

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

CRIMINAL WRIT PETITION NO.358 OF 2017

NELABAI W/O SHIVRAM SHINDE
VERSUS
SAVLIRAM S/O SHAMRAO JADHAV AND OTHERS

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Advocate for Petitioner : Mr. V. P. Savant
APP for Respondents: Mr. G. O. Watamwar
Advocate for Respondent Nos. 1 and 2: Mr. B. S. Dhawale

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CORAM : R.M. JOSHI, J

DATE : AUGUST 09, 2023

PER COURT :

1. Heard finally by consent of both sides.
2. This Petition takes exception to the order dated 23rd November, 2016 passed in Criminal Revision No. 135/2015 whereby order of issuance of process against accused nos. 17, 18 and 23 is set aside.
3. Learned Counsel for the Petitioner states that the Petitioner is the first wife of the Respondent No. 3/accused no. 1 and their marriage was solemnized on 25.04.2002. It is alleged that during the subsistence of first marriage he performed second marriage with accused no. 2 on 28.03.2010. In the respect of the said offence, private complaint came to be filed bearing R.C.C. No. 123/2010 before JMFC, Georai, Dist. Beed.

Learned JMFC issued process against all accused i.e., Accused Nos. 1 to 23 by order dated 09.06.2010. It is his contention that accused nos. 17 and 18 preferred Revision Application bearing No. 135/2015 which not only came to be allowed against these Applicants, however, in respect of accused no. 23 even without making any application, he was discharged by passing impugned order.

4. Learned Counsel for the Petitioner drew attention of the Court to the finding recorded by the learned Additional Sessions Judge in paragraph 15 wherein it is specifically held that the impugned order passed by the trial Court regarding issue of process against accused No. 1 to 16 and 19 to 21 cannot be said to be *prima facie* illegal because after the verification of the allegations in the complaint and ascertaining the fact that the learned Judge of the trial Court had issued the process against said accused persons. It is submitted that without recording any reason as to what different role is alleged against the accused nos. 17 and 18 order of issuance of process against them came to be interfered.

5. Learned Counsel for the Respondent Nos. 1 and 2/accused nos. 17 and 18 contended that bare perusal of the complaint lodged before Magistrate indicates that no specific role has been attributed against these accused and hence, impugned order does not deserve any interference.

6. Perusal of the impugned order shows that the learned Revisional Court was of the view that on the basis of complaint and averments in the complaint against accused nos. 1 to 16 and 19 to 21 the order of issuance of process against them cannot be faulted with. Perusal of the complaint shows that role alleged against all accused is similar in nature except for the accused no. 23. In such circumstances, unless some findings were recorded as to how the role of the accused before Additional Sessions Judge differs from the rest of the accused, it was not open for the learned Additional Sessions Judge to set aside the impugned order. Apart from this, there is no reason or justification recorded by the learned Court in discharging accused no. 23 without even any application made to that effect before said Court.

7. No doubt, it is always open for the Revision Court even to *suo moto* call record and proceedings and to pass appropriate order if the trial Court has committed manifest error in passing order. The perusal of the order does not show any *suo moto* cognizance was intended to take by revisional Court. Having regard to this fact, the order passed by learned Additional Sessions Judge on the face of it is not passed in accordance with law and hence, same deserves to be set aside.

8. In the result, Criminal Revision No. 135/2015 is relegated back to the learned Additional Sessions Judge for decision afresh. The Revision to be decided within the period of two months. The stay of the proceedings before the learned Trial Court to continue till expiry of two months from today. Parties are directed to appear before learned Additional Sessions Judge on 21st August, 2023.

9. Accordingly, Petition is allowed in aforesaid terms.

(R.M. JOSHI, J.)

Malani