

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

CRIMINAL APPLICATION NO. 5599 OF 2015

1. Prabukant S/o. Dattaram Gangulwar,
Age. 46 years, Occ. Education,
Unemployed, R/o. Dastgirgalli,
Kondalwadi, Tq. Biloli, Dist. Nanded.
2. Dattaram S/o. Sidram Gangulwar,
Age. 75 years, Occ. Agriculture,
R/o. Dastgirgalli, Kondalwadi,
Tq. Biloli, Dist. Nanded.
3. Gangadhar S/o. Poshetty Gangulwar,
Age. 65 years, Occ. Business,
R/o. Bodhan, Dist. Nizamabad.
(Tea stall, in front of Govt. Hospital).
4. Sow. Gangamani W/o. Gangadhar Gangulwar,
Age. 60 years, Occ. Household,
R/o. Bodhan, Dist. Nizamabad.
(Tea stall, in front of Govt. Hospital).
5. Sidram S/o. Dattaram Gangulwar,
Age. 55 years, Occ. Service,
R/o. Naigaon, Dist. Nanded,
(Janta High School).
6. Sow. Parwati W/o. Sidram Gangulwar,
Age. 50 years, Occ. Household,
R/o. Naigaon, Dist. Nanded,
(Janta High School).
7. Gangadhar S/o. Dattaram Gangulwar,
Age. 52 years, Occ. Agriculture,
R/o. Arjaspur, Tq. Biloli, Dist. Nanded.
8. Sow. Rajmani W/o. Gangadhar Gangulwar,
Age. 42 years, Occ. Household,
R/o. Arjaspur, Tq. Biloli, Dist. Nanded.

9. Prakash S/o. Dattram Gangulwar,
Age. 47 years, Occ. Service,
R/o. Dastagir Galli, Kondalwadi,
Tq. Biloli, Dist. Nanded.
10. Sow. Sunita W/o Prakash Gangulwar,
Age. 42 years, Occ. Household,
Dastagir Galli, Kondalwadi,
Tq. Biloli, Dist. Nanded.
11. Pandurang @ Pandharinath,
Age. 40 years, Occ. Business,
R/o. Dastagir Galli, Kondalwadi,
Tq. Biloli, Dist. Nanded.
12. Sow. Anusaya W/o. Pandurang Gangulwar,
Age. 30 years, Occ. Household,
R/o. Dastagir Galli, Kondalwadi,
Tq. Biloli, Dist. Nanded.
13. Chandrashekhar S/o. Sidram Gangulwar,
Age. 32 years, Occ. Agriculture,
R/o. Naigaon, Dist. Nanded,
(Janta High School).
14. Ravindra S/o. Sidram Gangulwar,
Age. 29 years, Occ. Agriculture,
R/o. Naigaon, Dist. Nanded,
(Janta High School).
15. Parashant S/o. Sidram Gangulwar,
Age. 25 years, Occ. Agriculture,
R/o. Naigaon, Dist. Nanded,
(Janta High School).
16. Shyam S/o. Gangadhar Gangulwar,
Age. 25 years, Occ. Agriculture,
R/o. Arjapur, Tq. Biloli,
Dist. Nanded.
17. Vijay S/o. Gangadhar Gangulwar,
Age. 19 years, Occ. Agriculture,

R/o. Arjapur, Tq. Biloli,
Dist. Nanded.

...APPLICANTS

VERSUS

1. Sow. Trupti W/o. Prabhukant Gangulwar,
Age. 39 years, Occ. Service,
R/o. At post Swami Vivekanant Housing
Society, Gopalchiwadi, Tq. & Dist. Nanded.

2. The State of Maharashtra,
Through Police Inspector P.S.,
Biloli, Tq. Biloli, Dist. Nanded. **...RESPONDENTS**

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Advocate for Applicants : Mr S.S.Bhise h/f S.B Bhapkar
APP for Respondent State : Mr. A R Kale
Advocate for Respondents : Mr H V Patil

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CORAM : V.K. JADHAV, J.
Dated: September 28, 2016

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ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. Being aggrieved by the order dated 24.04.2014 passed by the Judicial Magistrate First Class, Nanded in RCC No.570/2014 for issuance of process against the present applicant and some other accused persons for the offences punishable under section 494, 109 of the Indian Penal Code and the judgment and Order passed

by the Additional Sessions Judge-1, Nanded dated 30.6.2015 in Criminal Revision Application No.3/2015 confirming the order passed by the Magistrate, the original accused nos. 1 and 3 to 18 have preferred this Criminal Application.

