

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1716 OF 2015

- 1] Satyawan Asaram Karadbhaje,
Age : 32 years, Occu. : Service,
R/o Anandnagar, Pathardi,
Tq. Pathardi, Dist. Ahmednagar.
- 2] Manisha Uttareshwar Harel,
Age : 27 years, Occu. : Service,
R/o Walwad, Tq. Bhoom,
Dist. Osmanabad.
- 3] Chandrakala Asaram Karadbhaje,
Age : 61 years, Occu. :
R/o Anandnagar, Pathardi,
Tq. Pathardi, Dist. Ahmednagar.
- 4] Tatyasaheb Asaram Karadbhaje,
Age : 39 years, Occu. : Service,
R/o Swapnasakhar Building,
1st Floor, Near New Petrol Pump,
Katraj Highway, Badlapur East,
Tq. Ambarnath, Dist. Thane.
- 5] Meera Chandrashekhar Jagtap,
Age : 41 years, Occu. : Household,
R/o Tavar Galli, Patas,
Tq. Dound, Dist. Pune.
- 6] Tara Shivaji Taksal,
Age : 37 years, Occu. : Household,
R/o Sakshalpimpri, Tq. & Dist. Beed.
- 7] Sou. Savita Tatyasaheb Karadbhaje,
Age : 36 years,
Occu. : Household,

R/o Swapnasakhar Building,
1st Floor, Near New Petrol Pump,
Katraj Highway, Badlapur East,
Tq. Ambarnath, Dist. Thane.

8] Chandrashekhar Ramchandra Jagtap,

Age : 46 years,
Occu. : Construction work,
R/o Tavar Galli, Patas,
Tq. Dound, Dist. Pune.

9] Shivaji Ranuji Taksal,

Age : 39 years,
Occu. : Construction work,
R/o Sakshalpimpri,
Tq. & Dist. Beed.

10] Komal Ravindra Ankush,

Age : 24 years, Occu. : Household,
R/o Kedgaon, Tq. & Dist. Ahmednagar.

11] Rameshwar Rambhau Karadbhaje

Age : 56 years, Occu. : Blacksmith,
R/o Dahayala, Tq. Ambad,
Dist. Jalna.

12] Indu Rameshwar Karadbhaje,

Age : 51 years, Occu. : Household,
R/o Dahayala, Tq. Ambad,
Dist. Jalna.

13] Atmaram Rameshwar Karadbhaje,

Age : 37 years,
Occu. : Insurance Representator,
R/o Dahayala, Tq. Ambad,
Dist. Jalna.

14] Tulshiram Rameshwar Karadbhaje,

Age : 32 years, Occu. : Blacksmith,

R/o Dahayala, Tq. Ambad,
Dist. Jalna.

- 15] Balbhim Bhaulal Lad,
Age : 58 years, Occu. : Blacksmith,
R/o Sakegaon, Tq. Pathardi,
Dist. Ahmednagar.
- 16] Uttareshwar Shankar Harel,
Age : 56 years, Occu. : Labour Work,
R/o Walwad, Tq. Bhoom,
Dist. Osmanabad.
- 17] Suman Uttareshwar Harel,
Age : 51 years, Occu. : Blacksmith,
R/o Walwad, Tq. Bhoom,
Dist. Osmanabad.
- 18] Rama Shankar Harel,
Age : 51 years, Occu. : Blacksmith,
R/o Walwad, Tq. Bhoom,
Dist. Osmanabad.
- 19] Ganesh Mahadeo Ankush,
Age : 53 years, Occu. : Blacksmith,
R/o Walwad, Tq. Bhoom,
Dist. Osmanabad.
- 20] Usha Uttareshwar Harel,
Age : 24 years, Occu. : Unemployed,
R/o Walwad, Tq. Bhoom,
Dist. Osmanabad.
- 21] Ashruba @ Bapu Uttareshwar Harel,
Age : 22 years, Occu. : Unemployed,
R/o Walwad, Tq. Bhoom,
Dist. Osmanabad.
- 22] Yogesh Uttareshwar Harel,
Age : 20 years, Occu. : Blacksmith,

R/o Walwad, Tq. Bhoom,
Dist. Osmanabad.

