

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

CRIMINAL WRIT PETITION NO. 435 OF 2015

1. Atmaram s/o Paraji Pawade,
Age: 45 years, Occ: Agri.,
R/o. Near Shete Magal Karyalaya,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.
2. Meera w/o Atmaram Pawade,
Age: 32 years, Occ: Agri.,
R/o. As above.
3. Ramrao s/o Maruti Mote,
Age: 68 years, Occ: Agri.,
At Post Akoli, Tq. Gangakhed,
Dist. Parbhani.
4. Gangabai w/o Ramrao Mote,
Age: 62 years, Occ: Agri.,
R/o. As above. ...Petitioners

versus

Shobha w/o Atmaram Pawade,
Age: 42 years, Occ: Household,
R/o. Gangakhed, At present Bhogaon,
Tq. Jintur, Dist. Parbhani. ...Respondent

.....
Mr. S.G. Joshi, Advocate for petitioners
Mr. M.M. Patil (Beedkar), Advocate for respondent
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CORAM : N.W. SAMBRE, J.

DATE : 3rd MAY, 2016

ORAL ORDER :

The respondent-wife filed Regular Criminal Case No.
166 of 2002 before learned Judicial Magistrate, First Class, Jintur,

District Parbhani for an offence punishable under Sections 494, 109 read with Section 34 of the Indian Penal Code. It is claimed that their marriage was performed on 13/05/1994 and thereafter petitioner No.1- Atmaram performed another marriage with petitioner No.2 Meera on 15/03/2002.

2. The said proceedings have reached at the stage of recording of evidence, wherein the application for issuance of witness summons came to be moved, which is allowed by learned Magistrate, by an order dated 03/12/2014. The said order is questioned in the present proceedings on the ground that the conduct of respondent-wife was not in accordance with law and submission is made that the lawyer of the present petitioners is also sought to be summoned as a witness.

3. Mr. Patil, learned Counsel for respondent-wife submits that the lawyer who is summoned as a witness was earlier representing petitioner No.2-wife and that is basis for calling him. He would then submit that the issuance of witness summons is an act, which is part of the proceedings of learned Court below and once the Court has exercised jurisdiction, this Court has very limited scope of interference.

4. Having dwelt upon the controversy, it is to be noted that the complainant has come out with the case for the offence punishable under Section 494 of the Indian Penal Code. It is also not in dispute that the lawyer, who is summoned as witness, was lawyer for petitioner No.2-wife in earlier round of litigation.

5. In my opinion, once the Court during the conduct of trial has exercised discretion for summoning the witness, particularly in the background of observations and facts noted herein before, no material irregularity or procedure is noticed, which causes prejudice to the present petitioners. The petitioners will have every right to cross examine such witness and learned Court below while analyzing the evidence of witness will take into account the defence of the accused persons. In this background, no interference is warranted. Criminal Writ Petition, as such, fails and stands dismissed.

[N.W. SAMBRE, J.]