3. Brief facts, giving rise to the present application are as follows :-

Respondent no.1 filed a private complaint bearing RCC No.570/2014 before the Chief Judicial Magistrate, Nanded against the present applicant and some other persons for having committed an offence punishable under section 494, 109 of the Indian penal Code, alleging therein that she is legally wedded wife of applicant no.1 and even though said marriage is subsisted, applicant no.1 has performed second marriage with one Gangasagar d/o Prabhukant Gangulwar on 10.6.2014 at village Laghul, Tq. Biloli, Dist. Nanded. It has also alleged in the complaint that, applicants, other accused persons were present at the time of celebration of the marriage and they being close relatives had knowledge of the fact that the applicant-

accused no.1 was purporting to marry a second wife though first marriage is subsisted. The learned Judicial Magistrate First Class, Nanded was pleased to issue process against all the accused persons mentioned in the complaint for the offences punishable u/s 494, 109 of the Indian Penal Code. The learned Additional Sessions Judge, Nanded by impugned judgment and order dated 30.6.2015 in Criminal Revision Application No.3/2015 also confirmed the said order. Hence, this Criminal Application.

4. Learned counsel for the applicants submits that, there are allegations in the complaint that the applicant no.1 was celebrating a void marriage and at that time the other applicants remained present during the performance thereof. Learned counsel submits that, mere presence at the commission of crime even with the awareness that crime was being committed is not in itself an intentional aid. Learned counsel submits that, even accepting the allegations made in the complaint as it is, no case is made out against the applicants and therefore, order of issuance of process passed against

the applicants for having committed an offence punishable u/s 494, 109 of the Indian Penal Code and confirmed by the Additional Sessions Judge in Criminal Revision Application No.03/2015 are liable to be quashed and set aside.

5. Learned counsel in order to substantiate his contentions places his reliance on following judgment.

Malan w/o Rama and others Vs. State of Bombay and another reported in AIR 1960 Bombay 393.

6. Learned counsel for respondent no.1 submits that, it has alleged in the complaint that the persons from the husband side were giving threats to the complainant about performing of the second marriage of the present applicant no.1 and, even they were searching for the bride. All the applicants except the applicant no.19 and 20 reside jointly and they had knowledge of the fact that the applicant no.1 was purporting to marry second time even though first marriage is subsisted. It has alleged in the complaint that, other applicants abetted the commission of said crime. Learned counsel submits that, during the course of trial, respondent-complainant

would depose about the details of their abetment in the alleged crime. In that way, scope of the enquiry under Section 202 is extremely restricted and both the courts below after finding out a prima facie case against the applicants issued process for the offence punishable under sections 494, 109 of the Indian Penal Code.

7. Learned counsel in order to substantiate his contentions placed reliance on following judgment.

Mohinder Singh Vs. Gulwant Singh and others reported in AIR 1992 Supreme Court page 1894.

8. It is true that scope of inquiry under section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not. Learned counsel for respondent has, thus, rightly places his reliance on a case Mohindar Singh Vs. Gulwant Singh and ors (supra).

9. In a case Malan w/o Rama and ors Vs. State of Bombay and another (supra) and relied upon by the learned counsel for the applicant, in paragraph no.8 of

the judgment, this Court has made following observations :-

“(8) For the purpose of determining this question, in my opinion, it is better, first of all, to concentrate on the first three general facts found against all the accused persons. Those general facts are that they knew that the accused No. 1 was celebrating a void marriage and was committing the offence of bigamy; that they remained present at the time of the celebration of that void marriage and, during the performance thereof, they threw holy rice on the couple. There is very good authority for the proposition that mere presence at the commission of a crime even with the awareness that a crime was being committed is not in itself an intentional aid. This proposition is not being disputed by the learned Government Pleader. In fact, this proposition was laid down by this Court as early as in Empress v. Umi, ILR 6 Bom. 126. The learned Government Pleader, however, contended that though this is so, there may be some cases in which persons may occupy a position of influence and rank so that their presence may mean encouragement to commit the crime, and he contended that, when such is the case, persons holding the position of rank and influence should be regarded as abettors. For this purpose, the learned Government Pleader relied upon a passage from Messrs. Ratanlal and Dhirajlal's Law of Crimes 19th Edition, at page 230. The passage is as follows:

"Mere presence at the commission of a crime cannot amount to intentional aid, unless it was intended to have that effect. To be present and to be aware that an offence is about to be committed does not constitute abetment unless the person thus present holds some position of rank or influence such that his countenancing what takes place may, under the circumstances, be held a direct encouragement....."

