

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

CRIMINAL WRIT PETITION NO.2303 OF 2022

Navin Amritnath TripathiPetitioner
Versus
Hema Navin Tripathi
and another Respondents

Mr. Mehul R. Thakkar, Advocate a/w. Jayshri Rajamahdik,
for the Petitioner.

Mr. Nikhil N. Pawar, Advocate (appointed) for the
Respondent No.1.

Mr. A.R. Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th JUNE, 2023

P.C. :

1. The Petitioner has challenged the order dated 4.11.2017 passed by the 5th Judicial Magistrate, First Class, Thane in R.C.C. No.612/2015 thereby issuing process against the Petitioner under Section 494 of IPC. Said order was challenged by the Petitioner before the Additional Sessions Judge, Thane in Criminal Revision Application No.286/2019. Said Revision Application was dismissed by Additional Sessions, Thane vide judgment and order dated

4.4.2022. Therefore, this Petition is filed before this Court.

2. Heard Shri Mehul Thakkar, learned counsel for the Petitioner, Shri Nikhil Pawar, learned appointed counsel for the Respondent No.1 and Shri A.R. Patil, learned APP for the State.

3. Learned counsel for the Petitioner submitted that the allegations against the Petitioner are based on two copies of the birth certificate of a child, which, according to the Respondent No.1 complainant, was born from the wedlock of the Petitioner and his second wife.

4. Learned counsel submitted that these two copies of the birth certificates at Pages-79 & 84 of this Petition are distinct documents and the address of the Petitioner mentioned in these certificates are different. In the birth certificate at page-79 the address of Palghar is mentioned; whereas in the birth certificate at page-84 the address at Palghar is missing and only the address at Uttarpradesh is mentioned. He, therefore, submitted that there is a doubt

created about the respondent No.1's claim in the complaint. Therefore, it was necessary to send the complaint for inquiry under Section 202 of Cr.P.C..

5. Learned counsel for the Respondent No.1 submitted that the offence is made out in the complaint so clearly, that, it was not necessary to take any further steps and the order of issuance of process is proper.

6. I have considered these submissions and I have perused the impugned orders as well as the complaint. The Respondent No.1, in her complaint, has stated that she got married with the Petitioner on 11.7.2007 at Bhayander. The complaint goes on to mention as to how she was harassed and tortured. She has filed the case under Section 498-A of IPC in the J.M.F.C. Court against the Petitioner and his family members. She had also initiated the proceedings under the Protection of Women from Domestic Violence Act. She was thrown out of her matrimonial house on 26.2.2008. It is her case in the complaint that the Petitioner got married with another lady, who is named in the complaint, in the year

2009. She was working in a school as a teacher. From the said wedlock a male child was born on 21.3.2023. Thus, according to her, the Petitioner had committed the offence under Section 494 of IPC because his marriage with complainant-Respondent No.1 was still in subsistence. The complaint thus clearly makes out the offence under Section 494 of IPC. Section 494 of IPC reads thus :

“494. Marrying again during lifetime of husband or

wife: Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall,

before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

7. In this case, the ingredients of the offence punishable under Section 494 of IPC are made out. Therefore, learned Magistrate has not committed any error in issuing the process under Section 494 of IPC against the Petitioner. Said order was rightly confirmed by the Revisional Court. The defence, if any, which the Petitioner has, can only be proved at the trial. Beyond the allegations in the complaint, the complainant-Respondent No.1 could not have had more details of the time and place of the marriage between the Petitioner and the other lady.

8. In this view of the matter, I do not find any infirmity in the impugned orders. Hence, Writ Petition is dismissed. Since the trial is pending since 2015, the trial is expedited.

(SARANG V. KOTWAL, J.)