

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

CRIMINAL WRIT PETITION 1005 OF 2017

Sow. Mangala w/o Raghunath Tonpe
Age: 40 Years, Occ.: Househod,
R/o C/o. K.K. Hirekar, House No. N-13,
C-38/1 HUDCO Corner,
Aurangabad.

**...Petitioner
(Orig.complainant)**

Versus

1] Raghunath s/o Vasant Tonpe
Age: 47 Years, Occ.: Service,
R/o Malumbar, 33/11
KV Sub-Station, Tq. Tuljapur,
Dist. Osmanabad.

2] Saroj d/o Pandu Kajale
Age: 35 Years, Occ.: Labour,
R/o Plot No. 224, Paparam Nagar
Vijapur, Solapur.

3] Pandurang s/o Raghunath Kajale
Age: 68 Years, Occ.: Agri,
R/o Sarul, Tq. Ausa, Dist. Latur.

4] Kerabai w/o Pandu Kajale
Age: 63 Years, Occ.: Household,
R/o Sarul, Tq. Ausa, Dist. Latur.

5] Digambar @ Diggu Shahapure
Age: 53 Years, Occ.: Labour,
R/o Near Fish Market, Shivaji Nagar,
Malad, Mumbai.

6] Paregabai w/o Digambar Shahapure
Age: 47 Years, Occ.: Household,
Near Fish Market, Shivaji Nagar,
Malad, Mumbai.

7]The State of Maharashtra,
Through Police Inspector,
Police Station Begumpura,
Aurangabad.

...Respondents
(Orig. Accused No. 1 to
4, 6 & 7)

...
Mr.M.K.Deshpande, Advocate for petitioner.
Mr.A.R.Kale,APP for Respondent 7.
Mr.A.P.Ghute Patil, Adv. For respondents no.1 to 6.

...

CORAM : MANGESH S. PATIL, J.
DATE : 03/07/2018.

ORAL JUDGMENT :

Rule. Rule is made returnable forthwith. With the consent of both sides, the matter is heard finally.

2] A wife who is the original complainant has approached this Court under Articles 226 and 227 of the Constitution of India being aggrieved and dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No.111/2014, whereby the learned Judge was pleased to quash and set aside the order passed by the learned Judicial Magistrate, First Class in Regular Criminal Case No.1460/2012 directing a process to be issued, under Section 204 of the Code of Criminal Procedure against respondents 1 to 6 for the offences punishable under Sections 494 and 109 of the Indian Penal Code.

3] The learned advocate for the petitioner submits that she is the legally wedded wife of the respondent no.1 and had begotten couple of children. However, without the marriage having been dissolved he solemnized second marriage with the respondent no.2 and has begotten a child. Based on the allegations, the learned Magistrate was pleased to record her statement under Verification under Section 200 of the Cr.P.C. and had further directed the Police to conduct an inquiry under Section 202 of the Cr.P.C. On such report the learned Magistrate found that there were sufficient grounds to believe that the respondents 1 to 6 had committed the offence and directed the process to be issued. However, ignoring the fact that only the direction for issuance of process was being challenged the learned Additional Sessions Judge misdirected himself and by observing that there was no sufficient material to show that the second marriage was performed by following the custom held that there was no reasonable basis for proceeding against the respondents 1 to 6. The learned advocate would submit that that was not a stage to scan the material from this angle. The inquiry under Section 202 of the Cr.P.C. is only meant so that the Magistrate can reassure himself that there are sufficient grounds to proceed against the proposed accused. There is no scope to ascertain as is done during a fulfilled trial and expect the complainant to come out with the evidence which would be sufficient to bring home a charge. The scope of the inquiry was limited and still the learned Additional Sessions Judge by referring to a decision which is in respect of an Appeal has committed an error in quashing and setting aside the order of

issuance of process and dismissing complaint under Section 203 of the Cr.P.C.

