

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

CRIMINAL WRIT PETITION NO.303 OF 2021

Popat s/o Maruti Kutal .. Petitioner
Age.57 years, Occ. Retired,
R/o. Gulmohor Road, Near Kohinoor
Mangal Karyalaya, Savedi, Ahmednagar,
Tq. & Dist. Ahmednagar.

Versus

1. Mrs. Shakuntala w/o. Kaushik More .. Respondents
Age.57 years, Occ. Household,
R/o. Abiyanta Colony, Behind Adarsh
School, Aurangabad Road, Ahmednagar,
Tq. & Dist. Ahmednagar.
2. Mrs. Vidya w/o. Vidyadhar Dhamane
Age.35 years, Occ. Service,
R/o. "Guru" Surabhi Colony, Bhutkarwadi,
Savedi, Ahmednagar,
Tq. & Dist. Ahmednagar.
3. Mrs. Jayashri w/o. Sachin Gore,
Age. 39 years, Occ. Service
4. Sachin s/o. Asaram Gore,
Age. 42 years, Occ. Service,

Both R/o. Shivganga, Phase-3,
Near Madhuban Colony,
Behind Marketyard, Sarangnagar,
Ahmednagar, Tq. & Dist. Ahmednagar.
5. The State of Maharashtra

Mr.N.B. Narwade, Advocate for the petitioner.
Mr.N.C. Garud, Advocate for respondent Nos.1 to 4.
Ms.G.L. Deshpande, APP for the respondent/State.

CORAM : SURENDRA P. TAVADE, J.
DATED : 06.09.2021

ORAL JUDGMENT :-

01. Rule. Rule taken up for hearing forthwith with the consent of the parties.

02. By way of present petition the petitioner /original complainant is challenging order passed by the Additional Sessions Judge, Ahmednagar in Criminal Revision No.8 of 2021 dated 09.02.2021, whereby the Sessions Court has quashed the order of issue process against original accused Nos.3 to 6 i.e. respondent Nos. 1 to 4.

03. The facts giving rise to present petition can be summarized as under :-

04. The petitioner has filed private complaint

against respondent Nos.1 to 4 and the original accused – Jaydeep alias Jagdish Kaushik More and Kaushik Rambhau More for the offences punishable under sections 420, 406, 109, 34 of the Indian Penal Code, before the Court of Chief Judicial Magistrate, Ahmednagar. Said complaint was referred to police for enquiry under section 202 of the Cr.P.C. Accordingly, Tofkhana Police Station carried out investigation and submitted report before the Chief Judicial Magistrate. On the basis of said report the Chief Judicial Magistrate issued process against respondent Nos. 1 to 4 and original accused – Jagdish and Kaushik for the offences punishable under sections 420, 406, 109, 34 of the Indian Penal Code. The said order of issue process was challenged before the Sessions Judge, Ahmednagar under section 397 of the Cr.P.C. On hearing the parties, the Sessions Judge, Ahmednagar partly allowed the revision and set aside the order of issue process against respondent Nos.1 to 4, which is impugned in this petition.

05. The petitioner alleged in the complaint that his daughter Supriya, who was married on 09.12.2012. But she took divorce from her husband. It is contended that the petitioner was trying to settle second marriage of his daughter – Supriya. In August, 2017 accused Kaushik came to his house and he disclosed that he wishes to settle marriage of his son Jagdish with Supriya. Accused Kaushik disclosed that his son Jagdish was married but he took divorce. Accused Kaushik gave information of his family, his financial condition and income of son Jagdish. It is also contended that accused Kaushik informed the petitioner that accused Jagdish was married to daughter of Laxman Tupe, namely, Yogita, but accused Jagdish had taken divorce from his wife Yogita. He also showed divorce papers to him. It is further contended that on 21.11.2017 marriage of Supriya was performed with Jagdish. Prior to settlement of marriage respondent Nos.1 to 4 and original accused Jagdish and Kaushik had come to the house of the petitioner. There was discussion amongst themselves regarding settlement of marriage. In

the said discussion original accused Jagdish, Kaushik and respondent Nos. 1 to 4 did not disclose to the petitioner that accused Jagdish was married to one Amita Nimbalkar and the said marriage was subsisting. It is stated that after the marriage of daughter of petitioner – Supriya went to the house of matrimonial house. She stayed there for 8 – 10 months. During the stay in the matrimonial house, she saw reply given by Advocate D.N. Bade, wherein it was mentioned that Amita Nimbalkar was first wife of accused – Jagdish and the said marriage was subsisting. The petitioner sought explanation of accused Jagdish and Kaushik as well as respondents, but they did not give any satisfactory answer. Therefore, the petitioner filed private complaint against original accused Jagdish, Kaushik and respondent Nos.1 to 4, wherein the Trial Court issued process. The said order was partially modified by the Sessions Court, which is under challenge.

06. On behalf of the petitioner, learned Counsel submits that respondent No.1 is mother of accused

Jagdish, respondent Nos.2 and 3 are sisters of Jagdish and respondent No.4 is husband of respondent No.3. He also contends that respondent Nos.1 to 4 are family members of original accused Jagdish and Kaushik. They knew that Jagdish was married to Amita Nimbalkar in the year 2013. Thereafter, he married to his cousin Yogita Tupe and thereafter marriage of accused Jagdish was settled with daughter of the petitioner. He submits that the original accused and the respondents had been to the house of the petitioner. There was discussion about the settlement of marriage of daughter of the petitioner with Jagdish. Therefore, it was expected from respondent Nos. 1 to 4 to disclose the marital status of Jagdish to the petitioner and his daughter but they concealed the material fact and the subsistence of marriage of Jagdish with Amita Nimbalkar. Therefore, there is active participation of respondent Nos.1 to 4 in the crime. Said fact is not properly considered by the Sessions Judge while deciding the revision. It is prayed that the said order is required to be set aside.

