

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

**CRIMINAL APPLICATION NO. 3305 OF 2018**

- 1 Govind s/o. Tukaram Karad,  
Age 37 years, Occu. : Agri.,  
R/o. Injegaon, Tal. Parli Vaijinath,  
District Beed.
  - 2 Tukaram s/o. Vitthal Karad,  
Age 62 years, Occu. : Agri.,  
R/o. As above.
  - 3 Manchak s/o. Tukaram Karad,  
Age 39 years, Occu. Agri.,  
R/o. As above.
  - 4 Sou. Sunita w/o. Manchak Karad,  
Age 35 years, Occu. : Household,  
R/o. As above.
  - 5 Surekha d/o. Tukaram Karad,  
Age 41 Years, Occu. : Household,  
R/o. As above.
  - 6 Dnyanoba s/o. Yashwant Darade,  
Age 62 years, Occu. : Agri.,  
R/o. Nathra, Tal. Parli Vaijinath,  
Dist. Beed.
  - 7 Sou. Babita w/o. Dnyanoba Darade,  
Age 48 years, Occu. : Household,  
R/o. As above.
  - 8 Hari s/o. Keraba Munde,  
Age 48 years, Occu. : Agri.,  
R/o. As above.
  - 9 Sou. Mangal w/o. Hari Munde,  
Age 42 years, Occu. : Agri.,  
R/o. As above.
  - 10 Raghunath s/o. Keraba Munde,  
Age 52 years, Occu. : Household,  
R/o. As above.
  - 11 Sou. Gangabai w/o. Raghunath Munde,  
Age 50 years, Occu. : Agri.,  
R/o. As above.
  - 12 Sunita d/o. Dnyanoba Darade,  
Age 32 years, Occu. Household,  
R/o. As above.
  - 13 Mahadu s/o. Gyanba Munde,  
Age 37 years, Occu. Agri. & Driver,  
R/o. As above.
- Applicants  
.. (Original Accused)

**Versus**

- |   |                                                                                                                                                               |    |                           |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----|---------------------------|
| 1 | Savita w/o. Govind Karad,<br>Age 32 years, Occu. Household,<br>R/o. Injegaon, Tal. Parli, Dist. Beed.<br>Now Kanherwadi, Tal. Parli Vaijinath,<br>Dist. Beed. | .. | (Original<br>complainant) |
| 2 | The State of Maharashtra<br>Through P. I. Police Station, Dist. Beed.                                                                                         | .. | Respondents               |

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Mr. H. K. Munde, Advocate for Applicants.  
 Mr. Sandeep D. Munde, Advocate for Respondent No.1.  
 Mr. K. N. Lokhande, APP for Respondent No.2.

...

**CORAM : K.K. SONAWANE, J.**

**DATED : 03<sup>rd</sup> APRIL, 2019**

**JUDGMENT :-**

Heard. Rule. Rule made returnable forthwith. The matter is taken up for final hearing on merit with consent of both the sides.

2. The applicants, invoking remedy under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), preferred the present application seeking relief as below :-

*“(B) The order dated 23-10-2018 passed by Ld. Additional Sessions Judge, Ambejogai in Criminal Revision No. 42/2018 and order dated 03.05.2018 passed by JMFC, Parli Vaijinath in R.C.C. No. 219/2016 issuing a process u/sec. 494 and 109 of I.P.C. May kindly be quash and set aside.”*

3. The factual aspects giving rise to the present application sans unnecessary details are that, the applicants are arraigned for an offence punishable under Sections 494 and 109 of the Indian Penal Code (IPC) in private complaint filed by respondent No.1 Savita w/o. Govind bearing RCC No. 219 of 2016, on the accusation that applicant

No.1 Govind s/o. Tukaram Karad performed second marriage with one Kalpana @ Bhura w/o. Govind Karad, during the life time of his legally wedded wife Sou. Savita w/o. Govind Karad i.e. respondent No.1 herein.

4. It has been alleged on behalf of respondent No.1 Savita w/o. Govind Karad – original complainant that, she is legally wedded wife of applicant No.1 Govind s/o. Tukaram Karad and their marriage was solemnized on 10-05-2006. She begotten one daughter by name Ashwini during wedlock from the husband i.e. applicant No.1. The marital relations in between complainant Savita and applicant Govind are still subsists. It has been alleged on behalf of complainant that after the marriage, she received good treatment from the husband and inmates of matrimonial home till the birth of daughter – Ashwini. Thereafter, she was subjected to maltreat and harassment on account of giving birth to female child. There was also unlawful demand of money on the part of husband and other members of matrimonial home. They asked the complainant-wife to bring Rs. 5 Lakhs from her parents. They insisted the complainant-wife to put signature on the blank paper. Eventually, the husband and other inmates of matrimonial home driven out the complainant from the house on 09-05-2016 and left her in lurch at the mercy of parents. The complainant-wife filed criminal proceeding under Sections 498-A, 323, etc. of IPC against husband and other members of matrimonial home. It has been alleged that during her marital relation with applicant-husband - Govind Tukaram Karad, the complainant came to know that her husband Govind performed second marriage with one Kalpana w/o. Govind Karad. She has described in her complaint in detail the events of ceremony of second marriage of her husband- applicant Govind

