

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1778 OF 2022

RADHAKISAN JAGANNATH GULVE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Narwade Narayan B.

APP for Respondent No.1/State : Mr. P. M. Kulkarni

Advocate for Respondent No.2 : Mr. Ahmed Mushfiq Siddiqui

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CORAM : KISHORE C. SANT, J.

DATE : 22nd FEBRUARY 2023.

ORDER :

1. Heard the learned Advocates for the respective parties at length.

By consent of the parties, taken up for final disposal.

2. In this petition, a challenge is raised to an order passed by the learned Judicial Magistrate First Class, Paithan dated 07.07.2022 in R.C.C. No.298/2021. The respondent no.2 lodged a private complaint against the petitioners, wherein petitioner no. 1 is the husband; petitioner no.2 is father-in-law; petitioner no.3 is mother-in-law;

petitioner no.4 is brother-in-law; petitioner no.5 is the wife of brother-in-law; petitioner no.6 is married sister-in-law; petitioner no.7 is husband of sister-in-law and petitioner no.8 is relative. The complaint is lodged for the offences punishable under Sections 949, 114 of the Indian Penal Code. It is alleged in the complaint that during the subsistence of marriage of respondent no.2 and petitioner no.1, petitioner no.1 has performed second marriage with one Priyanka @ Chhakuli @ Mirabai on 01.11.2022 in front of the his house at village Kalas-Pimpri, Taluka Pathardi, Dist. Ahmednagar. Respondent no.2 received information on mobile phone and therefore she went to the house of petitioner no.1. It is alleged that the marriage ceremony was going on, wherein accused no.3 and 5 welcoming the persons for the marriage. Accused no.6, 7 and other accused also present and taking part in the marriage ceremony. A specific role is assigned to each other of the accused persons. The complaint came to be lodged on 14.09.2021. The learned JMFC on going through the complaint and after verification of the complaint and statement of witnesses, documents, was pleased to issue process against the accused persons. The petitioners are therefore before this Court challenging the said

order and also with a prayer for quashing of the proceeding.

3. The learned Advocate for the petitioners vehemently argued the petition stating that there is nothing on record to substantiate the allegation of the respondent no.2. All the facts are concocted. As a matter of fact, there is no marriage of the petitioner no.1, as alleged by the respondent no.2. The respondent no.2 has filed the complaint only after her complaint under Domestic Violence Act came to be quashed against some of the persons i.e. sister-in-law and her husband. He submits that the entire complaint is only with a view to harass the accused persons. He submits that there is no evidence to the fact of the alleged marriage. The continuance of the proceeding would clearly amount to an abuse of process of law. He therefore prays that the petition be allowed by quashing the proceeding of R.C.C. No. 298/2021.

4. The learned Advocate for the respondent no.2 opposes the petition vehemently. He submits that at the stage of issuance of process, the learned Magistrate is required to look into the material

produced by the complainant and the averments made in the complaint. In this case, he submits that the averments are clearly making out a case for issuance of process and no fault can be found with the impugned order. He submits that the genuineness of the allegation can be tested only during the trial and for that the complainant needs to get an opportunity to prove her case before the Court. He further submits that all these questions are necessarily questions of fact requiring proof before the trial Court.

5. This Court finds that the allegations are clearly made in the complaint filed by the respondent no.2. At these two pre-matured stage this Court need not look into the other aspect in the matter such as sufficiency of proof, genuineness of the allegation etc. Looking to the complaint as it is, it is seen that each of the accused is assigned a role and if proved, the same would be sufficient to prove the offence against the accused persons. In this view of the matter, this Court finds that no interference is required. Therefore the petition stands dismissed and disposed off.

6. At this stage, the learned Advocate for the petitioner prays that the interim relief that is granted by this Court vide order dated 21.12.2022 be continued for the period of four weeks.

7. Looking to the nature of petition, this Court finds that this request need not be entertained. Hence the said request is refused.

[KISHORE C. SANT, J.]

Najeeb.