

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

CRIMINAL WRIT PETITION NO. 1787 OF 2018

Ushadevi w/o Jaydeep Kakade,
Age 36 years, Occ. Household,
R/o. Tapneshwar Galli, Jamkhed,
Tq. Jamkhed, Dist. Ahmednagar.

... **Petitioner.**

VERSUS.

- 1) Nanasaheb s/o Vinayak Kokate,
Age 62 years, Occ. Agriculture,
R/o. Dashkhed, Tq. Patoda,
Dist. Beed.
- 2) Mangal w/o Vinayak Kokate,
Age 50 years, Occ. Household,
R/o. As above.
- 3) Kranti w/o Kalyan Deshmukh,
Age Major, Occ. Household,
R/o. Pangri, Tq. Barshi, Dist.
Solapur.
- 4) Kalyan s/o Sadashiv Deshmukh,
Age Major, Occup. Agriculture,
R/o. As above.
- 5) Shamrao s/o Pandharinath Landge,
Age 50 years, Occ. Agriculture,
R/o. Pachangri, Tq. Patoda, Dist.
Beed.

6. The State of Maharashtra

... **Respondents.**

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Advocate for the Petitioners : Mr. S.S. Bora.
Advocate for the Respondents No. 1 to 5 : Mr. A. S. Kakade.
APP for the Respondent No. 6/State : G. L. Deshpande.

CORAM : MANGESH S. PATIL, J.
DATE : 06.07.2021.

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned advocate Mr. Kakade waives service for the contesting respondent Nos. 1 to 5. Learned A.P.P. waives service for the respondent No. 6. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The original complainant is invoking the powers of this Court under Article 227 of the Constitution of India questioning the legality of the order passed by the learned Additional Sessions Judge in a revision proceeding under Section 397 of the Code of Criminal Procedure whereby the order of the learned Magistrate directing a process to be issued inter alia against the respondent Nos. 1 to 5 for the offences punishable under Section 494, 109 read with Section 34 of the Indian Penal Code has been quashed and set aside.

3. Learned advocate Mr. Bora for the petitioner would submit that the original accused No. 1 was already married to the petitioner and while the marriage was still subsisting he performed marriage with the accused No. 2 and the respondent Nos. 1 to 5 abetted the marriage by actively taking part in the marriage ceremony in spite of having knowledge that he was already married and his first marriage was subsisting. Learned advocate would submit that the learned Magistrate after going through the complaint, statement of the petitioner under verification and statement of the witness had taken cognizance and directed the process to be issued. Since it was still a stage of issuance of process, the scope of the enquiry was limited in ascertaining existence of all the ingredients for constituting the offence. He would point out that not only in the complaint but even in the statement under verification the petitioner specifically described the role played by each of the respondent Nos. 1 to 5 in performing the second marriage of the accused No. 1. It would constitute abetment within the meaning of Section 107 of the Indian Penal Code and the process was rightly issued.

4. Learned advocate would further submit that without there being any apparent perversity or arbitrariness, the learned Additional Sessions Judge has illegally interfered with the order of issuance of process and by the impugned judgment and order has allowed the revision quashing and setting aside the order of issuance of process. The impugned order is grossly erroneous and illegal. The petitioner deserves to be extended sufficient opportunity to substantiate her allegations. The observations and conclusions in the case of **Malan w/o Rama and others Vs. State of Bombay and another; 1960 Criminal Law Journal, 1189** are not strictly applicable to the fact situation of the matter in hand. He would also cite decision of this Court in the case of **Gajanan Sadashiv Hivarkar and others Vs. The State of Maharashtra and others; 2017 ALL MR (Criminal) 3298** and **Vishram Vs. The State of Maharashtra, Criminal Application No. 1122/2002 decided on 02.02.2005.**

5. Per contra, the learned advocate Mr. Kakade for the contesting respondents would support the impugned judgment and order. He would rely upon the decision in the case of **Malan (supra)** and submit that no fault can be found with the observations and conclusions of the learned Additional Sessions Court in allowing the Revision and recalling the process. He would further point out that no specific and exclusive role is attributed to the respondent Nos. 1 to 5 much less for abetting the marriage. It would have been sheer abuse of process of law had they been allowed to defend themselves in the absence of material to prima facie reveal their complicity in commission of the crime, the ingredients of which are wanting.

6. I have carefully gone through the order of learned Magistrate directing a process to be issued as also the impugned judgment and order. Admittedly, along with respondent Nos. 1 to 5 the process was issued against the accused No. 1 who happens to be the husband of the petitioner and his second wife who is slated to be accused No. 2. However, both of them are not before this Court and the present scrutiny has to be restricted

only to the extent of the respondent Nos. 1 to 5. The respondent Nos. 1 and 2 happen to be the parents of the accused No. 2. Respondent No. 3 is her sister, respondent No. 4 is the husband of the respondent No. 3 and the respondent No. 5 is the priest who is alleged to have performed the rituals.

7. Since it is a case of bigamy, in order to constitute abetment qua the respondent Nos. 1 to 5 it is highly imperative that there are allegations and some material to substantiate the fact of they having knowledge at the time of second marriage that the accused No. 1 was already married to the petitioner and that the marriage was still subsisting. Minute perusal of the papers would reveal that there is a vague and omnibus statement in the complaint of the petitioner filed before the Magistrate attributing such knowledge to all the accused. However, pertinently, in her statement under verification recorded under Section 200 of the Code of Criminal Procedure she has clearly omitted to make any statement attributing knowledge about the first marriage of the accused No. 1 to the respondent Nos. 1 to 5 which is a basic ingredient if they are to be implicated for abetting the second marriage. For that matter it is equally important to note that the petitioner also examined a witness by name Bhausahab Manikrao Kokate to substantiate her allegations. However, even he has not whispered about any knowledge of the respondent Nos. 1 to 5 about the first marriage.

8. Since the respondent Nos. 1 to 5 are being sought to be roped in by resorting to Section 107 of the Indian Penal Code, it was expected that there are sufficient allegations to constitute abetment either by way of instigation, conspiracy or intentional aid. Keeping aside the distinction amongst them, if one examines the fact situation discussed herein above, even there is no material to prima facie demonstrate as to which of these kinds of abetments the petitioner is intending to allege and establish. She does not specifically allege that the respondent Nos. 1 to 5 had instigated the accused Nos. 1 and 2 to solemnize the marriage. She also does not allege about there being some conspiracy or intentional aid, albeit she cursorily prescribes some role

to each of them during the process of solemnization of the marriage. Besides, as is discussed herein above the material is too scant to even prima facie attribute knowledge on their part to abet the marriage between the accused No. 1 and 2 knowing about first marriage between the petitioner and accused No. 1.

9. Taking into account the fact that power of this Court under Article 227 of the Constitution of India is being invoked, it is imperative for the petitioner to demonstrate some perversity, arbitrariness or capriciousness in the impugned judgment and order. In my considered view she has miserably failed to demonstrate it and consequently the petition is liable to be dismissed.

10. As far as the decisions cited on behalf of the petitioner (supra) , suffice for the purpose to observe that the decisions were rendered in the peculiar facts and circumstances obtaining in those matters which are not akin to the fact situation of the matter in hand.

11. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

mkd/-