07. On the other hand, learned Counsel for respondent Nos.1 to 4 submits that respondent Nos.1 to 4 were not aware of the first marriage of accused Jagdish. Said marriage was not performed with the consent of parents and the relatives of Jagdish. Therefore, the respondents were not aware of the said marriage. Therefore, there is no question of disclosing facts about the said marriage to the petitioner. It is also contended that the respondent Nos.1 to 4 knew about marriage of Jagdish with Yogita and their divorce and said fact is correctly disclosed by respondent Nos.1 to 4 to petitioner along with the documents of divorce. He also submits that the Sessions Court rightly considered the role of respondent Nos.1 to 4 and rightly set aside the order of issue process against them. He also submits that the order of Sessions Court is correct, legal and valid and therefore there is no need to interfere with the said order.

08. Heard learned Counsel for the petitioner and the respondents. Perused the complaint. It is specifically averred by the petitioner that his daughter was married on 09.12.2012. Said marriage was not lasted for long time. She took divorce from her first husband in the year 2014. Said fact was disclosed by the petitioner to accused Jagdish and his father Kaushik, when they had come to make enquiry about the proposal of marriage of the daughter of the petitioner. It is specifically averred that on the basis of information given by accused Jagdish and Kaushik, the petitioner has decided to settle marriage of his daughter with accused Jagdish. It is also averred in the complaint that prior to settlement of marriage, accused Jagdish and Kaushik and respondent Nos. 1 to 4 had been to his house. There was discussion about the settlement of marriage and accordingly the marriage was fixed on 21.11.2017. If this averment is taken into account, it can be said that it was incumbent on the respondents to disclose marital status of Jagdish to the petitioner and his daughter. Respondent Nos.1 to 4 have

taken defence that they were not aware of first marriage of accused Jagdish, at the time of settlement of marriage of daughter of the petitioner. Respondent No.1 is mother, respondent Nos.2 and 3 are real sisters and accused No.4 is husband of respondent No.3. If said relations are taken into account, it cannot be believed that the mother and sisters were unaware of the first marriage of their son and brother respectively, in the year 2017.

09. The complaint was referred for enquiry, wherein it is prima facie established that the first marriage of Jagdish was performed in the year 2012 with Amita Nimbalkar. Thereafter, accused contracted second marriage with his cousin Yogita Tupe. Second marriage was performed on 08.02.2014. So, there is prima facie material on record that accused Jagdish performed first marriage in the year 2012. He performed second marriage on 02.02.2014 and his third marriage with the daughter of the petitioner was performed on 21.11.2017. So, if these

events are taken into account, it cannot be believed that the mother and sisters of accused Jagdish were not knowing the marital history of accused Jagdish. In-fact, it has come in the statement of respondent No.3 that she came to know about marriage of accused Jagdish with Amita Nimbalkar through second wife of accused Jagdish. So, it can be said that the mother and sisters of accused Jagdish were having knowledge about first and second marriage of Jagdish and said facts are revealed from the statement of witnesses recorded during the enquiry held by police. So, it can be said that there was sufficient material before the Trial Court to issue process against respondent Nos. 1 to 4.

10. As far as observations of the Sessions Court are concerned, in the Criminal Revision No.8 of 2021, the Sessions Judge observed that respondent Nos.1 to 4 had no knowledge of previous marriage of accused Jagdish. Therefore, the Sessions Judge has set aside the order. To my surprise the Sessions Court has not considered the

enquiry conducted by the police. The statements of witnesses are recorded in the said enquiry. It appears that the Sessions Court simply believed submissions of respondent No.1 to 4 and came to conclusion that they had no knowledge about the first marriage of accused Jagdish. Said observations is not only incorrect but it is perverse. Hence, it is required to be set aside. On the basis of enquiry conducted by police and material placed before the Trial Court, learned Counsel for the petitioner submits that there is sufficient material against original accused as well as respondent Nos.1 to 4 for issuance of process against them. It is submitted that the Sessions Court thought that the material placed on record would not warrant conviction of the respondent Nos.1 to 4. It is duty of Trial Court to verify material placed before him and there upon to see whether there is material to issue process against accused persons. Accordingly, the Trial Court has considered the material placed before him and issued process. To substantiate this point, he relied upon ratio laid down in the case of

Jacob Harold Arnha & Anr. Vs. Mrs. Vera Aranha & Anr.,

(1979) Cr.L.J.974, wherein this Court observed as

under :-

"3. It is by now well settled that at the stage of issuing process it is not the duty of the Court to find out as to whether the accused will be ultimately convicted or acquitted. The object of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. Mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand such grounds may indicate the need for proceeding further in order to discover truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or, that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then of course, the complaint is liable to be dismissed at that stage only. What the Magistrate has to determine at the stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true. See Debendranath Bhattacharyya v. State of West Bengal ."

11. It is now settled law that at the time of issuance of process, it is not duty of the Court to find out as to whether accused will be ultimately convicted or acquitted. At that stage the Magistrate has to see whether there are sufficient grounds to proceed further or not.

12. Said ratio is applicable in the facts of the present case. The Trial Court has rightly considered the material placed before it and issued process, but in the Criminal Revision the Sessions Court swayed away with the submissions of respondent Nos.1 to 4 without considering material on record and set aside the order of issue of process. It is required to be set aside. With this, I pass following order :-

O R D E R

(i) The petition is allowed.

(ii) The order passed by the Sessions Court is set aside.

(iii) The order of issue of process passed against respondent Nos.1 to 4 by the Trial Court is confirmed.

(iv) Rule made absolute.

[SURENDRA P. TAVADE,J.]