

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

CRIMINAL WRIT PETITION NO. 1372 OF 2015

Sow. Jyousana W/o. Subhash Pawar,
Age. 38 years, Occu. Household,
R/o. House No. A-5, Gulab Vishwa Pethe Nagar,
Bhausinghpura, Tal. & Dist. Aurangabad.

...PETITIONER
[Original Complainant]

Versus

- 1] Vasant S/o. Ratan Nikam,
Age. 35 years, Occu. Business,
R/o. House No. A-5, Gulab Vishwa,
Pethe Nagar, Bhausinghpura,
Tal. & Dist. Aurangabad.
- 2] The State of Maharashtra.

...RESPONDENTS
[Respondent No. 1-
Original accused No. 1]

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Advocate for Petitioner : Mr. Sonpethakar Pradeep N.
Advocate for Respondent No. 1 : Mr. B. N. Magar.
APP for respondent no.2 : Miss R P Gour

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CORAM : V.K. JADHAV, J.
Dated: October 26, 2016
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ORAL JUDGMENT:-

1. Heard finally with consent of the parties.
2. Being aggrieved by the judgment and order dated

3.10.2015 in criminal revision No.182/2015, the original complainant in RCC No.1180/2015 preferred this writ petition.

3. Brief facts giving rise to the present writ petition are as follows :-

a. On 7.3.2009 respondent no.1 had performed marriage with one Sarika and even she gave birth to two children out of their marital wedlock. Their marriage is still in existence. However, by concealing the said first marriage and by deceiving the daughter of the present petitioner, by name Neha, respondent no.1 original accused performed second marriage with said Neha. Thus, the petitioner-complainant constrained to file a complaint before the Judicial Magistrate First Class, Aurangabad bearing RCC No.1180/2015 against the present respondent and three more accused persons for having committed an offence punishable under section 494 r.w. section 34 of the Indian Penal Code. The learned Judicial Magistrate First Class, Aurangabad by order dated 1.7.2015 issued process against the present respondent-original accused no.1 alone for having committed an offence punishable under section 494 of

the Indian Penal Code, however, dismissed the complaint against the remaining accused nos. 2 to 4.

b. Being aggrieved by the same, respondent no.1 original accused preferred criminal revision no.182/2015 before the Sessions Court, Aurangabad and the learned Additional Sessions Judge, Aurangabad by judgment and order dated 3.10.2015 allowed the criminal revision application and thereby quashed and set aside the order of issuance of process against respondent-original accused no.1. Hence, this Writ Petition.

3. The learned counsel for the petitioner submits that the petitioner-original complainant is the mother of victim Neha. Respondent-original accused no.1 though already married and his first marriage was in existence, married with the daughter of the petitioner by concealing his first marriage. Respondent accused no.1 has committed an offence punishable under section 494 of the Indian Penal Code. Learned counsel submits that, the complainant being a mother of victim Neha,

with whom the respondent-accused no.1 had performed second marriage, entitled to lodge a complaint for commission of an offence under section 494 or 495 of the Indian Penal Code as the case may be and in view of the provisions of Section 198 Sub section (1) clause (c), the complaint filed by the mother is maintainable.

4. Learned counsel for the petitioner in order to substantiate his contentions placed reliance on the judgment of Supreme Court in case of **A. Subhash Babu Vs. State of A.P. And another**, reported in 2011 AIR SCW 4702. The Hon'ble Supreme Court in para 10 of the said case has made following observations:-

“10. A bare reading of complaint together with statutory provisions makes it abundantly clear that the appellant having a wife living, married with the respondent No. 2 herein by concealing from her the fact of former marriage and therefore her complaint against the appellant for commission of offence punishable under Sections 494 and 495, IPC is, maintainable and cannot be quashed on this ground. To hold that a woman with whom second marriage is performed is not entitled to maintain a complaint under Section 494 of IPC

though she suffers legal injuries would be height of perversity.”

5. The learned counsel for respondent submits that the respondent-original accused filed today before this Court the affidavit of his wife Neha. She has accepted her status as second wife of the respondent-accused and she denied the allegations made in the petition. She has also stated in her affidavit that she got married with respondent no.1 accused with the consent of his first wife and it was her will and wish that she got married with him. At the time of marriage she was 20 years of age and she was conscious about her decision and no pressure was applied on her. Even in a missing complaint lodged before the police authority she made a statement in the like manner. Even copy of the statement is annexed with her affidavit. It is further stated in the affidavit that she is living with her husband happily and she is not having any complaint against him. Further, she also delivered a female child and said child at present is six months old and her husband/respondent herein is taking every care of child

and herself.

6. Learned counsel for respondent-accused submits that in view of the provisions of Section 198 (1) Clause (c) the complaint may be made by the aggrieved person or on her behalf by her father, mother, brother, sister, son or daughter or by her father's brother, or sister or with the leave of the Court by any other person related to her by blood, marriage or adoption. The learned counsel submits that, in the light of the affidavit placed on record, it can be said that Neha is not willing to file any complaint against her husband-respondent herein and in view of that the complaint cannot be filed by her mother on her behalf. The learned counsel submits that, the ratio laid down in a case **A. Subhash Babu (supra)** is in the different context and cannot be made applicable to the facts and circumstances of the present case.

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

8. Section 198 sub section (1) and that relevant clause (c) reads as under :

“198. Prosecution for offences against marriage.- (1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offences:

Provided that-

(a).....

(b).....

(c) where the person aggrieved by an offence punishable under [section 494 or section 495] of the Indian Penal Code is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, [with the leave of the Court, by any other person related to her by blood, marriage or adoption].”

9. It is clear from the provisions of Section 198 of Cr.P.C., that court cannot take cognizance of an offence punishable under chapter XX of the Indian Penal Code except upon a complaint made by some persons aggrieved by the offence. In terms of sub section (1) and considering the allegations made in the complaint

which is subject matter of the present criminal writ petition, Neha would be an aggrieved person. In terms of clause (c) of sub section (1) of Section 198 of Cr.P.C., Neha being aggrieved person may file a complaint or the complaint may be made on her behalf by the person as detailed in clause (c). Considering the affidavit of Neha placed on record, it appears that she declined to be an aggrieved person and she is not willing to file any complaint against the respondent-accused with whom at present she is residing happily and even she gave birth to a female child out of their wedlock.

10. In a case of **A. Subhash Babu (supra)**, second wife has lodged complaint and in the circumstances of that case, the Supreme Court held that second wife is entitled to file a complaint for commission of offence punishable under section 494, 495 of the Indian Penal code. The Supreme Court has observed that, it would be a height of perversity if it is held that, woman with whom a second marriage is performed is not entitled to file a complaint under section 494 of Indian Penal Code. The Supreme Court has made aforesaid observation in

the different context. Had it been a case that victim Neha filed the complaint before the Court, then in the light of the ratio laid down in the aforesaid case, her complaint against her husband would have been maintainable. However, in the facts and circumstances, of the present case, the petitioner-mother cannot file a complaint on behalf of her daughter Neha, since Neha is not willing to file any complaint against her husband.

11. In view of this, the view taken by the learned Additional Sessions Judge appears to be sound. No interference is required. There is no substance in the writ petition. Writ Petition is liable to be dismissed. Hence, I proceed to pass the following order.

O R D E R

- I. Writ petition is hereby dismissed.
- II. Rule discharged.

(V.K. JADHAV, J.)

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aaa/-