



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 39 OF 2018

Sumanbai w/o Kashinath Murge,
Age 64 yrs., Occu. Household,
Through her son
Ramdas Kashinath Murge
Age 37 yrs. Occ. Service,
R/o Neknal, Taluka Deoni,
District Latur.

... Applicant

Versus

1. Kashinath s/o Gangadhar Murge,
Age 69 years, Occ. Service and Agri.
2. Jankabai w/o Kashinath Murge
Age 60 years, Occ Household,
Both r/o Neknal, Taluka Deoni,
District Latur.
At present Nalegaon, Taluka Chakur,
District Latur.
3. Gangadhar s/o Ramshetty Murge
Age 95 years, Occ. Agri.
4. Hanumant s/o Sangappa Murge
Age major, Occ. Agri.
Both r/o Neknal, Taluka Deoni,
District Latur.

... Respondents
[Orig. Accused]

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Mr. K. B. Jadhav, Advocate for the Applicant.
Mr. M. B. Sandanshiv, Advocate for Respondent Nos. 1 to 3.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 30.01.2024
Pronounced on : 07.02.2024

ORDER :

1. Acquittal of respondents by learned JMFC, Deoni, District Latur in RCC No. 451 of 2008 from offence punishable under Section 494 r/w 109 of the Indian Penal Code [IPC], prompted original complainant to prefer instant leave application thereby seeking leave to file appeal.

2. Learned counsel for the applicant would submit that there is improper appreciation of evidence adduced by the complainant in the trial court. That, in spite of subsistence of valid legal marriage between applicant and accused no.1 husband, he and respondent no.2 (second wife) performed illegal second marriage on 17.11.2006. There is ample evidence in that regard. Sufficient cogent evidence to that extent was adduced in the trial court but the learned trial court has acquitted accused without assigning proper and sound reasons and even the findings are not in consonance with the evidence and therefore, appeal is sought to be preferred and as there are good chances of succeeding in appeal, leave is prayed for.

3. Learned counsel for respondents accused would object to the very maintainability of the complaint. He pointed out that here, son

has filed complaint on behalf of mother and therefore complaint under Section 494 of IPC is not maintainable. He further pointed out that *de facto* complainant has not stepped in the witness box, rather on her behalf, her son has adduced evidence who apparently had no knowledge about the alleged occurrence. Learned counsel for the respondents-accused placed reliance on the decision in the case of ***Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh*** ; 1971 (1) SCC 864.

4. On considering the submissions and on *prima facie* going through the impugned judgment, it seems that complaint was filed by one Ramdas on behalf of his mother, alleging commission of offence punishable under Section 494 r/w 109 of IPC. In brief, case set up by complainant is that she is legally wedded wife of accused no.1. They have four sons and a daughter out of their such marriage. Their such cohabitation was of more than 20 years. Accused husband subsequently developed bad vices and started beating complainant and neglecting her. He drove her out of the house and more over developed relations with accused no.2 and finally performed illegal marriage with her. She has alleged that accused nos. 3 and 4 have abetted accused husband and they are all thereby responsible for the said offence.

5. Record shows that on receipt of complaint, learned trial Judge had issued process. However, very title clause goes to show that on behalf of complainant wife, her son, namely, Ramdas has instituted the complaint and he is also examined as CW1 at Exhibit 39. Even other witnesses are examined at Exhibits 42, 43, 44 and 49.

6. Before this Court, and in the trial court also, fundamental objection raised was regarding maintainability of the complaint on above ground i.e. *de facto* complainant is the son and not the wife herself. Complaint and evidence of applicant-complainant clearly shows that wife did not step in to contest the complaint, rather her son Ramdas had adduced evidence. Therefore, obviously, he is not a party to the alleged marriage between accused no.1 and accused no.2 dated 17.11.2006. No direct eye witness to alleged marriage dated 17.11.2006 has been examined. CW3 Shivkumar, who has allegedly passed information to the complainant about receipt of information of second marriage, while under cross, has categorically admitted that even he was not present at the time said marriage. Therefore, apparently, on hearsay information, complaint seems to have been instituted. Similarly, other witnesses are not deposing about any rituals being conducted during alleged second marriage of accused

no.1 with accused no.2 to hold that they performed second marriage and the same to be illegal. Therefore, apparently evidence is lacking as regards to essential ingredients. Severe blow is suffered by complainant for want of her own evidence.

7. Learned trial Judge seems to have discussed entire law by taking into account the citations relied by both sides. Therefore, there being no cogent and reliable oral and documentary evidence regarding second marriage of accused no.1 with accused no.2, findings cannot be faulted at. No purpose would be served by granting leave to file appeal with such weak and fragile evidence on record. No case is made out for grant of leave. Hence, I proceed to pass the following order:

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]