

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

CRIMINAL APPLICATION NO.133 OF 2020

Kalpana @ Devyani W/o Vitthal Takale .. Applicant

Versus

The State of Maharashtra and
others .. Respondents

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Mr. Haribhau B. Pawar, Advocate for the Applicant
Mr. S.P. Deshmukh, APP for Respondent No.1
Mr. M.S. Kokate, Advocate for respondent Nos. 3 to 21

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 26 JULY, 2022

PER COURT :

. Heard finally with the consent of both the parties.

2. The applicant/original complainant is challenging the impugned order passed in criminal revision application No.2 of 2018 by the Additional Sessions Judge, Ahmednagar dated 08.04.2019, whereby the order of issue process passed by the learned Judicial Magistrate, First Class, Ahmednagar came to be struck down to the extent of original accused Nos. 3 to 27.

3. Heard Mr. H.B. Pawar, learned counsel for the applicant, Mr. S.P. Deshmukh, learned APP for respondent No.1/State and Mr. M.S. Kokate, learned counsel for respondent Nos. 3 to 21.

4. Perused the copy of order of issue process passed by the Judicial Magistrate, First Class, Court No.5, Ahmednagar dated 20.09.2016. The learned Magistrate after perusing the verification statement of the complainant and the statement of the witness, was pleased to issue process against all the accused (27 in number) for the offence punishable under Section 494 read with Section 34 of the Indian Penal Code. That order of issue process was challenged by the original accused Nos. 3 to 15 and 22 to 27 before the Sessions Court at Ahmednagar by taking aid of Section 397 of the Code of Criminal Procedure. The learned Additional Sessions Judge, Ahmednagar was pleased to allow the criminal revision application partly to the extent to original accused Nos. 3 to 27 and pleased to set aside the order of issue process passed against accused Nos. 3 to 27.

5. Feeling aggrieved by the impugned judgment and order passed by the learned Additional Sessions Judge,

Ahmednagar in criminal revision application No. 2 of 2018, the original complainant has preferred this application by taking aid of Article 227 of the Constitution of India.

6. The submission of the learned counsel for the applicant is of two fold, first, the learned Additional Sessions Judge has travelled beyond his jurisdiction while passing the impugned order. He submitted that though the original accused Nos. 16 to 21 have not preferred criminal revision, the learned Additional Sessions Judge has granted relief in their favour by setting aside the order of issue process. According to the learned counsel for the petitioner, the impugned order is bad in law and liable to be quashed and set aside. Second submission of Mr. Pawar, learned counsel for the petitioner is about the material placed on record by the complainant against the original accused which was sufficient to take cognizance against all the accused. According to Mr. Pawar, learned counsel for the petitioner, learned Judicial Magistrate, First Class has considered the verification statement of the complainant and the statement of the witness and accordingly pleased to take cognizance against all the accused under Section 494 read with Section 34 of the Indian Penal Code. He submitted that the learned Additional

Sessions Judge has committed an error in setting aside the order passed by the learned Magistrate. He submitted that the impugned order is bad in law and liable to be set aside.

7. On the other hand, Mr. Deshmukh, learned APP for respondent No.1/State supported the impugned order passed by the learned Additional Sessions Judge in criminal revision application.

8. Mr. Kokate, learned counsel for respondent Nos. 3 to 21 made similar submissions and supported the impugned order passed by the learned Additional Sessions Judge, Ahmednagar in the criminal revision application.

9. First, I shall deal with the point raised by Mr. Pawar, learned counsel for the applicant about exceeding jurisdiction by the Sessions Court. True, it is that the original accused Nos. 16 to 21 have not preferred the criminal revision application before the learned Additional Sessions Judge under Section 397 of the Code of Criminal Procedure. Even then the learned Additional Sessions Judge has set aside the order of issue process as if they have preferred the criminal revision application.

10. On careful study of the provisions of Section 397 of the Code of Criminal Procedure, it would reveal that the High Court or any Sessions Judge is empowered to call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any findings, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

11. Having regard to the provisions of Section 397 of the Code of Criminal Procedure, it is very much clear that the Sessions Court is empowered to call for and examine the record and proceedings from any inferior Criminal Court situated within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. The Sessions Judge is vested with the powers under Section 397 of the Code of Criminal Procedure to set aside the finding, if it is found *ex facie*

illegal. In this background, even though the original accused Nos. 16 to 21 had not preferred criminal revision application before the Sessions Court at Ahmednagar, the learned Additional Sessions Judge was perfectly right by invoking revisional jurisdiction while examining the correctness of the order even to the extent of original accused Nos. 16 to 21. It is observed by the learned Additional Sessions Judge in the impugned order that there was absolutely no iota of evidence against them regarding abetment of commission of offence of bigamy punishable under Section 494 of the Indian Penal Code, and as such, struck down the order of issue process even against them. I do not see any error on the part of the learned Additional Sessions Judge while invoking revisional jurisdiction vested with him under Section 397 of the Code of Criminal Procedure.

12. Now coming to the later part of the order attacked by Mr. Pawar, learned counsel for the applicant. I have gone through the verification statement of the complainant and the statement of the witness No.2-Balasaheb Kanhu Sumbe examined by the complainant before the Judicial Magistrate, First Class. On perusing the statement of witness No.2 Balasaheb Sumbe, it would reveal that role is attributed to

Vitthal Murlidhar Takle, who is accused No.1. There is no iota of evidence against original accused Nos. 3 to 27 regarding their participation, involvement, much less abetment in the so called second marriage. This aspect has been considered by the learned Additional Sessions Judge and accordingly struck down the order of issue process.

13. Having regard to the above reasons and discussion, I do not see any error on the part of the learned Additional Sessions Judge while setting aside the order of issue process to the extent of accused Nos. 3 to 27. As such, no interference is called for.

ORDER

(i) The criminal application stands dismissed.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane