

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3141 OF 2007

1. Vitthal s/o Tulshiram Jadhav
Age 38 years, Occ. Service
R/o. Civil Hospital, Parbhani
Tq. and District Parbhani
2. Varsha w/o Vitthal Jadhav
Age 25 years, Occ. Household
R/o. Parbhani, Tq. & Dist. Parbhani
3. Tulshiram s/o Devla Jadhav
Age 60 years, Occ. Agriculture
R/o. Hirabori Tanda, Tq. Loha
District Nanded
4. Bapurao s/o Tulshiram Jadhav
Age 36 years, Occ. Service
R/o. Hirabori Tanda, Tq. Loha
District Nanded
5. Ganesh s/o Tulsiram Jadhav
Age 32 years, Occ. Agriculture
R/o. Hirabori Tanda, Tq. Loha
District Nanded
6. Dudhabai w/o Tulshiram Jadhav
Age 53 years, Occ. Household
R/o. Hirabori Tanda, Tq. Loha
District Nanded
7. Parubai w/o Narayan Rathod,
Age 34 years, Occ. Household
R/o. Dattawadi, Tq. Gangakhed
at present Hirabori Tanda, Tq. Loha
District Nanded
8. Vimalbai w/o Raosaheb Pawar
Age 30 years, Occ. Household
R/o. Godavari Tanda, Tq. Gangakhed
District Parbhani
9. Ramji s/o Amarsing Rathod
Age 50 years, Occ. Service

R/o. Dhokalewadi, Tq. Gangakhed
District Parbhani
at present S.T. Depo Parbhani

10. Nithubai w/o Ramji Rathod
Age 45 years, Occ. Household
R/o. Dhokalewadi, Tq. Gangakhed
District Parbhani
at present Parbhani

11. Premlabai d/o Ramji Rathod
Age 28 years, Occ. Household,
R/o. Dhokalewadi, Tq. Gangakhed
District Parbhani
at present Parbhani

...Applicants

Versus

1. Sau. Babita w/o Vitthal Jadhav
Age 29 years, Occ. Household
R/o. Hirabori Tanda, Tq. Loha
District Nanded

2. The State of Maharashtra,
(copy to be served on P.P.
High Court of Bombay,
Bench at Aurangabad)

...Respondents

.....
Mr. N.S. Kadam, advocate for the applicants
Mr. M.V. Deshpande with Mr. R.N. Chavan, advocate for respondent No.1
Mr. M.B. Bharaswadkar, A.P.P. for respondent No.2
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CORAM : V. K. JADHAV, J.
DATED : 16th DECEMBER, 2016

ORAL JUDGMENT:-

1. By this criminal application, the applicants are seeking quashment of proceeding of R.C.C. No. 48 of 2007, pending before the learned Judicial Magistrate, First Class, Loha, District Nanded.

2. Brief facts, giving rise to the present criminal application, are

as follows:-

a) Respondent No.1 has filed private complaint bearing criminal case No. 48 of 2007, before the J.M.F.C. Loha, district Nanded against the applicants for having committed offences punishable under Sections 494 r.w. 109 of I.P.C. It has alleged in the said complaint that respondent No.1 is legally wedded wife of present applicant No.1 and their marriage was solemnized on 14.5.1996. After the marriage, she was treated well for certain period, however, thereafter subjected to ill-treatment on the count that she is unable to give birth to the child and also on some other counts. Respondent No.1 complainant thereafter, started residing with her parents. Afterwards, she learnt that applicant No.1 has performed second marriage.

b) The learned Magistrate, on receipt of said complaint, recorded verification statement of the complainant and statements of her witnesses, issued process against the applicants original accused No.1 for the offences punishable under section 494 of I.P.C. and against the applicants original accused Nos. 2 to 11, for the offences punishable under Section 494 r.w. 109 of I.P.C. Hence, this criminal application.

3. Learned counsel for the applicants original accused submits that even though the incident alleged to have taken place on 23.12.2000, the complaint in question came to be filed before the court on 28.3.2007 i.e. after seven (07) years of the alleged incident. Learned counsel submits that no specific role is ascribed to applicant Nos. 2 to 11. It has nowhere alleged in the complaint that accused Nos. 9, 10 and 11 were having knowledge about the first marriage of applicant original accused No.1. Learned counsel submits that considering the same, by order dated 24.10.2007, this court has granted interim relief in terms of prayer clause "B" in favour of applicant Nos. 3 to 11 and further directed that the proceedings against applicant Nos. 1 and 2 shall proceed in accordance with law. This court has also made it clear that if applicant Nos. 1 and 2 desire to raise any objection regarding territorial jurisdiction of the Court at Loha for entertaining the complaint, the applicants shall be entitled to raise such an objection and the same shall be considered by the Magistrate at Loha, in accordance with law. Learned counsel submits that during pendency of this application, the complaint came to be dismissed against applicant original accused No.2 and also learned Magistrate has discharged applicant original accused No.1.

