

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

CRIMINAL WRIT PETITION NO. 373 OF 2021

Chandraprakash Kailas Chavan
and others

.. Petitioners

Versus

The State of Maharashtra and another

.. Respondents

Mr. S. B. Solanke, Advocate for the Petitioners.

Smt. D. S. Jape, APP for Respondent No. 1.

Mr. Ravindra B. Ade, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 16th NOVEMBER, 2022.

P. C. :-

. By consent of the parties, taken up for final disposal.

2. Heard learned advocate for the petitioners, learned A.P.P. and learned advocate Mr. Ade for respondent No. 2.

3. The present petition is filed challenging the order passed by the learned Additional Sessions Judge, Parbhani dated 24.02.2021 thereby dismissing the revision petition filed by the present petitioners. The revision was filed challenging the order passed by the learned Judicial Magistrate First Class (J.M.F.C.), Jintur dated 01.08.2017 by which the learned J.M.F.C. has passed an order issuing process against these

petitioners who are accused Nos. 2 to 34 before the said Court. The process is issued for the offence punishable under Sections 494 and 109 of the Indian Penal Code. Initially, these petitioners had approached this Court by filing Criminal Application No. 1463/2015 with the grievance that earlier notice was issued without following procedure as prescribed under Section 202 of the Code of Criminal Procedure (for short "Cr.P.C."). The said application was allowed and the order of issuance of process dated 04.03.2015 was set aside and the Magistrate was directed to pass fresh orders after following the provisions of Section 202 of the Cr.P.C. It is submitted that, thereafter the Magistrate has again passed the similar order which was impugned in the revision application and the same was passed by the learned J.M.F.C. The petitioners thereafter filed Criminal Application No. 2923/2018 before this Court. By order dated 25.02.2019, the said application was allowed to be withdrawn so as to avail the remedy of revision before the Sessions Court. Leave was granted. It is thereafter, the Criminal Revision Application No. 52/2019 came to be filed. The order passed in the said revision petition is now challenged in this proceeding.

4. It is submission of the learned advocate for the petitioners that the statements recorded by the Investigating Officer which show that no second marriage has taken place as alleged by the complainant. He

pointed out that in the complaint in paragraph No. 9 it is reported that the complainant received the information from one Lahu Rathod. In the complaint, she has stated detail role of each of the accused persons whereas, it is pointed out from the statement of Lahu Rathod at page no. 38 wherein, he has not stated the fact in such minute details. He states that, the statement of the complainant is not correct. He further pointed out a letter issued by Shri Eknath Maharaj Vishwast Mandal Sansthan, Paithan to the effect that on 12.10.2014 no marriage was performed and they do not allow marriages to take place in their premises. It is thus, submitted that there is no question of performing marriage on 12.10.2014 as alleged by the complainant.

5. As against this, learned advocate for respondent No. 2 submits that this is not a stage where the evidence is to be appreciated. At this stage, only averments in the complaint are required to be seen. If the complaint is seen, it is clear that role of each of the petitioners is clearly stated and thus, clear case is made out for issuance of process. He thus supports both the orders. He further submitted that she is the person aggrieved because of the offence and therefore it is necessary to give her opportunity to prove her case before the Trial Court.

6. Learned A.P.P. adopts the argument of learned advocate for respondent No. 2 and supports the impugned judgment.

7. Considering the arguments and the material on record, this Court finds that at this stage propriety requires that the prosecution must be allowed to go. It is necessary to give an opportunity to the complainant to prove her case during the trial. Assuming that there are contrary statements appearing on record as of now, however, it is for the complainant to decide which of the evidence to be proved and which of the persons to be examined before the Court. The petitioners also have opportunity in trial to prove their case or to make out that the prosecution has not proved the case against the petitioners.

8. Considering that, there is no merit in the writ petition, writ petition is dismissed.

(KISHORE C. SANT, J.)

PS.B.