



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

925 CRIMINAL WRIT PETITION NO. 954 OF 2023

SUREKHA W/O BHAGWAN SHELKE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioner : Mr. Navandar Gopal C.

APP for Respondent/State : Ms.R.R. Tandale

Advocate for Respondent nos.2 to 8 : Mr. Arvind Ramnath Kawade

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CORAM : **SHIVKUMAR DIGE, J.**

DATE : 11th July, 2024.

P.C.:

1. By this writ petition, the petitioner is challenging the order dated 3rd April, 2023 passed by the Additional Sessions Judge, Aurangabad in Criminal Revision Application No.3 of 2023, whereby the learned Judge has quashed and set aside the order of the Judicial Magistrate, First Class, Aurangabad (for short, "J.M.F.C.").

2. It is contention of the learned counsel for the petitioner that the petitioner has filed complaint against respondent nos.2 to 8 before the Judicial Magistrate, First Class (Court No.7), Aurangabad alleging that she got knowledge on 16th November, 2020 about performance of 2nd marriage between respondent nos.2 and 3 on 9th March, 2020 at village Lasra, Tq. Ausa, Dist. Latur, as per the customs prevailing in the Hindu religion. They are blessed with one daughter, but she died. The family dispute between the petitioner and respondent no.2 is pending

in the Family Court, Aurangabad. However, respondent no.2 has performed second marriage with respondent no.3. They have one son and one daughter out of the second marriage. The learned counsel further submitted that respondent nos.2 to 8 and other relatives were present at the time of second marriage. In such background, the petitioner had filed complaint before the Judicial Magistrate, First Class, Aurangabad, for the offences punishable under sections 494 read with 34 of the Indian Penal Code (For short, "I.P.C."). The learned Magistrate recorded the evidence before charge under section 200 of the Criminal Procedure Code (for short, "Cr.P.C.") and thereafter issued process against the respondents for the above-referred offences. Issue process order was challenged by respondent nos.2 to 8 before the Sessions Judge. Sessions Judge has set aside the order of issue process. The Sessions Court observed that the second marriage was performed at village Lasra, Tq. Ausa, Dist. Latur, hence territorial jurisdiction of the complaint will be at J.M.F.C. Court, Ausa, hence quashed the issue process order, which is erroneous. The learned counsel further submitted that as per section 182(2) of the Cr.P.C., the place of offence is where petitioner i.e. first wife of the husband stays, hence requested to allow the petition.

3. It is contention of learned counsel for respondent nos.2 to 8 that respondent no.2 has not performed any marriage. The false complaint is filed against respondent no.2 and his relatives. The order passed by

the Sessions Court is legal and valid. No interference is required in it. The learned counsel further submitted that the petitioner stays at Aurangabad after commission of the offence, hence section 182(2) will not be applicable. As per the allegations of the petitioner, the marriage is performed in Ausa Taluka, the petitioner is aware about it but she has filed private complaint before the J.M.F.C. Aurangabad, which is illegal, hence requested to dismiss the writ petition.

4. I have heard both the learned counsel. Perused the impugned order passed by the Additional Sessions Judge, Aurangabad. While passing the order, the Sessions Court has observed that as per the Code of Criminal Procedure, the jurisdiction is invested on the Courts where the offender last resides with his or her spouse or within whose jurisdiction the offence was committed. Admittedly, in this case, both the places are beyond the jurisdiction of this Court. On this ground the Sessions Court has quashed the issue process order passed by the Judicial Magistrate, First Class. I am unable to understand the observations of the Sessions Court. The section 182 of the Cr.P.C. reads as under :-

“Section 182. **Offences committed by letters, etc.** - (1) Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2) Any offence punishable under section 494 and 495 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage, or the wife by the first marriage has taken up permanent residence after the commission of offence.”

5. Sub-clause (2) of this section provides that section 494 may be inquired by a Court within whose jurisdiction the wife by the first marriage has permanent residence. In the present case, after commission of offence the petitioner is staying at Aurangabad, hence Judicial Magistrate, First Class, Aurangabad has jurisdiction. Considering this fact, interference is needed in the order passed by the Sessions Court and I pass the following order :-

ORDER

- (i) The writ petition is allowed.
- (ii) The order dated 3rd April, 2023 passed by the Additional Sessions Judge, Aurangabad in Criminal Revision Application no.3 of 2023 is hereby quashed and set aside.
- (iii) The order of issue process passed by the Judicial Magistrate, First Class, Aurangabad in R.C.C. No.2073 of 2020 is legal and valid.

[SHIVKUMAR DIGE, J.]