



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

**APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY
NO. 58 OF 2023**

AVINASH PRAKASH KULKARNI
VERSUS
GOVINDRAO VASANTRAO NAIK AND OTHERS

....
Ms. Pooja Ingale, Advocate h/f Mr. Sudarshan J. Salunke, Advocate
for Appellant
Mr. R.B. Dhaware, APP for Respondent No.4/State
Mr. Wasif Shaikh, Advocate h/f Mr. Mrigesh D. Narwadkar, Advocate
for Respondent Nos.1 to 3

....
AND
**APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY
NO. 59 OF 2023**

AVINASH PRAKASH KULKARNI
VERSUS
MEENAL @ PRATIBHA GOVIND NAIK AND ANOTHER

....
Ms. Pooja Ingale, Advocate h/f Mr. Sudarshan J. Salunke, Advocate
for Appellant
Mr. R.B. Dhaware, APP for Respondent No.2/State
Mr. Anant R. Devakate, Advocate for Respondent No.1

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th SEPTEMBER, 2024

PER COURT :

1. Both these applications are filed under Section 378 of Cr.P.C. by applicant/complainant challenging the judgments and orders of acquittal dated 17/02/2023, passed by learned Additional Sessions Judge, Beed, in Criminal Appeal Nos.101/2019 and 104/2019.

2. Applicant filed a private complaint against respondents

accused under Sections 109, 420, 494, 495, 496 r/w 34 of the Indian Penal Code, contending that accused No.1 during the subsistence of her first marriage performed marriage with him and accused Nos.2 to 4 abetted the said crime. The case was registered at R.C.C. No.518/2015. In support of complaint applicant examined himself and his brother. Trial Court convicted all accused persons and sentenced them to suffer simple imprisonment for six months and pay fine of Rs.3,000/- each.

Being aggrieved by the said decision, accused persons filed Criminal Appeal Nos.101/2019 and 104/2019. Sessions Court has allowed both the appeals and acquitted accused persons. Hence, the present application seeking leave to file appeal against orders of acquittal passed by learned Sessions Judge.

3. Heard learned advocate for applicant, learned advocates for respondents/accused and learned APP for State.

4. Learned advocate for applicant submits that the Trial Court was justified in recording conviction on the basis of evidence led by applicant. Accused No.1 in her statement under Section 313 of Cr.P.C. has admitted her first marriage and performance of second marriage. This evidence is ignored by the Sessions Court while acquitting accused persons. She submits that reasons assigned by appellate Court are unacceptable and they are contrary to the record, hence, both the impugned judgments and orders of acquittal

are unsustainable and liable to be quashed and set aside.

5. Learned advocates for accused persons, on the other hand, supported the impugned judgments and orders of acquittal. They would urge that applicant has utterly failed to prove charge against accused persons and it is well settled that prosecution has to stand on its own legs and cannot derive benefit from the weakness of defence. Admission on the part of accused No.1 cannot be held against accused persons in the facts of the present case. By relying on ***Bhaurao Shankar Lokhande and Another Vs. The State of Maharashtra and Another, AIR 1965 SC 1564***, it is argued that applicant has failed to prove that essential ceremonies of marriage were performed in the second marriage and therefore, Sessions Court is justified in acquitting accused persons.

6. Learned APP supported the impugned judgments and orders of acquittal.

7. Perusal of record indicates that applicant in support of his complaint has examined himself and his brother. Though it is contended that 700 to 800 persons attended the marriage ceremony, but no independent witness is examined. Essential ceremonies of marriage i.e. *Homa and Saptapadi* are not proved either by complainant or by his brother. Evidence of complainant and his brother is not sufficient to prove either first marriage of

accused No.1 or the second marriage. There is no material on record to show that accused No.1 had concealed her previous marriage from complainant and she had fraudulently undergone the second marriage ceremony with complainant. Marriage certificate Exhibit-35 allegedly issued by Marriage Officer, Pune, of the first marriage of accused No.1 is not proved on record.

8. Sessions Court has properly appreciated the evidence on record and granted acquittal by giving cogent reasons. View taken by the Sessions Court is possible view. No case is made out by applicant to interfere in the impugned judgments and orders of acquittal passed by the Sessions Court in favour of respondents accused. Applications being devoid of merit are rejected.

(NITIN B. SURYAWANSHI, J.)