

(1)

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

CRIMINAL WRIT PETITION NO. 1178 OF 2014

Kiran Ravindra Kukkar @ Pinki Vitthal Chavan,
Age: 28 years, Occu: Household,
R/o New Peth, Pune, Taluka and District Pune ..PETITIONER

VERSUS

1. Seema w/o Ravindra Kukkar
(Since Deceased)
- 1a) Lata w/o Keshav Katyare,
Age: 61 years, Occu: Household,
R/o. 18, Bhujal Colony,
Behind Pnachwati Gas Godown,
Deopur, Dhule
- 1b) Keshav s/o Pandu Katyare,
Age: 65 years, Occu: Pensioner,
R/o. 18, Bhujal Colony,
Behind Pnachwati Gas Godown,
Deopur, Dhule
- 1c) Nitin s/o Keshav Katyare
Age: 37 years, Occu: Business,
R/o. 18, Bhujal Colony,
Behind Pnachwati Gas Godown,
Deopur, Dhule
2. Chandrakant s/o Dadasaheb Yadav,
(formal party) Age: major, Occu: Service,
R/o Premnagar, Near Market Yard,
Pune-37
3. R. K. Pawar (formal party),
Age: Major, Occu: Legal Practitioner,
R/o Narayan Peth, Pune
4. Tushar s/o Ramesh Khaladkar (formal party)
Age: Major, Occu: Service,
R/o 105, Narayan Peth, Pune
5. Ravindra s/o Jankiram Kukkar (formal party)
Age: 30 years, Occu: Labour,
R/o Burud Lane, Yeola,
Tq. Yeola, Dist. Nashik ..RESPONDENTS

(2)

Mr A. D. Pawar, Advocate to for petitioner;
Mr M. H. Patil, Advocate for respondent Nos. 1a to 1c

CORAM : N.W. SAMBRE, J.

DATE : 26th August, 2016

ORAL ORDER :

In Regular Criminal Case No.131 of 2002, complainant Seema had alleged that her husband – accused no.1 Ravindra married to accused no.2 Kiran, which marriage was second to that of her marriage and as such, alleged commission of offences punishable under sections 494 - bigamy, 465 – forgery, 109 - abetment and 119 - presence of abettor when the offence was committed.

2. Complainant Seema died on 13th Mach, 2012 and without considering the locus to prosecute the complaint for offence punishable under section 494 of the Indian Penal Code, the learned Magistrate granted substitution. Be that as it may, accused no.2 Kiran, claiming to be second wife of accused no.1 Ravindra, sought discharge on the ground that she cannot be prosecuted, having regard to the scheme of the said provision. The discharge is also sought on the ground that so far as the offence under other sections, i.e. 465, 109 and 114 is concerned, there are no necessary ingredients.

3. The said application was resisted by the legal representatives of original complainant and the learned Magistrate rejected the claim for

(3)

discharge, which order was upheld in Criminal Revision No.105 of 2013, vide order dated 24th July, 2014 by the learned Additional Sessions Judge, Dhule. As such, present petition.

4. Learned Counsel appearing on behalf of the petitioner, while taking me through the contents of the complaint, would urge that admittedly present petitioner – Sau. Kiran ought not to have been prosecuted for offence punishable under Section 494 of the Indian Penal Code and should have been discharged. He would then urge that offences punishable under Sections 465, 109 and 114 of the Indian Penal Code cannot be considered to have been committed by the petitioner, particularly in absence of the pleadings and *prima facie* evidence therefor. He would rely upon the judgment of this Court in the matter of **Sangita d/o Natthulal Labhane Vs. Yashodhara w/o Krishna Bhitre and anr.** reported in **2008 (5) Mh.L.J. 820** and the judgment of this Court in the matter of **Kusum Dadarao Khandagale Vs. Dadarao Bajirao Khandagale and ors.** reported in **2003 ALL MR (Cri) 1279**, so as to claim that the evidence while considering the framing of charge *qua* the offence punishable under Section 494 of the Indian Penal Code has to be appreciated and if no evidence is available, the accused needs to be discharged.

5. Learned Counsel appearing on behalf of respondent Nos. 1a to 1c opposed the claim on the ground that there are sufficient pleadings raised in the complaint and it is upon satisfaction of the Magistrate who has recorded the verification, process came to be issued against the present

(4)

petitioner. He would then invite my attention to the marriage certificate, so as to submit that there is forgery and as such, offence punishable under Section 465 of the Indian Penal Code is committed, as the date of marriage came to be tampered in the said marriage certificate. He would then urge that the petitioner abetted the offence under Section 109 of the Indian Penal Code and was very much present at the time of second marriage and as such, committed offence punishable under Section 114 of the Indian Penal Code also.

6. Learned Counsel would rely upon the judgment of the Apex Court, in the matter of **Wakil Yadav and anr. vs State of Bihar** reported in **(2000) 10 SCC 500**.

7. Having perused basic pleadings as are raised in the complaint so as to make out *prima facie* case, including that of the contents of the verification, it is required to be noted that there is absence of statement by the present respondent-complainant, that the present petitioner who happened to be second wife of Ravindra was in know how of the fact that Ravindra was already married to the complainant. Apart therefrom, if the scheme of Section 494 of the Indian Penal Code is considered, particularly commission of an offence therein, it is to be noted that the woman, who marries a man, whose wife is living, cannot be prosecuted. Section 494 of the Indian Penal Code basically covers such an act, which he has committed on his own and not by other persons. Section 494 in no way permits the prosecution of second wife. Paragraph 8 of the judgment in

the matter of Sangita (supra) is worth referring to, which reads thus :

“8. Insofar as section 494 of the Indian Penal Code is concerned, the learned counsel for respondent No. 1/original complainant has fairly submitted that no case is made out against the present applicant. In my considered opinion, the concession has been correctly made inasmuch as under section 494 of the Indian Penal Code it is either the husband or the wife who marries during the life time of husband or wife who can be punished. Under Section 494 of the Indian Penal Code the woman who marries a man whose wife is living cannot be prosecuted. Therefore, the order passed by the learned Magistrate issuing process against the applicant for the offence under section 494 read with section 34 of the Indian Penal Code and the order of the Revisional Court deserves to be quashed and set aside”

8. In view thereof, even if it is claimed that offences under Sections 109 and 114 of the Indian Penal Code are alleged against the petitioner, in absence of provision for prosecution under Section 494 and in absence of pleadings, i.e. about the knowledge of the present petitioner *qua* existence of first marriage of petitioner with accused No. 1, the charge for offences punishable under Sections 109 and 114 of the Indian Penal Code is not maintainable against the petitioner. It is to be noted from the record that the charge under section 465 of the Indian Penal Code is based on a marriage certificate, which was lodged for registration and there are also no specific allegations as regards involvement of the petitioner in the said crime.

(6)

9. It is then to be noted that the judgment of the Apex Court, in the matter of Wakil (supra) relied upon by the learned Counsel appearing on behalf of the respondent lays down a proposition of law, that while ordering punishment to an accused for offence punishable under section 109, the conviction need not be under other sections for which the main accused is punished, but has to be independently under section 109 only, as the same forms a distinct offence, punishable independently. As such, in my opinion, the judgment in the case of Wakil (supra) will hardly be of any assistance.

10. For the aforesaid reasons, in my opinion, a case for discharge of the petitioner is made out. I, therefore, pass following order :

The petitioner is discharged from Regular Criminal Case No. 131 of 2002, pending on the file of learned Judicial Magistrate First Class, Dhule.

Criminal Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

amj