occurred in the temple of Lord Mahadev at Tapovan, Taluka Parali Vaijinath. She also attributed the overtact and participation of each of the applicants-accused in the ceremony of second marriage in between husband Govind and second wife Kalpana. According to complainant, the husband committed crime of bigamy punishable under Section 494 of IPC. Therefore, she approached to the Court of learned Magistrate at Parali Vaijinath and filed the complaint bearing RCC No.219 of 2016. The learned Magistrate appreciated the entire factual aspects as well as allegations nurtured on behalf of complainant wife, and eventually, by taking cognizance of the offence, issued process against the accused-applicants for the charges under Section 494 and 109 of IPC.

5. Being aggrieved with the order of issuance of process passed by the learned Magistrate, the applicant rushed to the Court of Additional Sessions Judge, Ambejogai, District Beed and filed Criminal Revision Application No. 42 of 2018. But, the learned Additional Sessions Judge found reluctant to nod in favour of applicant-accused and dismissed the revision petition. The applicants did not satisfy with the dismissal of revision application by learned Additional Sessions Judge. In the aftermath, the applicant taking recourse of remedy under Section 482 of Cr.P.C. preferred present application and put in question the validity and propriety of the proceedings of private complaint filed on behalf of respondent No.2 for the charges under Sections 494 and 109 of IPC.

6. Learned counsel Mr. H. K. Mundhe for the applicants vehemently submits that the learned Magistrate as well as learned Additional Sessions Judge did not consider in proper manner the merits of the allegations nurtured on behalf of wife against the applicant-

husband for the offence of bigamy. She did not disclose about the rituals of *Hom*, *Saptapadi*, etc., which are mandatory to perform the valid marriage in between the spouses. The learned Sessions Judge failed to appreciate judicial precedents relied on behalf of applicants in its proper perspective. The allegations nurtured on behalf of respondent wife are cryptic baseless and ambiguous in nature. There are no any circumstances on record to draw adverse inference against the applicants about performance of second marriage during life time of first wife. Moreover, the circumstances are not sufficient to establish the offence of abetment of commission of offence of bigamy by the applicant-husband. Learned counsel relied upon order dated 22<sup>nd</sup> August, 2016, passed by the Co-ordinate Bench of this Court (Coram : V. K. Jadhav, J.) in Criminal Writ Petition No. 119 of 2005 (*Pandurang s/o. Nagnath Malwade and others Versus Surekha w/o. Umakant Kasole and another*), and submits that the learned Single Judge of this Court set aside and quashed the criminal proceeding filed by the wife for the charge under Section 494 of IPC against husband under similar circumstances. The learned counsel prayed the same relief to quash and set-aside the criminal proceeding filed on behalf of respondent-wife against the applicant-accused.

7. I have given anxious consideration to the rival submissions advanced on behalf of both sides. I have also delved into the relevant documents produced on record. The intense scrutiny of attending circumstances on record reflects that the arguments advanced on behalf of learned counsel for applicants appears not sustainable and considerable one. It is worth to mention that the respondent-wife Savita Govind Karad initiated criminal proceeding bearing RCC No. 219

of 2016 for the charges under Sections 494 and 109 of IPC against the accused No.1 Govind Tukaram Karad and other 14 co-accused in this matter including alleged second wife namely Kalpana @ Bhura w/o. Govind Karad. However, the present application came to be filed only by in all 13 accused, including the husband Govind Tukaram Karad and his relatives *inter-se*. The alleged accused No.2 Sou. Kalpana @ Bhura w/o. Govind Karad and accused No.15 Sou. Daivshala Sanap, paternal aunt of alleged second wife did not cause their appearance before this Court as party applicant to redress her grievances nor they were incorporated as party-respondent in this application. In such circumstances, keeping the impugned order of issuance of process under Section 494 of IPC intact without any interference and executable against them. It would unsafe to appreciate the contentions propounded on behalf of rest of the co-accused including husband for set-aside and quash the impugned order passed by learned trial Court against them.

