

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.144 OF 2019

1. VINOD PANDIT SALVE	)
Aged 47 years, Occ:service	)
residing at Hariniwas, 3rd	)
floor, room no.301, opp:Ishwar	)
Niletan Apartment,near NMC	)
School no.125, Datta Mandir	)
road, Nasik road -422 101.	)
	)
	)
2. MS. SANDHYA PANDIT SALVE	)
Aged 44 years,	)
residing at Hariniwas, 3 rd	)
floor, room no.301, opp: Ishwar	)
Niletan Apartment,near NMC	)
School no.125, Datta Mandir	)
road, Nasik road -422 101.	) PETITIONERS.

VERSUS

1. MRS.SUVARNA PRASHANT SALVE	)
Aged about 42 years, Occ:housewife	)
c/o Mr.Govind Dhondiram Jadhav	)
4/42 Shahakar building, Br.Nath	)
Pai Marg, Mazgaon, Mumbai 400 010	)
	)
2. THE STATE OF MAHARASHTRA	)
(Through Byculla police station)	) RESPONDENTS.

Ms.Varsha Pichaya a/w Sachin Padaye, Advocate for the
Petitioner.

Mr.Satish S.Mande, Advocate for the Respondent.

Mr.R.M.Pethe, APP for the State.

CORAM : A. M. BADAR, J.

DATE : 3RD MARCH 2020.

ORAL JUDGMENT:

1. By this petition, the petitioners/accused nos.3 and 4 are taking exception to the Judgment and order dated 11.12.2017 passed by the learned Additional Sessions Judge, Mumbai, in Criminal Revision Application No.256/2017. By this impugned order, the learned Additional Sessions Judge was pleased to allow the revision petition filed by the original complainant partly and was pleased to set aside the order passed by the learned trial Magistrate so far as it relates to discharging the petitioners/original accused nos. 3 and 4 from the offences punishable under Section 494 and 109 r/w Section 34 of the Indian Penal Code. Discharge of original accused No.2 was, however, confirmed by the learned

Additional Sessions Judge.

2. Heard. Rule. Heard finally by consent of the parties. Learned counsel for the petitioners/original accused nos. 1 and 2 vehemently argued that the Agreement of Marriage dated 15.8.2009 has been changed from time to time by the contesting respondent/original complainant. In second such document name Sandhya is incorporated. She placed reliance on the statement of Vasant Ahire, Suvarna Salvi and other witnesses recorded in some other proceedings and contended that in the complaint, averments are vague. It is further argued that no custom was pleaded in the complaint. Time and date of the marriage was also not mentioned in the complaint and therefore, the learned Metropolitan Magistrate was right in discharging the petitioners/original accused.

3. As against this, the learned counsel for the contesting respondent/original complainant has supported the

impugned Judgment and Order passed by the learned Additional Sessions Judge, Mumbai.

4. I have considered the submissions so advanced and also perused the material placed on record.

5. In the year 2014, the contesting respondent/original complainant had preferred a complaint in the Court of learned Metropolitan Magistrate, Mumbai against accused persons alleging offences punishable under Section 494 r/w 34 of the Indian Penal Code. After following due process of law, process came to be issued against accused persons. Accused no.1 is the husband whereas present petitioners/accused nos.3 and 4 are the brother and sister of the husband i.e. accused no.1 Prashant Salve. In the complaint, allegations against accused persons are to the effect that though first marriage of accused No.1 Prashant Salve with Suvarna was subsisting, he contracted second

marriage with accused no.5 Purnima @ Poonam. It is further averred that present petitioners/accused nos.3 and 4 have intentionally aided accused no.1 for performing this marriage. It is contended in the complaint that accused no.1/husband had signed a Contract of marriage as Pranay whereas, the present petitioners/accused nos.3 and 4 have signed that Contract of marriage as Vijay and Nita by suppressing their real names. It is further averred that out of this second marriage, accused no.5 gave birth to a male child on 13.1.2014.

6. Application for discharge came to be filed subsequently by the accused persons and the learned Metropolitan Magistrate, vide Order dated 30.1.2017, was pleased to hold that the accused nos.2 to 4 deserves to be discharged from the offences punishable under Sections 394, 109 r/w 34 of the Indian Penal Code. By the impugned Judgment and Order dated 11.12.2017 passed by the learned

Additional Sessions Judge, Mumbai, the application for discharge so far as it relates to the present petitioners, came to be rejected, by overturning order of the learned trial Magistrate.

7. For issuing process, the Court is required to satisfy as to sufficiency of grounds for proceeding against the accused persons. Strong suspicion coupled with prima facie material is enough for rejecting the application for discharge. In the case in hand, there is specific pleading in the complaint that by concealing their identity and by changing their names present petitioners/accused nos.3 and 4 have signed the Agreement for Marriage which allegedly took place between the accused no.1 and accused no.5. It is averred that, the petitioners/original accused nos.3 and 4 have signed that document as Vijay and Nita Salve. Copies of that Agreement for Marriage were placed alongwith the complaint on record of the learned trial Magistrate and that is how the

process came to be issued. Whether those documents are genuine documents or forged documents will have to be determined after adducing the evidence in the trial. The documents which were not forming part of the record of the record of the learned trial Magistrate can not be gone into while considering the application for discharge.

8. In the light of these facts, I see no infirmity in the impugned Judgment and Order of the learned Additional Sessions Judge, Mumbai holding that, there is prima facie case for the offences alleged against them so far as present petitioners/accused nos.3 and 4 are concerned. The impugned order, as such can not be faulted with. The petition is, therefore, dismissed.

(A. M. BADAR, J.)