

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.748 OF 2015

(VISHWAMBAR SITARAMJI DAHAT...VS..NITYANAND MADHAVRAO SHENDE & 1 OTHER.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : MARCH 08, 2016.

Heard Shri Vinay Dahat, advocate for the applicant and Shri R.S. Nayak, A.P.P. for the non-applicant No.2. There is no appearance on behalf of the non-applicant No.1.

2. The non-applicant No.1 filed an application under Section 156(3) of the Code of Criminal Procedure in which the inquiry is directed and after the inquiry report the process is issued against seven persons (including the present applicant) for prosecution under Sections 494, 496, 199, 200, 419 and 34 of the Indian Penal Code. The averments in the complaint are that the accused No.2-Supriya was married to Prafulla Jain, marriage having been solemnized on 21st August, 2003 and without getting divorce, the accused No.2-Supriya married Abhishek Nityanand Shende (son of the complainant). As against the present applicant, the allegation is that he was aware about the earlier marriage of accused No.2, however, without disclosing it he has been instrumental in arranging the marriage of accused No.2-Supriya with Abhishek Nityanand Shende (son of the complainant).

3. The applicant had challenged the order passed by the learned Magistrate directing issuance of process by filing revision before the Sessions Court. The learned Additional Sessions Judge has quashed the order passed by the learned Magistrate directing issuance of process against the accused (including the present applicant) for the offence punishable under Sections 494, 496, 199, 200, 419 and 34 of the Indian Penal Code, however, the learned Additional Sessions Judge has maintained the order of issuance of process for the offence punishable under Section 420 and 34 of the Indian Penal Code. The applicant being aggrieved by the order passed by the learned Additional Sessions Judge, insofar as the order directing issuance of process for the offence punishable under Section 420 and 34 of the Indian Penal Code is maintained, has filed this application.

4. With the assistance of the learned advocate for the applicant and the learned A.P.P., I have examined the documents placed on the record of this application. The relevant findings are recorded by the learned Additional Sessions Judge in paragraph 14 of the impugned order. The documentary evidence relied upon by the learned Additional Sessions Judge refers to the factum of marriage between Supriya and Prafulla Anant Jain. There is no consideration as to how the offence punishable under Section 420 of the Indian Penal Code can be said to have been committed by the present applicant. The learned A.P.P. has not been able to point out that the present applicant has committed any act because of which he can be prosecuted for the offence punishable under Section 420 of the Indian Penal Code.

5. The statement of Abhishek Nityanand Shende does not show that the present applicant connived with accused No.2-Supriya and other accused and had any dishonest intention. I find that the necessary ingredients to constitute the offence of cheating to prosecute the present applicant are lacking. The learned Additional Sessions Judge has failed to appreciate these aspects. Hence, the impugned order insofar as it affects the present applicant is unsustainable.

6. Hence, the following order :

The order directing issuance of process against the applicant for prosecution for the offence punishable under Section 420 and 34 of the Indian Penal Code passed by the learned Magistrate and maintained by the learned Additional Sessions Judge is quashed.

The criminal application is allowed accordingly. In the circumstances, the parties to bear their own costs.

JUDGE