

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

**31 CRIMINAL APPLICATION NO.3620 OF 2018**

**VISHNU S/O. GANGARAM SHINDE AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA AND ANR**

Mr.R.S. Jaiswal, Advocate for the applicants.

Mrs.PV. Diggikar, APP for the respondent/State.

Mr.A.R. Gaikwad h/f. Mr.S.B. Solunke, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.  
DATED : 15.03.2023**

**PC :-**

01. Heard the learned Advocates for the parties at length. The application is against an order passed by the learned Judicial Magistrate, First Class, Court No.2, Ambad dated 22.12.2017 issuing process against the applicants for the offence punishable under sections 494 and 109 read with section 494 of the Indian Penal Code. This application is filed by 15 accused persons against whom the process is issued. Applicant No.1 is husband of the informant, applicant No.2 is allegedly second wife of applicant No.1, applicant Nos.3 and 4 are parents of applicant No.2, applicant Nos.5 and 6 are parents of applicant No.1, applicant No.7, 8 & 9 are sister and brothers of applicant No.1, applicant No. 10 is sister-in-law of applicant No.1, applicant Nos.11 to 15 are distant relatives of applicant no.1. In the complaint it is alleged that

during subsistence of marriage between the informant and applicant No.1, applicant No.1 married with applicant No.2. Other accused persons have participated in the marriage and have taken active part in the second marriage. The allegation against applicant No.1 and 2 is about performing second marriage. As regards applicant Nos.7 to 15 are concerned, they have arranged for feast on the occasion of the marriage. Applicant Nos. 9 and 11 had held Antarpah (in the marriage), applicant Nos. 11 to 15 alleged to have arranged the marriage. The marriage was witnessed by maternal uncle of the informant, namely, Tukaram Shinde. The learned Magistrate after recording statements of maternal uncle of the informant and the informant, issued process by the impugned order. Said order is under challenge.

02. The learned Advocate for the applicant vehemently argued the matter. He placed reliance on the judgment in the case of **Kahkashan Kausar alias Sonam & Ors., Vs. State of Bihar & Ors., reported in (2022) 6 SCC 599,** wherein the Hon'ble Apex Court has observed that there is trend of lodging false complaints under sections 498-A, 304-B of the IPC etc., which is a disturbing factor. He further relied upon judgment in the case of **Gajanan Maroti More Vs. Sou. Durga @ Radha Shrikrishna Wagh & Anr., reported in**

**2009 ALL MR (Cri) 3383**, wherein this Court at Nagpur Bench had remanded the matter for fresh inquiry by the learned JMFC and to pass necessary orders.

03. The learned Advocate for respondent No.2 vehemently opposed the application. He submits that specific role is assigned to each of the applicants showing exact role played by them in the marriage. Applicant Nos.1 to 10 are closely related, applicant Nos. 11 to 15 are distant relatives. All the applicants have personal knowledge about first marriage between applicant No.1 and the informant. The Trial Court has recorded statement of eye witness, namely, Tukaram Shinde. The Trial Court has also recorded statement of the informant and only upon that a process is issued, which clearly shows that the Trial Court has applied its mind and prays for rejection of the application.

04. After hearing the learned Advocates for the parties and after going through the complaint as well as order passed by the Court below, this Court finds that there are allegations made in the complaint with specific role of each of the accused persons. At this prima facie stage this Court cannot go into veracity of the statements or the genuineness of the statements. Though

it is vehemently argued that the allegations are made in casual manner and no specific role is assigned, this Court cannot go into genuineness of the allegations. What needs to be seen is as to whether the learned Magistrate while passing the order has taken sufficient care & has satisfied himself about existence of prima facie case against the accused persons. This Court finds that the Trial Court has rightly considered the averments in the complaint as well as statements recorded. No perversity is found in the impugned order. There is no substance in the application. Same is, therefore, dismissed.

**[KISHORE C. SANT, J.]**