

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3878 OF 2018

Maya Sujitsinh Jadhav

... Petitioner

V/s.

1) Namrata Sunil Halgekar

2) The State of Maharashtra

... Respondents

Mr. Yuvraj P. Narvankar, for the Petitioner.

Mr. Shailesh D. Chavan a/w Vishal Khatavkar, for the Respondent No.1

Mr. S. R. Aagarkar, APP for State

CORAM : N.J. JAMADAR, J.

DATE : 28 APRIL 2022

P.C.:-

1. This petition under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 takes exception to a judgment and order passed by the learned Additional Sessions Judge, Pune in Criminal Revision No. 684 of 2017 whereby the learned Additional Sessions Judge allowed the revision application preferred by the

respondent No.1–Original Accused No.7 by setting aside the order dated 27th April, 2016 passed by the learned J.M.F.C. court No.5, Pune in R.C.C. No. 1233 of 2016 of issuance of process against the accused No.7, along with accused No.1, the husband of the petitioner – original complainant, for the offence punishable under Section 494 read with Section 34 of the Indian Penal Code, 1860 (Penal Code).

2. Shorn of superfluities, the background facts are as under:

(a) The marriage of the petitioner (hereinafter referred to as the complainant) was solemnized with Sujit Sinh – accused No.1 on 27 June, 2006 according to the Hindu religious rites and ceremonies. The marital life was struck with discord. The complainant was subjected to physical and mental harassment. Matrimonial proceedings followed. In the meanwhile in the year 2016, the complainant reliably learnt that the accused No.1 solemnized marriage with respondent No.1 – Accused No.7 and had also seered a child from the said bigamous marriage. Thus, the complaint lodged,

a complaint before the learned Magistrate with the allegations that the accused No.1 solemnized marriage with accused No.7, in connivance with accused No.2 to 6 and 8.

(b) The learned Magistrate recorded the statement of the complainant and after perusal of the complaint and the verification statement of the complainant dismissed the complaint against the accused No.2 to 6 and 8 under Section 203 of the Code of Criminal Procedure, 1973 (the Code) as no prima facie case was found against them. The learned Magistrate was, however, impelled to issue process against the accused No.1 and 7 for the offence punishable under Section 494 read with Section 34 of the Penal Code.

3. Being aggrieved, the accused No.7 filed a revision application in the court of Sessions, Pune. By the impugned judgment and order, the learned Additional Sessions Judge was persuaded to interfere with the order of issuance of process qua the accused No.7. It was inter alia observed that the learned Magistrate didn't keep in view the distinction

between Sections 34 and 109 of the Penal Code. The offence of bigamy can never be committed in furtherance of common intention. The learned Magistrate, according to the learned Additional Sessions Judge, didn't even record the verification statement of the complainant. It was further observed that no prima facie case was made out against the accused No.7 to rope her in, by invoking the provisions contained in Section 109 of the penal code. The learned Additional Sessions Judge thus quashed the order passed by the learned Magistrate and also ordered dismissal of R.C.C. No. 1233 of 2016 under Section 203 of the Code.

4. Being aggrieved, the complainant has invoked the writ jurisdiction.

5. I have heard, Mr. Narvankar, the learned counsel for the petitioner. Mr. Shailesh Chavan, the learned counsel for the respondent No.1–Accused No.7 and Mr. S. R. Agarkar, learned APP for the State.

6. Mr. Narvankar would urge that the learned Additional

Sessions Judge was in error in recording that the learned Magistrate has not recorded the verification statement and, thus, there was non-compliance with the requirement of Section 200 of the Code before issuance of the process. It was further submitted the mere fact that the process was issued under Section 494 read with Section 34 instead of Section 109 of the Penal Code could not have been a justifiable ground to set aside the order of issue of process. The substance of matter ought to have been considered. In the face of overwhelming material in the nature of the accused No.1 having shown the accused No.7 as his wife in official record and the birth certificate, which revealed that a child was born to accused No.7 by accused No.1 on 9th October, 2013 the finding of the learned Revisional Court that no prima facie case was made out against the accused No.7 is manifestly unsustainable.

7. Per contra, Mr. Chavan, the learned counsel for the respondent No.1 submitted that the Revisional Court was fully

justified in setting aside the order passed by the learned Magistrate as the essential ingredient of abetment was not at all made out.

8. Mr. Narvankar, the learned counsel for the petitioner further submitted that, the Revisional Court exceeded the jurisdiction and approached the controversy as if it was called upon to consider the proof of the guilt of accused No.7. Impermissibility of such a course of action was sought to be highlighted by placing reliance upon a judgment of the Supreme Court in the case of *Mahinder Singh V. Gulwant Singh*.¹

9. I have carefully considered the submissions. It is well recognised that the scope of enquiry under Section 202 is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the premise that there

1 (1992) SCC 213

is no sufficient ground for proceeding on the basis of the statement of the complainant and of his witnesses, if any. It is equally well settled that the enquiry at such nascent stage, does not take the character of a full-dressed trial.

10. The submission on behalf of the petitioner, as regards the Revisional Court having not properly considered the material on record, especially the fact as to whether verification of statement of the complainant was recorded may carry some substance. Indeed the learned Magistrate did record the verification statement of the complainant and, thereafter, passed the order of issuance of process. It is also true that the material on record indicates that the accused No.1 had represented the accused No.7 as his wife. The copy of the birth certificate of the child, in a sense, prima facie lends support to the claim of the complainant that the accused No.1 has fathered a child.

11. The issue which, however, crops up for consideration is the complicity of accused No.7 in the solemnisation of the

bigamous marriage by the accused No.1. Mr. Narvankar found it difficult to demonstrate from the allegations in the complaint that a case of abetment falling within the ambit of Section 109 of the Penal Code was made out. Mr. Narvankar attempted to salvage the position by putting forth a submission that the rigour of Section 109 stands at a lower pedestal than the active participation required under Section 34 of the Penal Code. This submission is not at all germane to the controversy at hand. What is required to be established, albeit prima facie, is that the accused No.7 abetted the commission of the offence of bigamy. Either there was instigation, intentional aid or conspiracy for the act of solemnising the second marriage. The complaint singularly lacks allegation regarding the abetment of the offence, by accused No.7. It even does not indicate that the accused No.7 had entered into the marital bond with accused No.1, having fully known that the accused No.1 was married and the first marriage subsisted. In the absence of the any act or omission

attributable to the accused No.7 so as to bring her conduct within the ambit of Section 107 of the Penal Code, the accused No.7 could not have been proceeded against.

12. For the foregoing reasons, I am not inclined to interfere with the order passed by the learned Additional Sessions Judge.

13. Before parting, it is necessary to note that this Court was anxious to know as to whether the complaint was dismissed, as a whole, pursuant to the order passed by the revisional court, though, revision was preferred by accused No.7 only. The court was informed that the trial against accused No.1 is underway and the learned Magistrate has correctly understood the purport of the order passed by the Revisional Court that dismissal of the complaint was qua accused No.7.

14. Let the trial against accused No.1 proceed in accordance with law. The Trial Court, however, shall not be influenced by any of the observations made hereinabove as they are

confined to the determination of the legality, propriety and correctness of the impugned order and not the merits of the case qua accused No.1.

15. The petition thus stands dismissed.

(N.J. JAMADAR,J.)