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 No.1 submits that applicant No.1 has performed second marriage with applicant No.2 and rest of the applicants had participated in the ceremony of marriage. Learned counsel submits that there are specific allegations in the complaint against each and every accused and the learned Magistrate has therefore, rightly issued process and there is no substance in the criminal application.

5. On careful perusal of complaint, it appears that no specific role is assigned to the applicants original accused Nos. 3 to 8. It has alleged in the complaint that the applicant original accused No.5 has simply distributed sacred rice, however, mere distribution of sacred rice in the alleged incident, prima facie, is not sufficient to attract the provisions of Section 494 and 109 of I.P.C. It has nowhere alleged in the complaint that the applicants original accused Nos. 9 and 10, who happened to be the parents of second wife and the applicant original accused No.11, who happened to be real sister of original accused No.2, were having knowledge about the first marriage of the applicant original accused No.1. It appears that the learned Magistrate has not applied his mind and mechanically issued process

against applicants accused for the offences punishable under Sections 494 r.w. 109 of I.P.C. Further, the respondent complainant had approached to the court seven years after the alleged incident and has not tendered any explanation in the complaint as to why there was such inordinate delay in filing the said complaint. In the light of the statement made by learned counsel for the applicants, this court, by order dated 28.11.2016 directed the Registrar (Judicial) of this court to find out the present status of R.C.C. No. 48 of 2007 pending before the Judicial Magistrate, First Class, Loha, Tq. Loha, District Nanded. Accordingly, the Registrar (Judicial) of this court has placed a report received from the learned J.M.F.C. Loha dated 02.12.2016. On perusal of the same, it appears that the complaint against the applicant original accused No.2 came to be dismissed for want of steps and applicant original accused No.1 came to be discharged by the court. This court, by order dated 24.10.2007, has made it clear that the proceedings against the applicants original accused Nos. 1 and 2 shall proceed in accordance with law. So far as the applicants original accused Nos. 3 to 11 are concerned, as observed in the foregoing paras, no case is made out against them even accepting the allegations made in the complaint as it is.

6. 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

applicants, this Court in para 9 of the said judgment has made the following observations:-

“9. The next point is whether the fact that the aforesaid accused person threw holy rice on the couple should be regarded as an act of abetment. The evidence discloses that this act of throwing rice was done by the aforesaid persons during the time when the ‘antarpāt’ was held and the ‘mangalastakes’ were being recited. The question as to whether this act amounts to an abetment or not depends upon a consideration of explanation 2 to Section 107 I.P.C. That Explanation says that whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and, thereby facilitates the commission thereof, is said to aid the doing of that act. Therefore, in order that the aforesaid act of throwing rice may be said to be an act of abetment, it is necessary to enquire whether the act of throwing rice was done in order to facilitate the commission of bigamy and thereby bigamy was facilitated. It is not shown that this act is one of the necessary acts which has got to be performed in the celebration of a marriage. It is true that the ceremony which was undertaken by accused No.1 was a void ceremony and anything which was done on the aforesaid day did not amount to marriage in law. But, in order that an offence under Section 494 may be committed it is necessary, at least, that all the ceremonies which are necessary to be performed in order that a valid marriage may take place, ought to be performed and, ordinarily, all these ceremonies would amount to a valid marriage but for the fact that the marriage becomes void on account of the existence of

a previous wife. It is not shown to me that the throwing of rice on the couple was a necessary part of the ceremony in the performance of a valid marriage. It appears that this thing is ordinarily done by all the spectators who remain present at a marriage, and the act is more consistent with the presence of the aforesaid persons at the time of the celebration of the marriage rather than actual participation in the acts which ultimately lead to the formation of the marriage contract. In my opinion, the aforesaid act in itself does not lead to the necessary conclusion that the act was done to facilitate the performance of the marriage, much less could it be said that thereby the performance of the marriage was facilitated. Under the aforesaid circumstances, I have come to the conclusion that the acts which have been brought home against all the accused persons, except accused Nos. 3 and 9, whose further, case will be considered hereafter, do not necessarily amount to an act of abetment. In my opinion, the acts which have been brought home against the aforesaid accused Nos. 2, 4, 5 to 8 and 11 to 13 are not acts of abetment within the meaning of Sec. 107 I.P.C., and , therefore, these persons were wrongly convicted under Sec. 114 I.P.C.

7. Even though the interim relief was operating and the same was in force, the learned Magistrate, Loha has not taken care while disposing of the case against the remaining accused persons. Since no case is made out as against remaining accused persons, no purpose will be served by directing the Magistrate to restore the said complaint as against original accused Nos. 3 to 11. Hence, I proceed

to pass the following order:-

O R D E R

- I. Criminal application is hereby allowed.
- II. The criminal complaint bearing R.C.C. No. 48 of 2007, pending before the learned Judicial Magistrate, First Class, Loha, District Nanded, for the offences punishable under section 494 r.w. 109 of I.P.C. is hereby dismissed against the applicants-original accused.
- III. Rule is made absolute in the above terms.
- IV. Criminal application is disposed of accordingly.

(V. K. JADHAV, J.)

rlj/