

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2150 OF 2021

Shankar Narhari Ghogare & Ors.

..Petitioners

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Pankaj P. Deokar for Petitioners.

Mr. S. H. Yadav, APP for State/Respondent No.1.

Mr. Hrishikesh S. Shinde, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 13 SEPTEMBER 2023

PC :

1. The Petitioners have challenged the order dated 19.12.2018 passed by the Judicial Magistrate, F.C., Madha, in Criminal M.A.No.545 of 2017 issuing process against the petitioners and other accused U/s.494 and 109 of the I.P.C. The said order was challenged by the petitioner Nos.1 to 14 before the learned Additional Sessions Judge, Barshi, vide Criminal Revision Application No.24 of 2019. That revision application was rejected and hence, the present petition is filed.

2. Heard Shri. Pankaj Deokar, learned counsel for the

Petitioners, Shri. S. H. Yadav, learned APP for the State/Respondent No.1 and Shri. Hrishikesh Shinde, learned counsel for the Respondent No.2.

3. With consent of both learned counsel for the parties, the petition is decided finally.

4. The complaint was filed by the Respondent No.2 herein. The original accused No.1 Khandu was her husband. It is her case that, during subsistence of their marriage, the original accused No.1 married original accused No.10 and hence, the offence was committed. The original accused No.1 and 10 are not before me in the present petition. As far as, the petitioners are concerned, the petitioner No.1 is the father of the original accused No.1 Khandu. The Petitioner Nos.3 and 5 are the brothers of the petitioner No.1. The other petitioner Nos.2, 4 and 6 are their wife's relatives. The Petitioner Nos.7 to 12 and 15 to 18 are the relatives of the original accused No.10. The Petitioner No.14 is the sister of the accused No.1 and the Petitioner No.13 is her husband.

5. It is the case of the Respondent No.2 that the original

accused No.1 and 10 got married on 03.03.2003 at village Shevre Taluka Madha, District Solapur in an agricultural land near a temple, at 11.15a.m. The allegations against the petitioners, in general, are that they co-operated with the original accused No.1 and 10 in their marriage. From this illegal wedlock, the accused No.1 and 10 had three children. It is her case that, on 03.03.2003 when the Respondent No.2 and her relatives had gone to another temple at Shevre, they came to know about the illegal marriage between the accused No.1 and 10. It is her specific case that, the respondent No.2 and her relatives tried to stop that marriage, but the accused No.1 threatened her with dire consequences. It is alleged that, all the petitioners threatened the informant that, she would not be left alive. After that, the Respondent No.2 had suffered an accident and was taking treatment for a long time. Therefore, she could not lodge the complaint immediately. Finally, she lodged her complaint on 13.10.2017.

6. Her verification was recorded by the learned Magistrate on 28.06.2018 and then, process was issued against all the petitioners, as well as, against the accused No.1 and 10 on

19.12.2018 U/s.494 and 109 of the I.P.C. The said impugned order was challenged in the Criminal Revision Application No.24 of 2019 before the learned Additional Sessions Judge, Barshi. It was dismissed and the present petition is filed.

7. Learned counsel for the Petitioners submitted that, there is important and major contradiction between the complaint and the verification statement. The version of the Respondent No.2 could not be true. The complaint was filed almost 14 years after the alleged incident of marriage between the accused No.1 and 10. This itself shows that the complaint is filed with a malafide intention. The specific roles are not attributed to the present petitioners. They are roped in because they were close relatives of the accused No.1 and 10. The complaint is obviously filed to harass the petitioners and to pressurise them. He submitted that, continuation of the proceedings would amount to abuse of process of law and therefore, the proceedings are required to be quashed by setting aside both the impugned orders.

8. Learned counsel for the Respondent No.2 submitted that

the ingredients of the offence punishable U/s.494 of the I.P.C. are made out in the complaint. All the petitioners are arraigned as accused because they have abetted the main accused in committing the offence U/s.494 of the I.P.C. and, therefore, Section 109 of the I.P.C. is applied. He submitted that, the present petitioners instigated the accused No.1 in getting married with the accused No.10. All the petitioners have threatened the Respondent No.2. Therefore, the offence is made out. Learned counsel submitted that the Revision Application was not filed by the Petitioner Nos.15 to 18 before the Sessions Court.

