

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

CRIMINAL APPLICATION NO. 5865 OF 2013

Sau. Sangitabai w/o. Ramdas Dandge .. Applicant

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. S.N. Lute, Advocate for the applicant.

Mr. K.S. Patil, A.P.P. for respondent No.1/State.

CORAM : INDIRA K.JAIN, J.

DATED : 3rd FEBRUARY, 2016.

P.C. :-

1. Heard Mr. S.N. Lute, learned Counsel for the applicant.

None for the respondents.

2. Here is an application under section 378 (4) of the Code of Criminal Procedure for leave to appeal against the judgment and order dated 25.07.2013 passed by learned Judicial Magistrate, First Class, Bhokardan, in R.C.C. No.102 of 2005, acquitting the accused of the offences punishable under sections 494, 109, 114 of the Indian Penal Code.

3. The facts giving rise to the application may be stated in brief as under :-

. Applicant-Sangita is the original complainant. She is legally wedded wife of accused No.1-Ramdas. Their marriage was performed in the year 1996 as per customary rites. After marriage, applicant went to her matrimonial house. Applicant and accused No.1 were blessed with a son and a daughter. Accused No.1-Ramdas is a teacher in Zilla Parishad School, Jalki Bazar. After some time of marriage, applicant was beaten by her husband under the influence of liquor on demand of Rs.50,000/-. She was driven out of the house and since then she was residing at her maternal place at Surangali, Tq. Bhokardan.

4. Complainant alleged that on 06.01.2004 accused No.1-Ramdas performed second marriage with accused No.2-Sunita at Bhuyareswar Temple, Vizora, Tq. Bhokardan in the presence of respondent Nos.4 to 18, who played key role in getting second marriage performed. Complainant submitted that second marriage was performed in accordance with the customary rites of the parties and accused No.1-Ramdas and second wife-Sunita had a daughter from the second marriage.

5. On the complaint of the applicant, process was issued against the accused for the offences punishable under sections 494,

109 and 114 of the Indian Penal Code. Evidence before framing charge was recorded. On the basis of the evidence, learned Judicial Magistrate, First Class, found that there was prima facie case to proceed against the accused. Charge was accordingly framed. Accused pleaded not guilty and claimed to be tried.

6. During trial, complainant examined in all five witnesses. On going through the evidence of complainant and her witnesses, Trial Court observed that offence alleged against the accused is not established beyond reasonable doubt and in consequence thereof, acquitted all the accused. Being aggrieved by the impugned judgment and order of acquittal, complainant has come up before this Court seeking leave to appeal.

7. According to applicant, there is substantive evidence on record to show that her husband-Ramdas had performed second marriage with Sunita with the assistance of other relatives of the husband. Learned Counsel for applicant submitted that findings recorded by Trial Court are against the evidence on record and urges to grant leave to appeal.

8. With the assistance of learned Counsel for applicant,

this Court has gone through the evidence of witnesses examined by complainant. Accused No.1-Ramdas does not dispute that applicant-Sangita is his legally wedded wife. He, however, denied alleged second marriage with Sunita. P.W.3-Dnyaneshwar, P.W.4-Sukhdeo and P.W.5- Atmaram are the witnesses who were present at the time of marriage of Ramdas with Sunita. They have categorically and consistently stated about the ceremonies performed at the time of wedding of accused No.1 with accused No.2. Learned Judicial Magistrate, First Class, while recording reasons, observed that second marriage was not strictly proved in accordance with law and so ingredients of offence under section 494 of the Indian Penal Code are not established.

9. So far as the role attributed to accused No.1-Ramdas and accused No.2-Sunita is concerned, this Court finds that complainant has an arguable case against them. In respect of other accused, no specific role is attributed to them except an omnibus statement by P.W.3 that he had seen all other accused present at the time of second marriage. He could not identify accused Nos.3 to 18 by names. There is no concrete evidence to connect accused Nos.3 to 18. For want of legal evidence, this Court is not inclined to grant leave to appeal against accused Nos. 3 to 18.

10. In the above premise, application needs to be partly allowed. Hence, the following order :-

i) Criminal Application No.5865 of 2013 is partly allowed.

ii) Leave to appeal against accused No.1-Ramdas and accused No.2-Sunita is granted.

iii) Criminal Application in respect of accused Nos.3 to 18 stands rejected.

[INDIRA K.JAIN,J.]

snk/2016/FEB16/cria5865.13