

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

CRIMINAL WRIT PETITION No.746 of 2017

* Pallavi Narsing Divre,
Age 27 years,
Occupation: Household,
R/o C/o Balu Namdeo Kshirsagar,
Sant Namdeo Nagar,
Dhanora Road, Beed,
Taluka and District Beed. .. **Petitioner.**

Versus

- 1) Kavita Balasaheb Raut,
Age 27 years,
Occupation: Household,
R/o Wagalwadi,
Taluka Ambajogai, Dist Beed.
- 2) Balasaheb Shrirang Raut,
Age 65 years,
Occupation: Agriculture,
R/o As above.
- 3) Shivkanta Balasaheb Raut,
Age 27 years,
Occupation: Household,
R/o As above.
- 4) Laxmibai Bhanudas Divre,
Age 70 years,
Occupation : Household,
R/o As above.
- 5) The State of Maharashtra. .. **Respondents.**

Shri. N.L. Jadhav, Advocate, for petitioner.

Shri. Rahul R. Khadap, Advocate, for respondent Nos.1 to 4.

Shri. A.B. Chate, Additional Public Prosecutor, for respondent No.5.

Coram: T.V. NALAWADE, J.

Date: 5 MARCH 2019

ORAL JUDGMENT:

1) Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2) The petition is filed to challenge the decision given by the learned Additional Sessions Judge Beed in Criminal Revision No.44/2016. The learned Additional Sessions Judge has set aside the order of issue process made against accused Nos.2,5,11 and 12 in R.C.C. No.209/2011 pending in the court of the Judicial Magistrate, First Class Beed. Private complaint was filed by present petitioner for offences punishable under sections 494, 109 etc. of Indian Penal Code. Present petitioner is the first wife of accused No.1 Narsing. She

has made allegation that Narsing married with accused No.2 Kavita when his marriage with the petitioner was in existence. accused No.5 - Lakshmibai is the grand mother of Kavita on her parents' side. Accused Nos.11 and 12 are the parents of Kavita. Parties are Hindus.

3) The Judicial Magistrate had issued process as against these accused but the learned Additional Sessions Judge has set aside the order of issue process by giving following reasons.

"6. It is an admitted position that the accused no.2 is alleged second wife of accused no.1 whereas accused no.5,11 and 12 are her parents and grand mother. I have gone through the complaint and the statement of the complainant recorded by the Court. I do not come across any of the allegations that the accused/petitioners abetted accused no.1 and his relatives to perform his second marriage during the existence of first one. In **Sangita w/o Natthulal Labhane Vs. Yashodhara w/o Krishan Bhitre and another** [supra] the similar facts were involved. The Court had issued summons against the second wife and her parents, on the complaint filed by the first wife, under Sec.494 of the I.P.C. It is held in para 8 as under :

"8. Insofar as section 494 of the Indian Penal Code is concerned, the learned counsel for respondent no.1/original complainant has fairly submitted that no case is made out against the present applicant. In my considered opinion, the concession has been correctly made inasmuch as under section 494 of the Indian Penal Code it is either the husband or the wife who marries during the life time of

husband or wife who can be punished. Under section 494 of the Indian Penal Code the woman who marries a man whose wife is living cannot be prosecuted. Therefore, the order passed by the learned Magistrate issuing process against the applicant for the offence under section 494 read with section 34 of the Indian Penal Code and the order of the Revisional Court deserves to be quashed and set aside."

7. In view of the aforesaid decision it can be held that under section 494 of the I.P.C. a woman who marries a man, whose first marriage is existing, cannot be prosecuted and so also her relatives. In the present case there was no material before the Court to issue process against the accused who are stated second wife and her relatives. The learned trial Court committed error in issuing process against them is illegal and improper."

4) It can be said that the learned Additional Sessions Judge did not know provision of section 109 of the Indian Penal Code. When there is such a case, provision of section 109 is applicable as against every person who abets the second marriage of the husband including the bride who performs marriage when it is the second marriage of the husband. It is surprising that by making aforesaid observations the order of issue process made against these accused is set aside.

5) Learned counsel for the respondents, the aforesaid accused, placed reliance on the case of the

Delhi High Court reported as **2012 SCC OnLine Del 4763 (Manju Verma v. State)**. The facts of the reported case were totally different. In the present case the contents of the complaint are specific and some witnesses were present when Narsing performed his second marriage. On the basis of verification of the witnesses and the contents of the complaint, process has been issued and at this stage it cannot be said that persons from the parents side of the second wife had no knowledge that Narsing was performing second marriage. Only due to the circumstance that accused No.5 Laxmibai is grandmother and she being an old lady it is possible that no information was given to her by other accused that it was the second marriage of Narsing. Considering her age this Court holds that the order made in her favour by the learned Additional Sessions Judge can be maintained.

6) In the result, the petition filed in respect of accused No.2,11 and 12 is allowed. The decision given by the learned Additional Sessions Judge in their favour is quashed and set aside and the order of issue process made against them by the Judicial Magistrate is restored.

The petition in respect of accused No.5 Laxmibai is however dismissed. Rule made partly absolute in the above terms. The observations made above are for the purpose of present proceeding only.

Sd/-
(T.V. NALAWADE, J.)

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