

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.576 OF 2018

SUVARNA PRASHANT SALVE)...PETITIONER

V/s.

VIMAL PANDIT SALVE AND ANOTHER)...RESPONDENTS

Mr.Satish Mande, Advocate for the Petitioner.

Ms.Varsha Pichaya a/w. Mr.Sachin Padaye, Advocate for
Respondent No.1.

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

CORAM : A. M. BADAR, J.

DATE : 21st JANUARY 2020

P.C. :

1 This is a petition by the first wife i.e. the original complainant challenging the order of the learned Additional Sessions Judge upholding discharge of respondent no.1 i.e. mother of original accused no.1 – husband, who allegedly contracted second marriage with accused lady.

2 Heard the learned counsel appearing for the petitioner / original complainant. He argued that it is highly improbable that respondent no.1/original accused would not remain present in the marriage of her own son with the co-accused. He submitted that there is enough evidence to show that she was present in the marriage, and therefore, the impugned order of confirmation of discharge needs to be quashed and set aside.

3 The learned counsel for respondent no.1 drew my attention to the order passed by the learned trial Magistrate and particularly to paragraph 15 thereof.

4 I have considered the submissions so advanced and also perused the material placed before me.

5 Being mother of the husband, who contracted second marriage, respondent no.1 came to be arraigned as an accused in the private criminal complaint filed by the petitioner. The learned trial Magistrate allowed her discharge application and discharged

her from offences punishable under Sections 494, 109 read with 34 of the Indian Penal Code.

6 It is observed thus by the learned trial Magistrate in paragraph 15 of its order, which came to be confirmed in revision :

“15 It is to note that the complainant did not disclose the source wherefrom she got to know about the second marriage. She does not disclose name of witnesses who had witnessed the second marriage. She did not aver overt acts of accused No.2 to 4. She merely stated that accused No.2 to 4 were present. Mere presence was not enough as held in the cited judgment. Actual role of individual accused is nowhere averred in the complaint.....”

7 The learned trial Magistrate further observed that verification statement of the complainant i.e. petitioner herein does not mention about presence of respondent no.1/original accused i.e. mother of the respondent at the time of second marriage. While upholding the discharge, the learned Additional Sessions Judge observed that respondent no.1 herein is mother of

accused no.1 and she cannot be roped in the offence alleged in the complaint simply because she is mother of accused no.1.

8 Jurisdiction of this court conferred by Article 227 of the Constitution of India can be exercised in the limited arena of decision making process. No fault with the decision making process either of the learned trial Magistrate or that of the learned Additional Sessions Judge is pointed out. Abetment requires instigation or incitement as well as provocation. Nothing is pointed out to demonstrate that with active aid of respondent no.1 herein, the act of offence took place. Even intention is also not pointed out. Therefore, even if it is assumed that respondent no.1 herein was present at the time of the incident, she cannot be fastened with criminal liability.

9 The petition, as such, is devoid of merits, and therefore, the same is dismissed.

(A. M. BADAR, J.)

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