4] The learned advocate for respondents 1 to 6 submits that accepting the material collected by the Police during the course of inquiry under Section 202 of the Cr.P.C., there is absolutely no whisper about the necessary customary rituals having been performed so as to constitute a legal marriage between the respondent no.1 and respondent no.2. The complaint itself is silent about all these aspects. Even the complainant petitioner herself does not have any personal knowledge. She has also not stated anything about this aspect in her statement under Verification and for want of sufficient material to *prima facie* show that any rituals were performed to constitute a marriage between respondents no.1 and 2, the respondents 1 to 6 cannot be allowed to face the prosecution.

5] I have carefully gone through the papers and the impugned order passed by the learned Additional Sessions Judge as also the order passed by the learned Magistrate. It is necessary to emphasize that the scheme of Sections 200 to 204 of Cr.P.C. clearly shows that it is only when a Magistrate forms an opinion that there are sufficient grounds for proceeding that is sufficient to empower him to direct a process to be issued under Section 204 of the Cr.P.C. It is a post cognizance stage and nowhere requires that the quality of material available to him should be sufficient to warrant conviction. The use of the words “sufficient grounds to proceed” make it abundantly clear that the material

should be sufficient enough for a person to *prima facie* show that there is substance in the allegations which make out necessary ingredients for constituting an offence.

6] The inquiry contemplated under Section 202 of the Cr.P.C. only enables him to reassure himself that there is such substance and grounds to proceed. The statements recorded during the course of such an inquiry under Section 202 of the Cr.P.C. is not evidence and the complainant has to establish and bring home the charge independently by leading the evidence during the course of the trial. If such a scheme is born in mind it would be hazardous to contemplate that a complainant should lead the evidence even before the process is issued. The stage of recording of the evidence would come only after the process is issued and the charge is framed or in case of a private complaint before the charge is framed in warrant triable cases.

7] I am emphasizing this aspect only because the learned Additional Sessions Judge seems to be oblivious of the purport and object of Sections 200 to 204 of the Cr.P.C. He has recalled the process and dismissed the complaint under Section 203 of the Cr.P.C. by observing that there is no material to show that the alleged second marriage was in fact performed by following all the customary rituals. In my considered view, such a conclusion and expectation of the learned Additional Sessions Judge is like putting a cart before the horse. To repeat, it was uncalled for the learned Additional Sessions Judge to have expected the petitioner complainant to have come out with some

evidence which would have been sufficient to establish the allegations regarding second marriage.

8] When admittedly the petitioner is the first wife of the respondent no.1 and there was material to show that he has been cohabiting with the respondent no.2 and even had begotten a child, evidenced by a certificate issued by a Doctor regarding birth of the child on 28/9/2006, when there were statements of various witnesses with whom the inquiry was made by the Police under Section 202 of the Cr.P.C. *prima facie* showing that the respondents no.1 and 2 have been cohabiting after some sort of ceremony was undertaken to constitute a marriage, in my considered view, the material was sufficient enough to say that there were sufficient grounds to issue process against atleast respondents 1 and 2.

9] Though there are allegations that the respondents 3 to 6 have abetted second marriage, no fault can be found with the conclusion drawn by the learned Additional Sessions Judge and when the material is not sufficient enough to conclude that there are sufficient grounds to proceed against them.

10] Reliance placed by the learned Additional Sessions Judge in a case of this Court in **Kerabai w/o Ramrao Nakhate V/s Ramrao s/o Laxman Nakhate and others; 2013 All MR (Cri) 3515** is not appropriate, the learned Judge seems to have lost sight of the fact that the observations were made in an appeal against acquittal. Considering the stage in the present

proceeding, those observations could not have been placed into service by the learned Additional Sessions Judge.

11] For the reasons discussed hereinabove, the impugned judgment and order deserves to be quashed and set aside to the extent of the respondents no.1 and 2.

12] The Writ Petition is partly allowed. The impugned judgment and order passed by the learned Additional Sessions Judge in Criminal Revision Application No.111/2014 dated 9/6/2016 is quashed and set aside to the extent of respondents no.1 and 2 and the order passed by the learned Judicial Magistrate, First Class directing a process to be issued against them is restored.

13] Rule is made absolute in above terms.

(MANGESH S. PATIL,J.)

umg/