

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

CRIMINAL APPLICATION NO. 677 OF 2005

1. Sudhakar Balkrishna Dalvi,
age 54 yrs, Occ. Service.
2. Nalani Sudhakar Dalvi,
age 46 yrs, occ. Service,
Both R/o Chaitrban Colony,
Gulmohar Road, Ahmednagar.

..Applicants..

(orig accused no. 3 and 4.)

VERSUS

1. The State of Maharashtra.
2. Surekha Mahesh Dhend,
age 35 yrs, Occ. Service,
R/o Plot no.7, Vrundavan Apartment,
Satbhai Lane, Ahmednagar.

...Respondents..

(orig complainant)

...

APP for Respondents: Mr S W Mundhe
Advocate for Respondent 2 : Mr N B Patekar h/f P R
Katneshwarkar

...

CORAM : V.K. JADHAV, J.

Dated: November 15, 2016

...

ORAL JUDGMENT :-

1. None present for the applicants. Heard learned counsel for respondent no.2-original complainant and learned APP for the State.

2. Brief facts, giving rise to the present criminal

application are as follows :-

The marriage of respondent no.2 complainant was performed with Mahesh on 9.5.1984 as per Hindu rites and said marriage is still in subsistence. However, after marriage differences were cropped in and therefore various matrimonial proceedings initiated and pending before the different courts. Respondent no.2 complainant has filed complaint bearing no. 181/2003 before the Chief Judicial Magistrate, Ahmednagar against the present applicants and against husband Mahesh for having committed an offence punishable under section 494, 109 read with 114 of Indian Penal Code. By order dated 19.7.2003 learned Magistrate was pleased to issue process against the present applicants and other co-accused persons for the offence punishable under section 494, 109 read with 114 of Indian Penal Code.

On appearance, the applicants preferred an application at exh.18 requested therein to recall order of issuance of process, however, by order dated 13.5.2004 the learned Magistrate has rejected the same. Even, the learned Sessions judge has confirmed the said order in

the revision. Hence, this criminal application.

3. It has alleged in the complaint that, original accused Mahesh had performed second marriage with original accused no.2 Savita in the month of June, 1998, however, complaint came to be filed on 26.5.2003 without explaining the delay. Order of issuance of process passed by the learned Magistrate is also challenged on the ground that there are absolutely no allegations as against the present applicants and no role what so ever ascribed to the applicants in the alleged performance of second marriage.

4. Learned counsel for respondent-original complainant submits that the present applicants have abetted the second marriage and the applicant no.2 Nalini Dalvi is real sister of husband Mahesh. Learned counsel submits that both the applicants had participated in performance of second marriage and considering the same, the learned Judge has rightly issued the process against the applicants under section 494, 109 r/w 114 of Indian penal Code.

5. On careful perusal of the complaint, it appears that, after marriage, respondent no.2-original complainant was subjected to ill-treatment by her husband Mahesh and his family members. On 12.1.1985 respondent no.2-original complainant was sent to her parents house and thereafter her husband Mahesh did not take her to his matrimonial home for further cohabitation. Consequently, respondent-original complainant has filed HMP bearing No.214/1985 for restitution of conjugal rights against husband Mahesh and the same was decided in her favour. Being aggrieved by the same her husband Mahesh had preferred RCA 7/1989 and District Judge, Ahmednagar also dismissed said appeal. Meanwhile, husband Mahesh had also filed a divorce petition against respondent no.2 - original complainant and same came to be dismissed by the trial Court. Being aggrieved by the same, husband Mahesh has preferred RCA No.115/1992 which also came to be dismissed. It has further alleged in the complaint that in the month of June, 1998 Mahesh had performed a second marriage with original accused no.2 Savita and even she gave

birth to one male child out of their marital wedlock. It has simply alleged in the complaint that present applicants have assisted husband Mahesh in performing second marriage, except this allegation, no specific role is ascribed to the present applicants. It is also not clear from the contents of the complaint as well as from the verification statement as to in what manner present applicants assisted husband Mahesh in performing second marriage illegally.

6. In view of this, the order of issuance of process against the present applicants under section 494 read with 109 and 114 of Indian Penal Code is improper, incorrect and illegal. Hence, following order.

O R D E R

- I. Criminal Application is hereby allowed in terms of prayer clause 'B'.
- II. Rule is made absolute in the above terms.
- III. Criminal Application is accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

aaa/-

...