



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

CRIMINAL WRIT PETITION NO. 69 OF 2024

Smt.Subhangi W/o Chandrakant Sardar @
(Subhangi Mahadev Gavai before divorce)
Aged about 34 years, Occu. Housewife,
R/o.B-505, Shobhan Residency, Opp Suda
Bhawan, Vesu Surat, 395007(Gujarat)

... PETITIONER

// VERSUS //

1. Leeni W/o Chandrakant Sardar,
Aged about 41 years,
Occu. Pvt. Service,R/o.C/o.Ramesh
Vaidya, Near AXIS ATM, Nava Nakasha,
Nagpur-440001
2. State of Maharashtra,
Through its Police Station Inspector,
Sadar Police Station, Civil Lines,Nagpur.

... RESPONDENTS

Mr S.V. Deshpande, Advocate for petitioner.
Mrs. H.S. Dhande, APP for respondent No.2/State.
Leeni C. Sardar present in person.

CORAM : G. A. SANAP, J.
DATE : 24.07.2024

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Taken up

for final disposal with the consent of learned Advocates for the parties.

3. In this Writ Petition, the challenge is to the order dated 30.10.2023 passed by the learned Additional Sessions Judge-14, Nagpur, whereby revision filed by the petitioner against the order of rejection of her discharge application at Exh.-22 was dismissed.

4. The marriage between the petitioner and one Mahadev Gavai was solemnized on 28.05.2006. On account of marital discord, their marriage was dissolved by consent decree dated 19.11.2012. The marriage of respondent No.1 was solemnized with one Chandrakant Sardar. It was dissolved by decree of divorce dated 19.10.2011. The appeal filed by respondent No.1 against the said judgment and decree was dismissed. The matter was carried to the Apex Court by respondent No.1. The Apex Court, vide order dated

18.11.2020, confirmed the decree of divorce.

5. It is the case of respondent No.1 in her complaint that during the pendency of her divorce proceeding, the petitioner and Chandrakant Sardar performed the marriage. It is stated that in the service record of Chandrakant Sardar, respondent No.1 was shown as a nominee for all practical purposes. It is alleged that after the order of a divorce dated 19.11.2012, the decree drawn by the Court was not consistent with the order. There were number of corrections and interpolations in the said decree. The correction/additions were made to obtain the marriage certificate to show the petitioner as a nominee in the service record of Chandrakant Sardar, during the pendency of appeal proceeding after the decree of dissolution of the marriage of the respondent No.1 with Chandrakant. The marriage certificate was obtained on the basis of a forged and fabricated decree. The intention was to show the petitioner as a nominee and remove the name of

respondent No.1 as a nominee from the service record during the pendency of the divorce proceeding. Respondent No.1 made a complaint to the Principal District Judge Amravati about the creation of a false decree. The inquiry was conducted. In the preliminary inquiry, the finding was against the employees, however, in a final inquiry, they were given benefit of doubt.

6. Respondent No.1 filed the report with the police, alleging the creation of a false document with the intention to cheat her. Police did not take action, and therefore, she filed an application under Section 156(3) of Code of Criminal Procedure (for short, "the Cr.P.C."). Learned Magistrate instead of issuing direction to the police under Section 156(3) of Cr.P.C. to register the First Information Report, conducted the inquiry and issued the process against the petitioner for the offences punishable under Sections 468, 471 and 473 of the Indian Penal Code (for short, "I.P.C."). The petitioner

appeared before the Magistrate. She had challenged the order of issuance of process. However, the revision filed was withdrawn with a liberty to apply for discharge under Section 245(2) of Cr.P.C.

7. It needs to be stated that after withdrawal of the revision challenging the order of issuance of process, the petitioner applied for discharge in the case vide Exh.22. Learned Magistrate for the reasons recorded vide order dated 12.07.2022, rejected the said application. The petitioner challenged the said order by filing the revision before the Sessions Court at Nagpur. Learned Sessions Judge, as stated above, dismissed the revision application. Learned Additional Sessions Judge has held that considering the nature of the allegations, the evidence would be necessary for deciding the question of fact. Being aggrieved by this order, this writ petition has been filed.

