

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 58 OF 2022

Harikisan Tulshiram Kalantri...Versus...Yogita @ Neha Pawan Rathi & 11 ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. A.A.Dhawas, Advocate for Petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 07/03/2022

Mr. Dhawas, learned counsel for the petitioner, at the outset, seeks leave for correction in the name of Respondent No. 1 as Yogita @ Netal Pawan Rathi, in place of Yogita @ Neha Pawan Rathi.

2] Leave is granted.

3] The correction be carried out forthwith.

4] Heard Mr. Dhawas, learned counsel for the petitioner.

5] The petition challenges the order dated 1.10.2019 passed by the learned Joint Civil Judge, J.D., Pauni, whereby the respondents have been discharged of the offence under Section 494 r/w 34 of the IPC (page 66) and the subsequent judgment of the learned Sessions Court dated

26.7.2021, passed in Criminal Revision No. 58/2019 (page 90), confirming the order of the learned Joint Civil Judge, J.D., discharging the respondents.

6] Mr. Dhawas, learned counsel for the petitioner submits that since the proceedings before the learned Joint Civil Judge, J.D., were warrant proceedings, as many as five witnesses were examined, including the petitioner, to demonstrate that respondent no.1 had conducted second marriage with the respondent No.2 and there was sufficient material on record, as Respondent No.1 had also given birth to a girl child from the relationship she was having with Respondent No.2, which factum had been proved by examination of the doctor who had performed the delivery at her Nursing Home, where the Respondent No. 1 was admitted. He further submits that the other witnesses namely Gourishankar Narayan Shende, Narendra Krishna Nandanwar and Vijayprakash Budhram Lilhare have also proved the factum of marriage and therefore, the findings by the Courts below regarding its absence and there being no sufficient material to demonstrate a *prima facie* plea of marriage was incorrect and therefore, the same were required to be quashed and set aside.

7] A perusal of the order dated 1.10.2019 passed by the learned Joint Civil Judge, J.D., would indicate that

though all the witnesses examined by the petitioner speak about the existence of the marriage of the petitioner and Respondent No.1, none of them speak about the marriage between the Respondent Nos.1 and 2. Though it is alluded to, none of the witnesses speak to have witnessed the ceremonies necessary for performing a marriage under the Hindu Law, as both the Respondent Nos. 1 and 2 profess Hindu religion. The learned Joint Civil Judge, J.D., therefore on the basis of the evidence before charge laid before her has rightly come to the conclusion about the absence of any material being placed on record to demonstrate the factum of marriage. The learned Sessions Court, has also considered the evidence of all the witnesses to conclude that there is nothing on record, except the oral testimony, the marriage card and the daughter being born to the Respondent No.1, to establish a *prima facie* factum of marriage and has rightly dismissed the revision. There is yet another reason why the findings by the learned Joint Civil Judge, J.D., and the learned Sessions Court gain support in as much as, in proceedings filed under Section 125 of Cr.P.C. by the Respondent No. 1 against the present petitioner, in Misc. Criminal Application No. 32/2009 (page 91), a similar plea was raised by the present petitioner as is evident from reading para 4 thereof (pg. 95), same witnesses who were examined before the learned Joint Civil Judge, J.D., have also been examined in proceedings under Section 125 Cr.PC and the learned JMFC by the judgment

dated 30.11.2015 has categorically recorded a finding that the petitioner herein had failed to prove the factum of second marriage, he however has recorded a finding that the Respondent No.1 was living an adulterous life with the Respondent No.2 and therefore, refused to grant maintenance to her. Even the Respondent No.2 herein was examined as DW-4 in those proceedings in which he has also denied any factum of marriage. The basic requirement of Section 494 of the IPC is the performance of a marriage by a spouse during the life time of the husband or wife. Thus, the factum of having performed the second marriage is the very gravamen of the provision and the evidence before charge laid by the petitioner falls woefully short of the requirement of law. That being the position, I do not see any reason to interfere in the concurrent findings recorded by the Courts below. The petition is therefore dismissed.

JUDGE

Rvjalit