

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

37 CRIMINAL WRIT PETITION NO.424 OF 2016

Sau Kamal Bapurao Ghaymukte,
Age : 41 Years, Occu.: Nil,
R/o.: Burhan Nagar, Taluka and
District : Ahemdngar. Petitioner

Versus

1. Macchindra Shankar Panchamukh,
Age : 64 years, Occu.: Service,
2. Sou Zumbabai Machhindra Panchamukh,
Age : 60 years, Occu.: Household,

Both R/o.: Ghumat Baburdi,
Tqluka and District : Ahmednagar.

3. Bapurao Madhavrao Ghaymukte,
Age : 60 years, Occu.: Service,
 4. Sau Mirabai Bapurao Ghaymukte,
Age : 46 years, Occu.: Household,
- Both R/o.: Deulgaon Siddhi,
Taluka and District : Ahmednagar.

5. Dhondiba Kondiba Pawar,
Age : 76 years, Occu.: Nil.
(Deleted)

6. Sau Malanbai Dhondiba Pawar,
Age : 72 years, Occu.: Household,
(Abated)

Both R/o.: Mohane R. S. Zopadpatti,
Jetvan Tekadi, Mohane,
Taluka : Kalyan, District : Thane.

7. The State of Maharashtra ... Respondents

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Advocate for Petitioner : Kulkarni Mukul S.
APP for Respondent-State No.7: Mr. S. P. Deshmukh
Advocate for Respondent Nos. 1 to 4 : Mr. N. L. Jadhav
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CORAM : MANGESH S. PATIL, J.
DATE : 07.01.2019

ORAL JUDGMENT :-

Heard.

2. Rule.

3. Learned advocate for the respondents waives service of Rule. With the consent of both the sides, the matter is heard finally at the stage of admission.

4. The learned advocate for the petitioner submits that the petitioner is the original complainant. His earlier complaint bearing R.T.C. No. 93 of 1991 was dismissed and the respondents were discharged. The learned Magistrate had rightly taken cognizance of the second complaint and the process was rightly directed to be issued against all the accused. There was no apparent illegality committed by the Magistrate. The order was neither perverse nor arbitrary and the

Revisional Court could not have intervened in revision under Section 397 of the Cr.P.C. The error committed by the learned Additional Sessions Judge goes to the root of the jurisdiction and the writ petition may be allowed by quashing and setting aside the order passed by the learned Additional Sessions Judge.

5. Learned advocate for the respondents submits that accepting the allegations in the complaint at their face value, no ingredients for constituting the offence punishable under Section 494 of the IPC are attributable to these respondents. There has been enormous delay in filing the subsequent complaint. The first complaint was filed in the year 1991. It was dismissed in the year 2003 and the present complaint was filed in the year 2012. In view of such circumstances, the order passed by the Magistrate was clearly perverse and arbitrary. He had clearly ignored such prolonged delay and had also overlooked absence of allegations against the respondents. No fault, therefore, could be found with the observations and the conclusions of the learned Additional Sessions Judge in

invoking powers under Section 397 of the Cr.P.C. and quashing and setting aside the order directing the process to be issued against the respondents, who were accused Nos. 5 and 6.

6. I have carefully gone through the papers. True it is that since the earlier complaint was dismissed in default presumably under section 239 of the Cr.P.C. since it was warrant case, the effect is of discharge and there was no bar for filing the second complaint on same set of allegations.

7. However, importantly it is pertinent to note that initial complaint was filed in the year 1991, which was dismissed in the year 2003 and still the petitioner filed the second complaint only in the year 2012 i.e. after the lapse of nine years. No plausible explanation is coming forth in the complaint for such a long delay.

8. Be that as it may, coming to the merits as well, the contents of the complaint would clearly reveal that only vague, bald and omnibus allegations have been made

against accused Nos. 2 to 6 about they having abetted the second marriage of accused No.1. It has not been specifically mentioned as to the manner in which they had abetted such a second marriage that was being performed by accused No.1. In paragraph No.6 of the complaint, it has been vaguely alleged that accused Nos. 3 to 6 had aided accused Nos. 1 and 2. In paragraph No.7, it has been alleged that when the petitioner had approached accused Nos. 2 to 6, they had given evasive replies and had threatened her. In concluding paragraph No.8, it has been vaguely alleged that accused Nos. 2 to 6 had attended the marriage and thereby abetted the second marriage that was being performed by accused No.1.

9. In my considered view, no ingredient which would constitute abetment for commission of offence punishable under Section 494 of the IPC can be made out from the complaint. If this was the state of affairs, it is quite apparent that the learned Magistrate overlooking the absence of precise and specific allegations and ignoring the fact of enormous delay in

filing the second complaint had passed the order, which was indeed an order passed without application of mind.

10. If that be so, the learned Additional Sessions Judge was certainly in the fact situation, entitled to invoke the powers under Section 397 of the Cr.P.C. Taking into account all the above mentioned aspects, the learned Additional Sessions Judge has rightly allowed the revision and quashed and set side the order directing the process to be issued against respondent Nos. 5 and 6. I find no perversity or illegality in the order passed by the learned Additional Sessions Judge. The writ petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

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vsm/-