...Applicants

Versus

1] Shivranda Satyawar Karadbhaje,
Age : 29 years, Occu. : Household,
& Service, R/o Chandrabhaga Niwas,
Bhagwan Nagar, Georai,
Tq. Georai, Dist. Beed.

2] The State of Maharashtra.

...Respondents

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Mr. Nimbalkar Aniruddha A., Advocate for Applicants.

Mr. K. D. Munde, A. P. P. for Respondent No. 2 /
State.

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 25-06-2018.

PRONOUNCED ON : 05-09-2018.

JUDGMENT :

01. Rule. Rule made returnable forthwith with the consent of learned counsels for the parties, the application is heard finally.

02. Present application has been filed by the applicants, who are the accused persons in order to challenge the proceedings in R. C. C. No. 82/2014

before learned J. M. F. C., Tq. Georai, Dist. Beed by invoking the inherent powers under Section 482 of Cr. P. C.

03. Before turning to the disputed facts, I would like to consider the admitted facts. Respondent No. 1 is the wife of applicant No. 1. They got married on 13.12.2009 at Georai and respondent No. 1-wife has filed F. I. R. vide C. R. No. 9/2013 against the accused No. 1 husband and others under Section 498A, 323, 504 of I. P. C. with Pathardi Police Station. Applicant No. 3 is the mother, applicant No. 4 is the brother, applicant No. 5 and 6 are the sisters, applicant No. 7 is the applicant No. 4's wife, accused No. 8 and 9 are the brother-in-laws, accused No. 10 is the niece, accused No. 11 is paternal uncle and accused No. 12 is paternal aunt, accused no. 13, 14 are the cousin brothers and accused No. 15 is maternal uncle of accused No. 1. It is also not disputed fact that accused No. 1 i.e. present applicant No. 1 has filed Hindu Marriage Petition No. 294/2012 before Civil Judge Senior Division, Ahmednagar for divorce. He

has also filed a complaint for the offences punishable under Sections 294, 501, 504, 506 read with 34 of I. P. C. and Sections 67 and 71 of the Information Technology Act bearing R. C. C. No. 44/2013 before the J. M. F. C., Pathardi against the present respondent No. 1 and other 2 persons.

04. Respondent No. 1 / original complainant has filed a private complaint bearing R. C. C. No. 82/2015 before J. M. F. C., Georai against all the present applicants stating that the accused No. 1 has married accused No. 2 in front of the house of accused No. 16. Accused No. 16 is the father of accused No. 2. Accused No. 17 is the mother of accused No. 2. Accused No. 18 is paternal uncle, accused No. 19 is the maternal uncle, accused No. 20 is the real sister. Accused No. 21, 22 are real brothers of the accused No. 2. It is alleged that all the rituals of Hindu marriage had taken place on 2.5.2012 between 7 to 8 PM. It is stated that "होम" was performed and accused No. 1 has tied Mangalsutra in the neck of accused No. 2. The marriage between applicant and accused No. 1 is still subsisting and

therefore, the marriage between accused Nod. 1 and 2 is illegal and hence, she has prayed that action be taken against all the accused persons under Sections 494 and 104 of Indian Penal Code.

05. After the presentation of the complaint, learned Magistrate has passed an order of investigation under Section 202 of Cr. P. C. The said enquiry under Section 202 of Cr. P. C. has been carried out by Police Station, Georai and report has been submitted, which is in the negative. After perusing the said report, it appears that learned Magistrate has given chance to the complainant to lead evidence and after the evidence was led, process has been issued against accused No. 1 for the offence punishable under Section 494 and against rest of the accused persons for the offence punishable under Section 109 read with Section 149 of I. P. C. This order is under challenge in this application, so also, the proceedings.

