

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

929 CRIMINAL WRIT PETITION NO. 1741 OF 2022

JYOTI W/O. VAIBHAV @ GUNWANT CHAUDHARI
VERSUS
VAIBHAV @ GUNWANT S/O. SUKRAM CHAUDHARI

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Advocate for Petitioner : Mr. K. S. Kahalekar h/f Mr. N. S. Ghanekar
Respondent – Vaibhav @ Gunwant s/o Sukram Chaudhari appears
in-person.

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CORAM : R. M. JOSHI, J.

DATE : 19th AUGUST, 2023

PER COURT :

1. This petition takes exception to the judgment and order dated 18.10.2022 passed by the learned Additional Sessions Judge, Aurangabad, dismissing the Criminal Revision Application No. 92 of 2022 and confirming the order dated 04.02.2022 passed by the learned Judicial Magistrate First Class, Aurangabad, passed in Criminal M.A. No. 3954 of 2021 dismissing the complaint against the accused nos. 2 to 12 i.e. respondent nos. 2 to 12 herein.

2. In spite of service of notice, respondent nos. 2 to 12 have failed to appear before this court. This Court had given an

opportunity to the respondent nos. 2 to 12 for appearance and specific order was passed to the effect that on their failure to appear before this court, this petition would be proceeded *ex parte* against them. In spite of giving opportunity, respondent nos. 2 to 12 have failed to appear before this court, which indicates that they are not inclined to oppose the petition.

3. Learned counsel for the petitioner submits that the learned trial Court has committed serious error in not issuing process against respondent nos. 2 to 12 though the petitioner had placed on record before the trial court evidence in the form of photographs and WhatsApp chat which indicates that respondent nos. 2 to 12 are also party to the crime in question.

4. Respondent no. 1 appeared in-person. He sought to raise objection with regard to the jurisdiction of the learned trial Court to pass an order of issuance of process. He further claimed that he seeks to challenge the validity of his first marriage with the petitioner. When a specific query was put to him as to whether he challenged the order of issuance of process issued against him for the offence

punishable under Section 494 of the Indian Penal Code, he answered in the negative.

5. Once the respondent no. 1 has not challenged the order of issuance of process against him for the offence punishable under Section 494 of IPC, it is not open for him to raise any issue with regard to the legality or validity thereof. As far as respondent nos. 2 to 12 are concerned, they failed to appear before the court and oppose the present petition.

6. *Prima facie* perusal of the complaint shows that the complainant has made specific averments about the second marriage of the respondent no. 1 with respondent no. 9. In support of her contention, she not only examined herself but also placed on record photographs and WhatsApp chat which indicates involvement of these respondents in the crime in question. Perusal of the order passed by the learned Magistrate shows that though the fact in respect of filing of photographs and WhatsApp chat is taken cognizance of, there is no reason or justification given for non-issuance of process against respondent nos. 2 to 12. Pertinently, the learned Magistrate records

that offence is made out against accused no. 1 i.e. respondent no. 1 herein for the offence punishable under Section 494 of the IPC. *Prima facie* perusal of the evidence placed before the learned Magistrate shows that, the said evidence was sufficient at that stage to issue process against respondent nos. 2 to 12.

7. It is pertinent to note that the respondent no. 1 herein has sought to raise an objection with regard to the validity of his marriage with the petitioner. In support of his submission, he submits that the petitioner herein has lodged false proceedings against him. Reliance is placed upon the order passed by the learned JMFC under the provisions of Domestic Violence Act. Perusal of the said order dated 2.11.2022 passed in PWDVA No. 536 of 2018 does not show that the respondent no. 1 has ever raised any objection to the marital status of petitioner herein. In any case, any such objection if any would be available for him as well as other accused during the trial of R.C.C. No. 1898/2022.

8. The learned trial Court has failed to take into consideration the *prima facie* evidence placed on record by the

complainant indicating second marriage of respondent no. 1 and presence of other respondents during the said marriage. The learned Revisional Court has further failed to take into account those material facts on record and has mechanically dismissed the revision application. In view of aforesaid discussion, petition deserves to be allowed and is accordingly **allowed in terms of prayer clause 'C'**.

9. The impugned order passed by the learned JMFC refusing to issue process against respondent no. 2 to 12 is quashed and set aside.

10. Issue process against respondent nos. 2 to 12 for the offence punishable under Section 494 r/w 34 of the IPC.

[R. M. JOSHI]
JUDGE

SG Punde