9. I have considered these submissions. As far as, question of threats is concerned, process is not issued for that offence and, therefore, this is not the subject matter before me today. I have perused the complaint and the verification statement. The complaint mentions that the marriage between the accused No.1 and 10 took place on 03.03.2003. The crucial question is as to how the Respondent No.2 came to know about this fact. In the complaint, she has stated that, on 03.03.2003, she along with her relatives had gone to another temple at Shevre and at that time,

they came to know about the said marriage. Whereas, in her verification statement she has stated that on 03.03.2003 she had gone to Narsihapur. There she came to know about the said marriage. After stating so, she has further stated in the complaint that, she herself and her relatives tried to stop that marriage, but they were not successful as the accused No.1 threatened her. Also the other accused i.e. present petitioners threatened her. This statement is directly contrary to her verification statement, in which, she has stated that, when she came to know about the marriage on 03.03.2003, she made inquiries with the accused No.10's relatives at Narsihapur and then she came to know that the accused No.1 and 10 had got married. After that, she went to the accused No.10's house at Sugav and then made inquiries about their marriage. At that time, the accused No.10's father i.e. the petitioner No.17 herein accepted that there was marriage between the accused No.1 and 10. While she was returning back from that place, she met with an accident and, therefore, she could not give her complaint. Thus, there is major contradiction between the complaint and the verification statement. In the complaint, it is

mentioned that, when she and her relatives had gone to a temple at Sangam Shevre, at that time, they came to know about the said marriage. She tried to stop that marriage. Whereas, the verification statement shows that, she only made enquiries and she came to know about the marriage from the villagers and from the father of the accused No.10. These two versions are directly contradictory and, therefore, it is not safe, even at this stage, to hold that one of the statements was correct. It is clear that the complaint is filed with malafide intentions to pressurise and harass the petitioners who are relatives of the accused No.1 and 10. As rightly submitted by the learned counsel for the petitioners, no specific role is attributed to any of the petitioners. It is also not mentioned as to how she came to know that, all the petitioners were present and had abetted the accused No.1 and 10.

Section 107 of the I.P.C. defines 'Abetment' as follows:

Section 107 - Abetment of a thing - A person abets the doing of a thing, who—

First.--Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal

omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly--Intentionally aids, by any act or illegal omission, the doing of that thing.

10. The complaint does not make out a single ingredient of Section 107 of the I.P.C. which is made punishable U/s.109 of the I.P.C. Neither the trial Court nor the Revisional Court has given sufficient reasons discussing the above aspects. The learned Magistrate had mentioned that, there was sufficient ground to proceed with the trial against all the accused and the learned Additional Sessions Judge has accepted those reasons.

11. It is also important to note that, this complaint was filed after more than 13 years from the date of the alleged marriage. In the meantime, the accused No.1 and 10 had three children. The Respondent No.2 had kept silent for more than 13 years. It is not possible to believe that for 13 years she was suffering from the injuries suffered in an accident. From the record, it appears that the complaint is filed to harass the petitioners. Therefore, continuation of the proceedings would be an abuse of process of

law and, therefore, both the impugned orders are required to be set aside. Though, learned counsel for the Respondent No.2 submitted that the Petitioner Nos.15 to 18 had not preferred the criminal revision application, since, I have considered the record of the case and since I am of the opinion that continuation of the proceedings would be abuse of process of law, therefore, even those petitioners deserve to get benefit of this order.

12. Hence, the following order:

ORDER

- i) The order dated 19.12.2018 passed by the Judicial Magistrate, F.C., Madha, in Criminal M.A.No.545 of 2017, as well as, the order dated 05.10.2019 passed by the learned Additional Sessions Judge, Barshi, in Criminal Revision Application No.24 of 2019, are quashed and set aside.
- ii) The petition is allowed in the aforesaid terms.

(SARANG V. KOTWAL, J.)