8. Moreover, bare glance of recitals of the private complaint filed by the respondent-wife reflect that, she has described overt-act and participation of each of the applicants-accused in the process of performance of second marriage by the husband with the alleged second wife - Kalpana. She has given detail descriptions about religious rituals of sacred fire (*Hom*) as well as *Saptapadi*, etc. The allegations nurtured on behalf of respondent-wife if taken at their face value and accepted the same in its entirety, *prima facie*, constitute an offence or make out a case against the applicants. It is not in dispute that respondent No.1 Savita married with applicant No.1 Govind Tukaram Karad and there was a marital discord in between spouses

resulting into criminal proceedings filed under Sections 498-A, 323 of IPC. During the course of marital relations, the applicant - Govind ventured to perform second marriage with the lady by name Kalpana @ Bhura. It is also an admitted fact that prior to issuance of process, the learned Magistrate issued direction for investigation under Section 202 of Cr.P.C. to the concerned police. After receipt of favourable report, the learned Magistrate proceeded to issue process against applicant. Therefore, in view of guidelines delineated by the Honourable Apex Court, in the case of - ***State of Haryana Versus Ch. Bhajan Lal and others***, reported in, ***AIR 1992 SC 604***, there is no propriety to exercise the inherent powers under Section 482 of Cr.P.C. to quash and set-aside the criminal proceedings filed by the wife Savita under Section 494 and 109 of IPC against the applicants. The allegations in the complaint presented by respondent-wife fairly constitute cognizable offence. It can not be said that there is an abuse of process of law or otherwise the interference is necessary to secure ends of justice.

9. Learned counsel for the applicant relied upon the order passed by the Co-ordinate Bench of this Court in Criminal Application No. 119 of 2005 dated 22-08-2016 and submits that the learned Single Judge of this Court quashed and set-aside the criminal proceeding filed under Section 494 of IPC on the identical set of circumstances. He requested to grant similar relief in the present application. It is to be noted that, the Co-ordinate Bench of this Court dealt with the matter by exercising the writ jurisdiction under Article 227 of the Constitution of India. It is the rule of law that the High Court, in exercise of its power of superintendence under Article 227 of the Constitution, can rectify an error committed by the Court below. The supervisory jurisdiction

conferred on the High Court under Article 227 of the Constitution is confined only to see whether an inferior Court proceeded in its parameters and not to correct an error apparent on the face of record much less an error of law. In the matter in hand, the applicant instead to prefer a petition for exercise of writ jurisdiction of this Court under Article 227 of the Constitution, seek relief to quash and set aside the proceedings by invoking inherent powers of this Court under Section 482 of Cr.P.C.

10. At this juncture, it is to be borne in mind that in view of settled principle of law, the powers under Section 482 of Cr.P.C. has to be exercised very sparingly to render real and substantial justice to the parties. It is not fair on the part of High Court to interfere with the judicial exercise of discretion vested in the lower Courts on mere allegations of the applicant-accused. The inherent powers under Section 482 of Cr.P.C. can be exercised only under three circumstances, namely, (i) Where the jurisdiction is invoked to give effect to an order of the Court; (ii) If there has been an abuse of the process of the Court; and (iii) In order to secure the ends of justice. It is imperative to mention that under Section 482 of Cr.P.C., a party gets no vested right or inherent right to seek interference. But, the Court has to take steps itself only to do real and substantial justice. It is also essential to appropriate that the powers under Section 482 of Cr.P.C. are distinct from the appellate or revisional power of the Court and in exercise of such power, the High Court can not make reappraisal of evidence and to come to an conclusion that different from one arrived at by the Court below unless there are compelling circumstances choking the conscience of the Court. In such back ground the order of Co-ordinate

Bench of this Court in Writ Petition is misplaced and could not render any help to applicant in this case.

11. In the matter in hand, undisputedly the applicants availed the remedy under Section 357 of Cr.P.C. before the Court of Additional Sessions Judge to redress their grievances. But, the learned Additional Sessions Judge found reluctant to favour the applicant-accused to exonerate them from the charges nurtured on behalf of respondent-wife. There are no compelling circumstances available on record to exercise powers under Section 482 of Cr.P.C. to cause interference in the order of issuance of process passed by the learned Magistrate as well as by learned Judge of Revisional Court. In contrast, the allegations reflects from the criminal proceedings filed against applicant-accused are, *prima facie*, sufficient to proceed further into the matter for examination of all ramification of crime to meet the ends of justice. The allegations nurtured on behalf of wife against applicants are required to be tasted on the anvil of merit and without opportunity to adduce evidence on record on behalf of both sides, it would unjust and improper to quash and set aside the criminal proceedings at the behest of applicant filed by the respondent-wife. Therefore, the present application, being devoid of merit, deserves to be dismissed. Accordingly, application stands dismissed. Rule stands discharged. No order as to costs.

**[ K. K. SONAWANE, J. ]**