06. Heard Mr. A. A. Nimbalkar, Advocate for Applicants, Mr. R. A. Jaiswal, Advocate for Respondent No. 1 and Mr. K. D. Munde, A. P. P. for

Respondent No. 2 / State and perused the documents. It has been submitted on behalf of the applicants that though the marriage was performed between the accused No. 1 and the complainant as per Hindu rites, complainant did not co-habit with the accused No. 1-husband. She left the matrimonial house within 8 days only and even after leaving the matrimonial home, she was blackmailing the husband. Therefore, the legal notice was issued by accused No. 1 on 7.6.2010. He has given details as to how the wife had behaved with him and under what circumstances, she had left his house. He had asked the wife to come for co-habitation. In spite of receipt of the said notice, she did not join the company of the husband. She used to give obscene and insulting messages to the complainant and for that purpose, the written complaint was filed by accused No. 1 against the complainant on 29.8.2010. After revealing as to who has sent those messages and the fact that the police were not taking cognizance, he had filed R. C. C. No. 44/2013 before J. M. F. C., Pathardi. He has given all the details of the said messages. That complaint was sent for investigation under Section

156(3) of Cr. P. C. and on the basis of the said complaint, F. I. R. was lodged vide C. R. No. 15/2013. Thereafter, on 4.2.2013, the complaint was filed by respondent No. 1 / complainant alleging that the applicants have committed offence punishable under Sections 494 & 109 of I. P. C. While passing the order of issuance of process, the learned Magistrate has not taken into consideration the negative report filed by the Police. It was specifically stated in the report that except the relatives of the complainant, nobody else has supported the allegations. Some persons were examined by the complainant, when the learned Magistrate has taken evidence under Section 202 of the Cr. P. C. It was also observed in the report by the police officer that many times the complainant was requested to produce witnesses. But, she had not produced any independent witness. Further, accused No. 1, who is a teacher with Zilla Parishad Primary School, Sonagaon, Tq. Jamkhed, Dist. Ahmednagar was present on 2.5.2012 on his duty. But, then thereafter from 12.5.2012 to 14.6.2012 there were summer vacations to the school. Therefore, when he was present in the

school, on that day, how he would have performed marriage with accused No. 2. There is absolutely no whisper about why the learned Magistrate is not taking note of negative report filed by the Police in the order. He, therefore, relied on the decision in **Shri B. H. Patil & Ors. V/s Shri Chandrashekhar Lomdeoji Titarmare, (2014 All MR (Cri.) 188)** wherein it has been held that "when the Magistrate did not take into consideration the negative report by investigating agency, nor gave reasons for not agreeing with the matters stated in the same, then it can be said that the impugned order is mechanically passed without application of mind and such order deserves to be set aside by exercising powers under Section 482 of Cr. P. C." He also relied on the decision in **State of Haryana and Ors. V/s Ch. Bhajan Lal and Ors., (AIR 1992 Supreme Court 604)** wherein the parameters have been laid down for exercising the powers of this Court under Section 482 of Cr. P. C. According to the learned Advocate for the applicant, this is a fit case where such powers are required to be exercised.

07. Per contra, it has been submitted on behalf of the respondent No. 2 that the learned Magistrate had taken into consideration the statements and the witnesses of the complainant. Though they are the relatives of the complainant, they have categorically stated that they were present at the time of incident. Complainant was harassed and therefore, she has filed report against accused No. 1 and other relatives for the offences punishable under Sections 498A, 323, 504 of I. P. C. When it was seen that the complainant is not coming for co-habitation, the accused No. 1 has married accused No. 2. Evidence that has been led under Section 202 of Cr. P. C. would be tested and if at all there is any delay in lodging the report, it has been properly explained by the complainant. Therefore, no fault can be found in the order of issuance of process.

