

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

57 CRIMINAL WRIT PETITION NO.1248 OF 2022

**NAYAN W/O. AVINASH TELANG
VERSUS
ARTI W/O. RAVI GUTTEDAR AND OTHERS**

Mr. Hamzakhan I. Pathan, Advocate for the petitioner
Mr. S. N. Janakwada, Advocate for respondent No.1 to 18

CORAM : KISHORE C. SANT, J.

DATE : 13th MARCH, 2023

P. C.

1. Heard the learned advocate for the parties at length.
2. This petition is filed by the original complainant challenging the judgment and order passed in Criminal Revision Petition No. 94/2021 passed by the learned Sessions Judge, Nanded dated 27-07-2022. The learned Sessions Judge by way of impugned judgment and order has quashed and set aside the order dated 15-03-2021 of issuance of process against the present respondents/accused passed by the learned Chief Judicial Magistrate, Nanded in RCC No. 744/2019.

3. Facts in short are that, respondent No.9 husband of the complainant contracted a second marriage with respondent No.5. The informant received information through her relatives and therefore, she lodged the complaint for the offence punishable under Section 494 & 109 of the Indian Penal Code. The learned CJM, Nanded on going through the complaint and after recording of statement of complainant and witnesses examined on her behalf issued process for the offences punishable under Section 494 read with Section 34 of the IPC. However, it is seen that no process was issued for the offence punishable under Section 109. Respondent Nos. 1 to 8 who are relatives filed revision application in the court of learned Sessions Judge, Nanded bearing Criminal Revision Petition No. 94/2021 on various grounds. No case of abatement is made out against these respondents. There is no direct evidence about the marriage etc. Learned Sessions Judge by way of impugned judgment and order allowed the revision petition and the impugned order of issuing process against revision petitioner i.e.

present respondent Nos.1 to 8 came to be quashed and set aside. It is this order which is under challenge. On going through the complaint RCC No. 744/2019 it is seen that the petitioner has clearly mentioned the role of each of the accused persons. Even the witness namely Govnid also stated that he was present when the second marriage was taking place. He clearly stated that all the accused total 11 in the complaint have personally participated in the marriage ceremony. Thereafter, the process was issued. On going through the judgment passed by the learned Sessions Judge it is seen that the learned court has considered that mere presence at that time would not amount to abatement and the learned Magistrate has failed to examine said aspect. It is observed that there is practically nothing on record to show that mere presence would amount to abatement and set aside the order of issuance of process.

4. This court finds that sufficient averments are there in the complaint. So far as respondent Nos.1 to 5 are concerned the role alleged is that they have offered the gift to the newly

married couple. Respondent No.5 is second wife who performed the marriage. Respondent Nos. 6 and 7 who are father & mother of the second wife have done Kanyadan. Respondent No. 8 who happens to be brother of the second wife has made all the arrangements for meal alongwith others. Thus in fact sufficient averments are there in the compliant.

5. The learned advocate for the petitioner submits that when all the necessary averments are there in the complaint, the observation of the learned Sessions Judge is not correct. He submits that revision ought to have been dismissed.

6. Learned advocate for the respondents submits that the witness who was examined by the learned CJM, Nanded namely Govind is not cited as a witness in the complaint lodged by the petitioner. None of the witnesses cited by the complainant have been examined by the learned CJM, Nanded and therefore, learned Sessions Judge has rightly passed the order. He relied upon the judgment passed by this court at principal seat

reported in 2015 All MR (Cri) 2209 in the case of Shaikh Ali Akbar Mogal and others Vs Eajaj Khan Shafi Khan Pathan and another. The learned advocate relied on this judgment for the purpose that in the complaint allegations need to be specific. The court has observed that in that case the order of issuance of process was set aside. It is recorded that allegations were omnibus. Allegations in respect of the venue of the marriage was not clearly mentioned. Allegations were unfounded and thus in view of the facts of that case this court had quashed and set aside the order of issuance of process. The another judgment he relied upon is the judgment reported in 2013 All MR (Cri) 3886 in the case of Prakash Limbaji Dhole Vs State of Maharashtra & Anr. wherein it was observed that allegations in the complaint were based on hearsay evidence and the complainant had no personal knowledge of the event. In this case, the court has examined person who claims to be the eye witness to the event and has deposed about the marriage. Therefore, the judgment in the case of Prakash Limbaji Dhole (supra) would not be applicable. He also relied upon judgment in the case of

Prabhukant Dattaram Gangulwar and others Vs Sow. Trupti Prabhukant Gangulwar and another in Criminal Application No. 5599/2015 decided by this court wherein this court has held that mere presence in the marriage will not attract the ingredients of the section 494 and the order of issuance of process was set aside. He also relied upon the judgment reported in 1960 AIR (Bom) 393 in the case of Malan and ors Vs State of Bombay and Anr wherein it is held that mere presence at the commission of a crime cannot amount to intentional aid, unless it was intended to have that effect. To be present and to be aware that an offence is about to be committed does not constitute abetment unless the person thus persons holds some position of rank.

7. Considering all these judgments this court finds that role is clearly assigned in the complaint to each of the respondents. In view of this, this court finds that the learned CJM, Nanded has rightly passed the order of issuance of process. The learned Sessions Judge appears to have overlooked this fact

and without sufficient discussion has arrived at the conclusion that no role is assigned to any of the respondents and mere presence at the time of marriage is not consonance with the record. The impugned judgment and order dated 27-07-2022 passed in Criminal Revision Petition No. 94/2021 by Learned Sessions Judge, Nanded therefore, quashed and set aside. The order dated 15-03-2021 of issuance of process passed by the learned CJM, Nanded in RCC No. 744/2019 is thus confirmed.

8. The criminal writ petition stands allowed and disposed off.

[KISHORE C. SANT, J.]

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