

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

CRIMINAL WRIT PETITION NO. 624 of 2020

- 1) Himmat Bhagwan Kuwar,
Age 42 years, Occ. Agriculture.
- 2) Sakharbai Himmat Kuwar,
Age 72 years, Occ. Household.
- 3) Bhausahab @ Uday Bhagwan Kuwar,
Age 32 years, Occ. Agriculture.

All r/o. Kalambu, Tq. Shahada,
District Nandurbar.

... **Petitioners.**

VERSUS

- 1) The State of Maharashtra.
- 2) Sima Himmat Kuwar @
Sima Ramesh Chavan,
Age 37 years, Occ. Household,
R/o. C/o. Ramesh Chavan
at post New Bamkheda Tasa,
Tq. Shahada, Dist. Nandurbar.

... **Respondents.**

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Advocate for the Petitioners : Mr. Savale Amit S.
APP for the Respondent No. 1 : Mr. S.W. Mundhe.
Advocate for the Respondent No. 2 : Mr. K.R. Doke.

CORAM : MANGESH S. PATIL, J.
DATE : 12.02.2021.

ORAL JUDGMENT :

Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. In this proceeding under Section 482 of the Code of Criminal Procedure the petitioners are seeking quashment of the Criminal Case

initiated by the respondent No. 2 against them for the offences punishable under Section 494 read with Section 34 of the Indian Penal Code.

3. The learned advocate for the petitioners would submit that the petitioner No. 1 had filed a petition for divorce bearing H.M.P No. 64/2011. It was decided on 09.04.2012. The respondent No. 2 tried to prefer an appeal but since there was a delay she filed Misc. Civil Application No. 11/2013 seeking condonation of delay. Even she did not prosecute it and it was also dismissed in default on 09.12.2014. He would point out that subsequently she filed the present case bearing Regular Criminal Case No. 179/2013 on 29.08.2013.

4. Going by the allegations in the complaint the petitioner No. 1 is stated to have solemnized second marriage in July 2013. Since the date of dissolution of marriage now stands confirmed as the date of decree for divorce, there is no question of petitioner No. 1 having solemnized second marriage while the earlier marriage was subsisting. The criminal case is a sheer misuse of process of the Court and may be quashed and set aside.

5. The learned advocate for the respondent No. 2 submits that the petitioners are seeking quashment belatedly. The complaint was filed in the year 2013. He has not promptly approached this Court and the Court should not exercise its discretion. It would be appropriate to allow the trial go on and to be concluded.

6. I have carefully perused the papers. As can be seen the date of decree for divorce is 09.04.2012. In the criminal complaint the respondent No. 2 alleges about the applicant having solemnized second marriage in July 2013. Apparently, the decree of divorce has reached finality and it is as on the date of that decree that the marriage between the petitioner No. 1 and the respondent No. 2 would stand dissolved. Therefore accepting the allegations at their face value, the petitioner No. 1 has solemnized second marriage in July 2013 i.e. after the earlier marriage was dissolved.

7. If this is be so, allowing the complaint to go on is a sheer misuse of the process of the Court.

8. In the case of **Krishna Gopal Divedi Vs. Prabha Divedi; (2002) 10 SCC 216**; where in similar set of facts when the decree of divorce was subsequently quashed and set side, still the Supreme Court quashed and set aside the criminal case under Section 494 of the Indian Penal Code. In the matter in hand the decree of divorce has reached finality and the petitioner No. 1 is alleged to have solemnized second marriage after such decree. It would be therefore sheer abuse of process of the Court to allow the prosecution to go on.

9. The Writ Petition is allowed in terms of prayer clause 'B'. The proceeding is quashed.

10. Rule is made absolute.

11. Mr. Doke, learned advocate was appointed to represent the respondent No. 2. His fees is quantified to Rs. 3000/-.

(MANGESH S. PATIL, J.)

mkd/-