

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

88 CRIMINAL APPLICATION NO.429 OF 2017

**JAYASHRI W/O CHANDRAPRAKASH CHAVAN @ JAYASHRI D/
O RAMRAO RATHOD AND OTHERS
VERSUS
CHANDRAPRAKASH S/O KAILAS CHAVAN**

Mr. Shivaji T. Shelke, Advocate for the applicants
Mr. S. B. Solanke, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 23rd MARCH, 2023

P. C.

1. This court by order dated 28-11-2017 was pleased to issue rule and grant interim relief in terms of prayer clause-C.

2. Applicant No.1 is wife of respondent and other applicants are his relatives. The applicants have challenged the order dated 08-08-2016 passed by the learned JMFC, Mantha in RCC No. 33/2015 by which a process came to be issued against the applicants for the offences punishable under Section 494 read with Section 109 of the Indian Penal Code. From reading of the order it is seen that the learned court had passed the order

after calling for report from the police under Section 202 of the Code of Criminal Procedure.

3. Learned advocate for the applicants submits that from reading the complaint as it is no case is made out to issue process. The respondent-husband had filed a complaint bearing RCC No. 33/2015 alleging that his wife applicant No.1 performed the marriage during the subsistence earlier marriage with accused No.2 who is not applicant before this court. As per the complaint respondent and applicant No.1 are married on 14-05-2007. There are two children out of said wedlock namely son Raj and daughter Sai. Though the marriage was in subsistence, the wife was residing away. The applicant therefore, had also filed a complaint under Section 498-A which was by then pending. Now he is acquitted from the said offences. It is further alleged that witnesses that is one distant relative of the husband saw all accused Nos. 1 to 37 were proceeding towards Parbhani from Mantha. He made an enquiry and came to know that applicant No.1 wants to marry with accused No.2. He therefore,

made enquiry with applicant Nos. 2 and 3 parents of applicant No.1 about the same. The uncle of the respondent followed other accused persons and saw that applicant No.1 performed the marriage with the help of others. In the complaint a specific allegation is seen against accused Nos. 1, 3 and 4 who are applicant Nos. 1,2 and 3 respectively. It is alleged that the accused No.22 -applicant No. 21 was helping in the marriage and distributing the akshada. Accused Nos. 23 and 24 i.e. present applicant Nos. 22 and 23 were holding the antarth. After mangalashtaka the applicant Nos.1 and accused Nos. 2 garlanded each other. All further rituals were performed like making holyfire, taking seven rounds around holy fire namely saptapadi etc. Thus, he submits that the marriage is performed during subsistence of earlier marriage.

4. On receiving the complaint the learned trial court directed the police to hold an enquiry under Section 202 and called report. The police pursuant to the direction conducted an enquiry and filed a report. The court after perusal of the said

report issued process against the applicants.

5. The learned advocate for the applicants pointed out that all the allegations are vague. No specific details are given about the alleged second marriage. He submits that in fact no any marriage had taken place as alleged by the respondent. In the complaint no specific role is alleged against the applicants. He submits that under such circumstances, continuance of the proceeding would be an abuse of process of law and therefore, prays for quashing of the proceeding.

6. Learned advocate for the respondent strenuously submitted that when specific allegations are made in the complaint no case is made out for quashing of the proceeding. He further submits that the learned Magistrate has issued the process showing application of mind. Proper care is taken to call for report of enquiry from the police. In the enquiry by the police it is found that all the allegations were substantiated and it is only thereafter the process is issued and no fault can be

found with the impugned order. It is further his submission that the complaint itself is lodged on the basis of information given to him by his uncle and there is nothing to suspect veracity of the statement. He therefore, prays for dismissal of the petition.

7. Having heard the parties and on going through the complaint and the order passed by the learned Magistrate this court finds that there is specific allegation against accused Nos. 1, 3, 4 and 22 to 24 who are applicant Nos. 1, 2, 3 and 21 to 23 respectively. applicant Nos. 2 and 3 are the parents of the applicant No.1 who have arranged the marriage of the applicant No.1. applicant Nos. 21 is real brother who distributed the akshada. Applicant Nos. 23 and 24 hold the antarpah in the marriage. Since all these persons are closely related to applicant No. 1 certainly knowledge is attributed to them as they have played active role. So far as other applicants are concerned this court finds that no role is assigned in the complaint to any of the applicants except applicant Nos.1, 2, 3, 21 to 23 except that were present and they asked the witness including of the

husband who witness the marriage. These allegations are not sufficient to attract the knowledge to them about the second marriage. To make out the case something more is required in the complaint so as to make out a case showing that they were actively involved and knowledge about second marriage as the section 494 is only against the husband or wife who performed second marriage. So far as the accused are concerned they can be prosecuted only for an offence under Section 109. Therefore, for prosecuting a person under Section 109 something needs to be shown which can be said to be an abatement. In this case taking allegations as it is only role alleged is that they were present at the time of marriage. Merely throwing the akshada on the newly married couple cannot be said to be an abatement. In this view of the matter this court finds that a case is made out to quash and set aside the impugned order passed against the applicants except applicant Nos. 1, 2, 3, 21 to 23. Hence, the following order.

ORDER

- a] The criminal application is partly allowed.

b] Order dated 08-08-2016 passed by the learned JMFC, Mantha in RCC No. 33/2015 is hereby quashed and set aside to the extent of applicant Nos. 4 to 20 and applicant Nos. 24 to 26.

c] Criminal Application stands dismissed to the extent of applicant Nos. 1, 2, 3, 21 to 23.

8. Needless to say that observations are only for the purpose of deciding this petition and trial court need not be influenced by any of the observations made in this petition.

[KISHORE C. SANT, J.]

VishalK/criapln429.17