

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1119 OF 2015**

Kalpana Sanjay Nangare

..... Appellant.

V/s

Sanjay Ananda Nangare & Ors.

..... Respondents.

Mr. Manoj Apagonda Patil for the Appellant.

Mr. Ganesh Gole for Respondent Nos. 1 to 3 and 5.

Mr. S.V. Gavand, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 4, 2019

P.C.:-

1] This appeal is filed by the complainant, questioning the acquittal of the accused of the offences punishable under Sections 498A, 323, 506 read with Section 34 of the Indian Penal Code.

2] The case of the Appellant/complainant is, the Respondent/Accused performed second marriage on 22/4/1998, whereas complaint came to be lodged on 9/11/1999. Mr. Patil, the learned Counsel appearing on behalf of the Appellant would urge that even if appeal against acquittal preferred by the prosecution i.e. State

was dismissed by the Sessions Court, pursuant to proviso to Section 372 of the Criminal Procedure Code, present application is very much maintainable in the form of an appeal by the Appellant/complainant while questioning the legality of the order of acquittal. He would urge that on 17/04/2003, DCP, Naigaon, Mumbai has submitted a report on the issue of an offence under Section 494 IPC (bigamy) committed by the Respondent/Accused of which no judicial note is taken by the Court below. His further contention is, proceedings before the Family Court for grant of maintenance were decided on 24/1/2001 which order is at Exhibit-25. According to him, the observations in the said proceedings on the issue of bigamy ought to have been taken into account by the Magistrate, as same are binding on him while deciding the prosecution case for an offence under Section 494 of the Indian Penal Code.

3] Mr. Gole, learned Counsel appearing on behalf of Respondent Nos. 1 to 3 and 5 opposed the submissions, as according to him, appeal preferred before the Sessions Court by the State is already dismissed, as the offence under Section 498A and 494 of IPC was not proved.

4] The learned APP appearing on behalf of the State assisted this Court in assessing the material available on record.

5] Considered the submissions.

6] Fact remains that the report which contains the conduct of the accused on the issue of bigamy, tendered by DCP, Naigaon, Mumbai on 17/4/2003 was not exhibited. The said Officer was not examined. As such, accused had no occasion to cross-examine the said witness or to ascertain the sanctity of the findings in that report. As a consequence of above, the Court below has rightly ignored the report dated 17/4/2003 tendered by DCP, Naigaon, Mumbai.

7] Exhibit-25 is an order passed by the Family Court on a prayer moved for grant of interim maintenance. The said order is interlocutory in nature and only deals with the entitlement of grant of maintenance. While deciding the issue therein, at interim stage if any reference is made to the allegation of bigamy, that by itself will not bind the Respondent/Accused, as an issue for consideration before the

Court was of the maintenance and not bigamy. As such, findings recorded in Exhibit-25 are not binding on the Court below. Even if order of granting of maintenance was executed, same was never put to Respondent/Accused so as to confront him as to contents in the said document. As such, same is also cannot be considered for conviction of the Accused.

8] It was expected of the complainant to enter into witness box and demonstrate the offence of bigamy which the complainant has failed to, as is reflected in the order of acquittal. That being so, no case for consideration is made out, as the view expressed by the Court below is a possible view. As such, appeal fails and same is dismissed.

(NITIN W. SAMBRE, J.)