08. It is to be noted that the marriage between the complainant and accused No. 1 had taken place on 13.12.2009 and a legal notice was issued by accused No. 1 to the complainant on 7.6.2010. This fact is not denied by the complainant. That means, the

husband was the person who had taken first step and called upon the wife to resume for co-habitation. It was specifically stated that the complainant was serving as a primary Teacher with Zilla Parishad School, Khatgaon, Tq. Paithan, Dist. Aurangabad. He has given as to what was the behaviour of the complainant during the period of 8 days at the matrimonial home. Complainant has not come with a case that she has replied the said notice. It appears that thereafter, the written complaint was filed by accused No. 1 with Police Inspector, Pathardi Police Station on 29.8.2010 stating that he is receiving threatening SMSs from a phone number, which he has given in the complaint and he gave the contents of the SMSs, date and time of receipt of the same and prayed that action should be taken against that sender. If we peruse the SMSs, it can be seen that it was in respect of the marriage between the complainant and accused No. 1. Thereafter, again on 14.11.2010, accused No. 1-husband has given another notice to complainant-wife and again called upon her to resume for co-habitation. In respect of receipt of this notice also neither the wife resumed for co-

habitation nor gave reply to the said notice. It appears that thereafter, the accused No. 1-husband filed the Hindu Marriage Petition under Section 13 of the Hindu Marriage Act for divorce before the Civil Judge, Senior Division, Ahmednagar in the month of July 2012. Thereafter, the complainant had filed a written complaint with Mahila Takrar Nivaran Kendra, Beed on 12.9.2012 and on that basis, the offence under Section 498A, 323, 504 of I. P. C. came to be registered vide C. R. No. 9/2013. Even, prior to that it appears that accused No. 1 has filed complaint R. C. C. No. 44/2013 against the complainant and other 2 persons with J. M. F. C. Pathardi, which was sent for investigation under Section 156(3) of Cr. P. C. In the said complaint, for the first time, it was revealed by the husband that the accused No. 2 to 3 are acting in conspiracy and on the basis of the SMSs and the behaviour of the complainant, he has stated that accused No. 2 was in love of accused No. 1 and all of them were harassing the accused No. 1 i.e. present applicant No. 1. All these events are necessary to be taken note for the simple reason that under which background the said

complaint to be filed by the accused No. 2 therein.

09. In the said complaint, the complainant has come with a case that the accused No. 1 performed second marriage with accused No. 2 on 2.5.2012. She also disclosed that the said fact about their marriage was made known to her by her relative on the same day. If she had come to know about the alleged second marriage on 2.5.2012, itself is the question as to why she had kept mum till 4.2.2013. The delay caused in filing the complaint has not been explained by the complainant. She has stated that she had gone to Police to lodge a report. But, she was asked by Police to lodge a private complaint, she has not given the date on which she had gone to Police Station and what advice was given to her. She has also tried to say that after she was made known about the alleged second marriage, she as well as witness No. 3 had gone to the house of the accused No. 1 and it was found by her that accused No. 2 is residing with accused No. 1 as his wife. Again she has not given the date on which she had gone to make enquiry and with whom she has made the enquiry.

10. The first and the foremost point to be noted is that when the matter was sent for enquiry under Section 202 of Cr. P. C. and the report was filed, it was specifically stated in the report that only the relatives of the complainant are saying that the accused No. 1 has performed the second marriage, but, no evidence is given either orally by the person who had actually seen the marriage or by documentary evidence and therefore, the negative report is given. The learned Magistrate has not at all considered the negative report. No doubt, after the negative report is filed the law expects that the complainant should be heard. She should be given an opportunity to file protest petition. It appears that such procedure has been adhered to and thereafter, the complainant was allowed to lead evidence before the Magistrate. After the evidence was led, it was for the learned Magistrate to consider the statements of those witnesses, who were examined by the Police as well as those were examined before him. A cryptic order has been passed by the learned Magistrate stating that the witnesses are supporting the complainant. Statements of accused persons i.e. accused Nos. 1 and