This passage is based upon the case in [Queen-Empress v. Lakshmi.](#), Crim Rev. Appln. No. 51 of 1886 : Rat Un Cri Cas 303. So far as this ruling is concerned, the aforesaid remarks are obiter. In this case, the learned Judges actually came to the conclusion that the woman who had been convicted of the offence of abetment did not hold a special position and her mere knowledge of what was done or was about to be done could not be held to be an abetment. Therefore, the observations which were made in this case do not give any help in deciding the present case. In my opinion even if one agrees with the submission of the learned Government Pleader that, under certain circumstance, where persons present hold position of influence or rank their presence should be construed as an encouragement of the criminal act, in the present case, it is impossible to hold that the aforesaid accused persons held such a position vis a vis accused No. 1 that their presence should be taken as having encouraged the accused No. 1 in committing the offence of bigamy. So far as some of the accused persons are concerned, the

learned Government Pleader had to concede that their acts do not come within the principle which is enunciated above. Accused No. 5 is the brother of the bridegroom. Accused no. 6 to 8 are his bhaubands, and accused no.13 is the brother of the bride. It is conceded by the learned Government Pleader that so far as these accused persons are concerned, they cannot be said to be occupying a position of rank or influence, and their presence cannot be said to have encouraged accused No. 1 in the performance of the void marriage. The learned Government Pleader, however, contended that the acts of accused Nos. 1 to 4, 9, 11 and 12 stood on a different footing. The accused Nos. 2 and 3 are the parents of the bridegroom, and the accused No. 4 is his uncle. Accused No. 9 is the police patil of the village at which the marriage was celebrated and accused Nos. 11 and 12 are the parents of the bride. It was contended that these persons occupied a position of rank and influence and, therefore, their presence must be taken to have encouraged accused No. 1 in the performance of the void marriage. This aspect of the case does not appear to have been discussed before any of the lower Courts, and none of the lower Courts have applied its mind on this subject. The matter is one of presumption arising from certain relationship existing between the parties. In my opinion the matter is one which is dependent upon the evidence in each case. The admitted fact is that these persons are related as aforesaid and that they remained present at the aforesaid void

marriage. There is nothing else on the record of the case which would show that their presence amounted to encouragement and that if these persons had not remained present at the time of the marriage, the offence of bigamy probably would not have taken place and the accused No. 1 would have acted in a manner different from what he did at the time of the performance of the aforesaid marriage. Sometimes elders do remain present even at marriages which they disapprove. They may do so out of sentiments or social considerations. Under the aforesaid circumstances, having regard to the fact that I am dealing with this matter in a revision application, and the fact that this aspect of the case has not been considered by the lower Courts. I am not prepared to hold that the aforesaid accused should be held to have encouraged the performance of the void marriage simply from the fact that they remained present at the marriage."

10. It is well settled that, an act of abetment may take place in one of three ways i.e. 1]-Instigation, 2]-conspiracy and 3] - Intentional aid. In the instant case, the allegations against the applicants except applicant no.1 are restricted to the extent that, they have attended said marriage. This Court in the aforesaid case had an occasion to deal with the similar issue and accordingly, considered the well settled proposition that mere

presence at the commission of the crime even with the awareness that crime was being committed is not itself an intentional aid. This Court has, however, considered that there may be in some cases in which person may occupy a position of influence or rank, so that their very presence may mean encouragement to commit the crime. In such a cases, person holding position or rank and influence should be or can be regarded as abettors. In the instant case, there are no allegations to that effect that some of the applicants are such a influential persons that their very presence at the time of performance of the alleged second marriage facilitated the crime. So far as applicant no.1 is concerned, there are direct allegations against him.

11. In the light of the above discussion and particularly, in the light of the observations made by this Court in the case of Malan w/o Rama Vs. State of Bombay and anr. (supra), the order of issuance of process passed by the Magistrate and confirmed by the Additional Sessions Judge, Nanded in Criminal Revision Application does not sustain/stand as against the

applicants nos. 2 to 17. Hence, I proceed to pass the following order.

O R D E R

- I. Criminal Application is hereby partly allowed.
- II. The order dated 24.4.2014 passed by the Judicial Magistrate First Class, Nanded in R.C.C. No.570/2014 for issuance of process against the applicants no.2 to 17 herein and the said order confirmed by the Additional Sessions Judge, Nanded, by order dated 30.06.2015 in Criminal Revision Application No. 03/2015 to the extent of applicants no. 2 to 17 is hereby quashed and set aside.
- III. The Complaint bearing R.C.C. No.570/2014 is hereby dismissed as against applicants No. 2 to 17.
- IV. Rule is made absolute in above terms. Criminal Application accordingly disposed off.

sd/-
(**V.K. JADHAV, J.**)

aaa/-

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