

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

CRIMINAL APPLICATION (APPA) NO.532 OF 2016

(Pravina Suresh Kamdi Vs. Suresh Bhaurao Kamdi and another)

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

Court's or Judge's orders.

Shri J.D. Bastian, Advocate for Appellant.

CORAM: ROHIT B. DEO, J.

DATE: 12th JANUARY, 2018.

The application seeks leave to appeal to challenge the judgment and order dated 07-05-2016 in Regular Criminal Case 98/2006 passed by the Judicial Magistrate First Class, Court 2, Narkhed, by and under which, the accused are acquitted for the offence punishable under section 494 read with section 109 of the Indian Penal Code.

2. The acquittal is in view of the finding recorded by the learned Magistrate, that the complainant failed to prove beyond reasonable doubt that the alleged second marriage was a valid marriage in law.

3. Concededly, the complainant is the legally wedded wife of accused 1. The complainant and accused 1 are blessed with a daughter from the wedlock. However, in

view of strained relationship, the complainant and accused 1 are estranged. The record reveals, that the complainant instituted proceedings seeking maintenance.

4. The second marriage is alleged to have been solemnized on 03-06-2006 at Banjari Mata Mandir with accused 2. The learned Magistrate has recorded a finding that neither the complainant nor her father are eye witnesses to the solemnization of the alleged second marriage, and that evidence being hearsay is inadmissible. The said finding is unexceptionable.

5. The learned Magistrate has rightly disbelieved the testimony of witness Namdeo. It is noted that the said witness had entered into the witness box on behalf of the complainant in an earlier proceeding related to recovery of *Stridhan*. The said witness did not make any disclosure about the second marriage, which was a relevant fact even in proceedings for recovery of *Stridhan*. The marshalling of evidence by the learned Magistrate does not suffer from any infirmity.

6. The evidence of the complainant is duly appreciated by the learned Magistrate and I see no perversity either in the approach or in the appreciation of

evidence. The documentary evidence suggesting that accused 2 lady gave birth to two children and that the name of the father is recorded as Suresh Kamdi, is not sufficient to prove that the second marriage was a valid marriage. The marriage invitation card on which the complainant relies, are held to be not proved. I do not see any error in the finding recorded in paragraphs 38 to 40 of the judgment and order impugned.

7. It must be borne in mind, that if the view taken by the learned Magistrate is a possible view, ordinarily the appellate Court would be slow to interfere. I do not see any perversity, or any serious error of law or miscarriage of justice which requires interference in the judgment and order of acquittal.

Leave to appeal is rejected.

The appeal is disposed of.

JUDGE