8. I have heard learned Advocate for the petitioner, respondent No.1 in person and learned APP for the State. Perused the record and proceedings.

9. It is seen on perusal of the orders passed by the courts below that the courts below have held that the application under Section 245(2) of Cr.P.C. for discharge was maintainable. However, the courts below have held that at the stage of framing of a charge without granting an opportunity to respondent No.1 to lead evidence to make good her contention for framing charge the material placed on record could not be taken into consideration. It is to be noted that the case filed by respondent No.1 is being tried as a warrant case instituted otherwise than on the police report. The procedure prescribed for such a trial is under Chapter XIX of part B. of Cr.P.C. Section 244 to Section 250 are applicable to such a trial. In such a case, after issuance of the process and appearance of the

accused, the complainant is required to lead the evidence before framing the charge. The accused has the right to cross-examine the witness and make good his/her contention if it is based on documents. The Magistrate is also duty bound to issue summons to the witnesses cited by the complainant on the request of the complainant. The accused has right to cross examine all the witnesses. Learned Magistrate is duty bound to take entire evidence, including the cross-examination and the documents produced by the accused, into consideration to form his opinion as to whether the material is sufficient to presume the commission of an offence by the accused. The accused cannot be made to face the trial by framing the charge if he or she is able to demonstrate that the material is not sufficient to frame the charge against him/her. Learned Magistrate is required to consider the material and record his reasons one way or the other before framing the charge or rejecting the prayer for framing the charge.

10. The basic contention of the complainant is that the result of departmental proceeding clearly indicates that those officers who have allegedly committed forgery have been given a clean chit. It needs to be stated that the accused would be required to bring that material on record and convert the same into legally admissible evidence. The accused can confront respondent No.1 during her cross-examination before framing the charge. The accused has an opportunity to make good her defence of innocence.

11. I have minutely perused the complaint and the orders passed by the learned Civil Judge, Senior Division, Achalpur, and decree drawn pursuant to this order. It is evident that after signing of the judgment and order by the learned Judge, there were corrections in the decree. The correction appears to be major. According to respondent No.1, these corrections made in the decree was handiwork of the

petitioner to obtain the marriage certificate and also to create evidence for denying the maintenance to respondent No.1. Learned Magistrate as well as the learned Additional Sessions Judge have taken all these facts into consideration. According to the courts below, the evidence is necessary to decide the fate of the defence of the petitioner. On going through the record, I am satisfied that the courts below have not committed any mistake or illegality. The scope of the inquiry while deciding the discharge application is very limited. The party having a good case cannot be non suited on the basis of such a defence.

12. Under Section 245 of the Cr.P.C. at two stages of the trial contemplated under sub section (1) and (2) of Section 245 of the Cr.P.C. the accused can be discharged. As per subsection (2) of Section 245 of the Cr.P.C. the application for discharge can be made at any stage before framing the charge for discharge. As per subsection (1) of Section 245 of the Cr.P.C. the accused gets an opportunity after recording the

evidence of the complainant and the witnesses of the complainant to plead before the Court for discharge. The accused has right to cross-examine the complainant and witnesses before framing the charge. The accused therefore, has sufficient opportunity to establish his defence on the basis of the available material in his custody. If such material is produced before the Court at the stage of cross-examination of the witnesses and the complainant the Magistrate is bound to take such material into consideration.

12. Therefore, I am of the view that there is no substance in the petition. The remedy to make good and substantiate her defence is available to the petitioner. The petitioner with the help of evidence adduced before framing charge can satisfy the learned Magistrate at the stage of framing the charge, that there is no material to frame the charge and her defence is of great significance to reject the prayer for framing

the charge. In this view of the matter I conclude that there is no substance in the petition. Petition is **dismissed**.

13. Rule is discharged.

14. Criminal Writ Petition stands disposed of.

(G. A. SANAP, J.)