

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

CRIMINAL APPLICATION NO. 3042 OF 2007

1. Mr. Vishnu S/o Haribhau Tupe,
Age. 32 years, Occu. Business,
R/o. Perache Bhabulagaon (Khurd),
At Present N.K. No. 278684, F.D. Company,
Link 19, Maratha, LIC/O-56, A.P. Sainik
Commanding Officer.
2. Sau. Vandana D/o Rangnath Agre,
Age. 20 years, Occu. Household,
3. Mr. Rangnath Alias Kachru Dada Agre,
Age. 50 years, Occu. Agri.,
4. Mr. Sahebrao Dada Agre,
Age. 48 years, Occu. Agri.,
5. Sau. Kondabai Rangnath Agre,
Age. 45 years, Occu. Housewife,
6. Santosh Rannath Agre,
Age. 20 years, Occu. Agri.,
7. Dada S/o Patil Agre,
Age. 70 years, Occu. Agri.,
8. Bala S/o. Haribhau Jadhav,
Age. 40 years, Occu. Agri.,
9. Karbhari S/o. Trambak More,
Age. 45 years, Occu. Agri.,
10. Gopinath Manikrao Gawali,
Age. 45 years, Occu. Labour,
11. Dada Pandharinath Pawar,
Age. 40 years, Occu. Agri.

(Petitioner No. 2 to 11 R/o. Babara,
Tq. Phulambri, Dist. Aurangabad.)

12. Uttam Devrao Patil (Takle)
Age. 40 years, Occu. Agri.,
13. Devidas S/o Devrao Patil (Takle)
Age. 42 years, Occu. Agri.,
14. Fakirrao S/o. Devrao Patil Takle,
Age. 40 years, Occu. Agri.,
15. Ashok Devrao Patil Takle,
Age. 40 years, Occu. Agri.,

(Petitioner No. 12 to 15 R/o. Sarola,
Tq. Kannad, Post Nachanwel, Dist. Aurangabad)

16. Haribhau S/o Devrao Tupe,
Age. 60 years, Occu. Agri.,
17. Sonabai W/o. Haribhau Tupe,
Age. 55 years, Occu. Household,
18. Bhagwan S/o. Haribhau Tupe,
Age. 28 years, Occu. Agri.,
19. Maya W/o. Bhagwan Tupe,
Age. 25 years, Occu. Household,

(Petitioner No. 16 to 19 R/o. Babhulgaon (Khurd),
Tq. Vaijapur, Dist. Aurangabad.

20. Prabhu S/o Pandharinath Pawar,
Age. 40 years, Occu. Service,
21. Dnyaneshwar S/o Kashinath Bhojne,
Age. 30 years, Occu. Service.
22. Vaishali W/o Dnyaneshwar Bhojne,
Age. 25 years, Occu. Housewife,

Petitioner No. 20 to 22 R/o. MGM Mission
Hospital, Cidco, Aurangabad.

23. Manohar S/o. Pandurang Thorat,
Age. 65 years, Occu. Agri,
R/o. Ambegaon, Tq. Gangapur,
Dist. Aurangabad. ...PETITIONERS

VERSUS

1. Smt. Chitrabai D/o Bajirao Shejwal,
Age. 28 years, Occu. Household,
R/o. At Dongaon, Post Bahirgaon,
Tq. Kannad, Dist. Aurangabad.
2. State of Maharashtra,
Through Police Inspector,
Kannad Police Station, Kannad,
Dist. Aurangabad. ...RESPONDENTS

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Advocate for Petitioners : Mr R F Totala
Respondent No.1 – absent.
APP for Respondent -2 : Mr M B Bharaswadkar

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CORAM : V.K. JADHAV, J.
Dated: November 23, 2016
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ORAL JUDGMENT :-

