness that a

crime was being committed is not in itself an intentional aid. Even accepting that the petitioners were knowing that the original accused no.1 was celebrating a void marriage and he was committing an offence punishable under section 494 of Indian Penal Code, merely by throwing holy rice on the couple, the provisions of Section 109 of the Indian Penal Code cannot be attracted. The learned counsel further submits that, so far as present petitioners are concerned, it has nowhere alleged in the complaint that they are the influential persons of the village and their mere presence in the marriage itself is sufficient to facilitate the commission of crime. Learned counsel in order to substantiate her submissions placed her reliance on a Judgment in case of **Malan w/o Rama and others Vs. State of Bombay and another** reported in **AIR 1960 Bombay 393**.

4. Learned counsel for respondent-original complainant submits that, the present petitioners are the near relatives of original accused no.1-husband. They were knowing that accused no.1 was celebrating a void marriage. Even they remained present at the time

of celebration of said marriage and, during the performance thereof they threw holy rice on the couple. Learned counsel submits that, in the given set of allegations explanation No.2 of Section 107 of the Indian Penal Code stands attracted. Learned counsel submits that, the scope of inquiry under section 202 of the Criminal Procedure Code is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint. The Magistrate has to find out *prima facie* whether a case is made out for issuance of process. The question whether the evidence is adequate for supporting the conviction can be determined at the time of trial and not at the stage of inquiry as contemplated u/s 202 of Criminal Procedure Code. Learned counsel submits that, whether present petitioners are the influential persons or not and whether their mere presence in the marriage is sufficient to facilitate the crime, can be seen during the course of the Trial. Learned counsel submits that, the Trial Court as well as the Sessions Court found that *prima facie* case exists against the accused persons including the petitioners and accordingly issued process

against them. No interference is required. There is no substance in the writ petition and the writ petition is liable to be dismissed.

5. The learned counsel for the respondent No.1 in order to substantiate his submissions places reliance on the following judgments :-

1. Jacob Harold Aranha and Anr. Vs. Mrs. Vera Aranha and another decided on 23.6.1978.
2. Mohinder Singh Vs. Gulwant Singh and others reported in AIR 1992 SC 1894.

6. On careful perusal of the complaint, most particularly paragraph no.3 of the complaint, it appears that, allegations have been made to the limited extent that present petitioners have attended said marriage and they have thrown holy rice on the couple at the time of celebration of said marriage. It has also stated in the complaint that, present petitioners are the close relatives of original accused and they were knowing that accused no.1 was celebrating void marriage and he was committing an offence punishable u/s 494 of the Indian Penal Code. Even accepting said allegations as it is, in a case of Malan w/o Rama and others (supra) cited by the

learned counsel for the petitioners, this Court had an occasion to reiterate the proposition that mere presence at the time of commission of a crime even with the awareness that a crime was being committed is not in itself an intentional aid as defined under Section 107 of the Criminal Procedure Code. This Court has also considered that, in some cases in which persons may occupy a position of influence and rank so that their presence may mean encouragement to commit the crime, and their very influence should be regarded as abettors. In the case in hand, there are no allegations that the present petitioners are the influential persons or high rank persons and their mere presence at the time of performing a void marriage by accused no.1 was sufficient to facilitate the commission of said crime. Furthermore, as observed by this Court, throwing of the rice on the couple was not a necessary part of the ceremony in the performance of a valid marriage. It is well known that, throwing of a holy rice in any marriage is ordinarily done by all the spectators who remained present at the time of marriage.

7. It is true that, inquiry as contemplated under Section 202 of Criminal Procedure Code is extremely limited and the ascertainment of the proof or falsehood of the allegations made in the complaint can be examined only on the basis of the material placed by the complainant before the Court. Even though, the allegations made in paragraph no.3 of the complaint are accepted as it is, I do not find that a *prima facie* case is made out for issuance of the process. Respondent No.1- original complainant has filed the complaint against near about 46 accused persons including the present petitioners. There are no specific allegations prescribing the individual role so far as the present petitioners are concerned and it is simply alleged that they have thrown holy rice on the couple. I do not find that even, *prima facie*, ingredients of Section 107 of the Indian Penal Code, stands attracted in this case. In view of this, the order passed by the 4th Judicial Magistrate First Class, Latur and confirmed by the learned 2nd Additional Sessions Judge, Latur, therefore, certainly calls for an interference to the extent of present petitioners. Hence, I proceed to pass the following order.

ORDER

- I. Writ petition is hereby allowed.
- II. The order passed by the 4th Judicial Magistrate First Class, Latur dated 16.12.2003 in RCC No.720 of 2003 and confirmed by the 2nd Additional Sessions Judge, Latur dated 13.1.2005 in Criminal Revision Application No.51 of 2004 against the present petitioners only is hereby quashed and set aside.
- III. The complaint/RCC No.720 of 2003 against the present petitioners stands dismissed. Rule is made absolute in above terms.
- IV. Writ Petition is accordingly disposed of.
- V. Considering the old pendency of RCC No.720 of 2003, the learned Judicial Magistrate First Class, Latur is hereby directed to dispose off the said case, as expeditiously as possible, preferably within a period of SIX MONTHS from today.

sd/-

(V.K. JADHAV, J.)

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aaa/-