2 were also taken by the Police who have negatived the fact that they have married each other. Police had then taken statement of one Shivhari Popatghal, who is the brother of complainant. His statement would clear that he has not witnessed the second marriage. Statement of witness Baban Popatghal taken by Police would show that he was called by one Uttareshwar Harel on 1.5.2012 for the marriage. Accordingly, he went to the venue at about 7 PM on 2.5.2012. But, before he could reach, according to him, the marriage was performed at 6.30 PM. But, then he says that he had seen the accused Nos. 1 and 2 in the attire of bride and bridegroom sitting on the chair on dais. He then said that accused No. 1 as to how he can perform second marriage. He says that thereafter, he was threatened. He also said that if it would have been known to him earlier he would have gone to Police. The conduct of these witnesses can be taken note of. He says to be the cousin brother of the complainant. He does not say that after witnessing the accused Nos. 1 and 2 and having a dialogue with them, he had ever informed the said fact to the complainant. He has stated that he

was called by accused No. 16 i.e. the father of the accused No. 2. The learned Magistrate ought to have considered that whether it was possible for accused No. 16 to call the relative of earlier wife of accused No. 1. Witness does not say that accused No. 16 had no knowledge about the previous marriage of accused No. 1.

11. Witness Rajendra Tambe has stated before the Police that he was called by brother of accused No. 1 on 2.2.2012 to remain present for marriage on 5.2.2012. It will not be out of place to mention here that he has given the status of accused No. 4 as Police Officer. Accused No. 4 is the real brother of accused No. 1 and he is serving in police. When the person was serving in Police and had a knowledge of law, whether he would call the relatives of the first wife of accused No. 1, is a question. But, then witness Rajendra Tambe says that he went to the place of marriage at about 12 PM and according to him, the marriage was performed at 6.30 PM. He has not stated that he had given information about whatever he had seen to the complainant. Thus, it can be seen that

on the basis of these statements, the report was filed by the Police that except the relatives of the complainant, nobody else is saying anything about the marriage of the accused No. 1 with accused No. 2. Statement of these witnesses ought to have been considered by the learned Magistrate.

12. After the complainant was asked to lead evidence under Section 202 of Cr. P. C., she has again reiterated the same facts as per her complaint and then she has examined same witness i.e. Rajendra Tambe. His conduct, therefore, ought to have been considered by the learned Magistrate even at the time of issuance of process. Act of issuance of process is a judicious act and can not be considered as a mechanical process. By passing such order of issuance of process, the learned Magistrate would be asking the accused persons to undergo the ordeal of trial. Therefore, the order of issuance of process should reflect about the application of judicious mind. The ratio laid down in **B. H. Patil's** case (Supra) is definitely applicable here. In that case also the learned Magistrate had not taken into

consideration the negative report by the Investigating Officer which was filed under Section 202 of the Cr. P. C. and therefore, this Court had come to the conclusion that such order of issuance of process is a mechanically passed order, without application of mind. No doubt, what had happened between the husband and the wife since the date of marriage till the complaint was filed was not before the learned Magistrate when the order was passed. However, the statement of accused No. 1 was taken by the Police. It ought to have been considered and further directions could have been given by the learned Magistrate before applying his mind in view of the statements made by accused No. 1. It is to be noted that as per the husband, complainant had resided with him only for 8 days. He is consistent in saying that he had no physical relations even after the marriage. Therefore, he has denied the paternity of the son. Therefore, when serious allegations were made by him, the learned Magistrate ought to have considered the negative report and ought to have given the detailed order.

13. Taking into consideration all the documents on record, especially, as it can be revealed from those documents that husband had taken the first step and had called upon the complainant to resume the co-habitation and she had neither resumed the co-habitation nor replied the notice and also the evidence that was led before the Magistrate as well as the statements taken by Police under Section 202 of Cr. P. C., it is clear that the impugned order passed by the learned Magistrate is without application of mind. There was absolutely no evidence before the learned Magistrate to take cognizance of the offence and therefore, the said complaint deserves to be quashed and set aside in view of the decision in **B. H. Patil and Bhajan Lal's** case (Supra).

14. Hence, following order;

ORDER

(i) Application is hereby allowed.

(ii) R. C. C. No. 82/2015 filed before J. M. F. C.,
Tq. Georai, Dist. Beed against the present

applicants is hereby quashed and set aside under
Section 482 of Cr. P. C.

(iii)Rule is made absolute in above terms.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-.