1. By this application the applicants seek quashing
and setting aside of the proceedings of RCC
No.177/2004 (3019/2004) pending before the Judicial
Magistrate First Class, Kannad.
2. Brief facts, giving rise to the present application

are as follows :-

a] Respondent no.1 was legally wedded wife of petitioner no.1 and respondent no.1 has filed the complaint bearing RCC No.177/2004 (3019/2004) before the Judicial Magistrate First Class, Kannad against present applicants alleging therein that during the subsistence of the first marriage, the petitioner no.1 had performed second marriage with the petitioner no.2 and all other petitioners-accused persons facilitated the commission of said offence. Learned Magistrate by order dated 4.10.2004 after recording verification statement of the complainant found a prima facie case made out against all the applicants-accused and accordingly issued process against them for the offence punishable under sections 494, 109 of the Indian Penal Code. Hence, this Criminal Application.

3. The learned counsel for the applicants submits that, during the pendency of said complaint, petitioner No.1 filed a petition H.M.P. No.34/2005 before the Civil Judge Senior Division,, Aurangabad u/s 13 of the Hindu Marriage Act seeking divorce against the respondent

no.1-original complainant and after hearing the parties, the learned Civil Judge Senior Division by judgment and order dated 10.3.2006 dismissed the petition. Being aggrieved by the same, petitioner no.1 herein preferred a R.C.A. No.104/2006 before the District Court, Aurangabad and the learned District Judge-5, Aurangabad by judgment and order dated 12.1.2007 allowed the appeal and thereby quashed and set aside the judgment and decree passed by the trial Court in H.M.P. No.34/2005 and accordingly declared that relations between the petitioner no.1 herein and respondent no.1 created by the marriage in between them put to an end. The learned District Judge-5 further directed that petitioner no.1-husband to pay Rs.1,50,000/- (One Lac Fifty Thousand Only) to the present respondent no. 1 as permanent alimony and interest thereon at the rate of 6 percent from the date of the order. It is further directed that, present respondent no. 1 is at liberty to get additional amount of maintenance in changed circumstances as and when permissible in law. Learned counsel has pointed out that on 16.4.2007 petitioner no.1 herein has deposited

amount of Rs.1,52,320/- (One lac, Fifty Two Thousand, Three Hundred Twenty Only) before the Court below and receipt to that effect is issued and the same is placed on record.

4. Learned counsel submits that relations between petitioner no.1 and respondent no.1 put to an end by the decree of the competent court and said decree has attained finality. Moreover, respondent no.1 has withdrawn said amount deposited by the petitioner no.1 before the court. Learned counsel submits that H.M.P. No.34/2005 though dismissed by the Civil Judge Senior Division, Aurangabad finding is recorded to the effect that present respondent no.1 has failed to prove the second marriage performed by the petitioner no.1 herein with petitioner no.2. Learned counsel submits that therefore nothing survives in the complaint bearing RCC No.177/2004 (3019/2004). Furthermore, learned counsel submits that acts complained in the complaint hardly attracts the provisions of section 494 of the Indian Penal Code. Learned Magistrate has not recorded any reasons and mechanically passed the

order of issuance of process.

5. I have also heard the learned APP for the State.

6. None appears for respondent no.2.

7. On careful perusal of the complaint, it appears that complainant was not eye witness to the alleged incident and she was informed about the incident by the witness. Complainant has not examined any witness before the Court and the learned Magistrate as it appears from the impugned order dated 4.10.2004 mechanically issued process without applying mind. The same is also evident from the contents of the complaint that it has alleged that some of the accused persons thrown sacred rice and clapped in the ceremony and some of the accused distributed sweet and performed some other acts which hardly attracts the penal provisions of section 494 of the Indian Penal Code. Furthermore, as pointed out by the learned counsel for the petitioner, respondent no.1 has accepted the amount towards permanent alimony and judgment and decree passed in RCA No.104/2006 has now

attained finality as submitted by the learned counsel for the petitioner.

8. In view of this, I do not find any substance in the complaint bearing RCC No.177/2004 (3019/2004). Accordingly, I proceed to pass the 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 above terms.
- III. Criminal Application accordingly disposed off.

(V.K. JADHAV, J.)

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