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47-WP-1113-2024

IN THE HIGH Court OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

47 CRIMINAL WRIT PETITION NO. 1113 OF 2024

Meenal W/o Parshuram Wagh And Another

VERSUS

The State Of Maharashtra And Another

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Mr. Ravindra M. Deshmukh, Advocate for the Petitioners.

Smt. Chaitali Chaudhari-Kutti, APP for Respondent-State.

Mr. S. I. Shaikh, Advocate for Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 4<sup>th</sup> AUGUST 2025.

PC :-

1. Heard Mr. Deshmukh, the learned Advocate for the petitioners, Smt. Chaudhari-Kutti, the learned APP for Respondent-State, and Mr. Shaikh, the learned Advocate for the Respondent No.2. The petitioner is taken up for final disposal at the stage of admission, with the consent of the parties.

2. The petitioners are the original accused Nos. 5 and 6 in complaint filed by Respondent No.2, have approached this Court challenging the

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judgment and order dated 4<sup>th</sup> April 2024, passed by the learned Additional Sessions Judge, Aurangabad, in Criminal Revision Application No. 301 of 2023. The revision came to be dismissed by the impugned order. The revision was filed challenging the order dated 21<sup>st</sup> September 2023, passed by the learned JMFC, Court No.10, Aurangabad, issuing process against the present petitioners and six other accused persons for the offences punishable under Sections 494 read with 34 of the Indian Penal Code, 1860.

3. Respondent No.2 filed a complaint in the Court of learned JMFC, Aurangabad, stating that she is married to accused No.1, who happens to be a brother of accused No.5, and brother-in-law of accused No.6. There is also one son born out of the marriage. The marriage was performed on 25<sup>th</sup> December 2011. It is alleged that the accused No.1 was having an affair prior to marriage with one lady. However, no marriage could be performed with her as she happens to be a person from different community.

4. On 31<sup>st</sup> December 2022, she received information that the accused No.1 i.e. Manoj is marrying with accused No.2. She, therefore, went to one Bungalow namely, Sonai Bungalow in New Shreya Nagar, Aurangabad. She went to the said bungalow alongwith her father, brother and one more at around 12:30. They saw a crowd near the bungalow. In the bungalow, they found that accused Nos.1 and 2 were wearing new clothes and were about to get married. The other accused persons were well-coming the guests and distributing the *akshada* (holy rise). The accused No.8 is alleged to have chanted *Managalashataka*. The informant tried to tell the people gathered there that she is the wife of accused No.1. There is one child born out of the marriage and the marriage is still in existence. The other accused persons threatened her and told her to go out. In spite of her resistance, marriage was performed. Poojan of homa (holy fire) was done. They also took rounds around homa. (holly fire). On that, she filed a complaint on 8<sup>th</sup> February 2023.

5. The learned trial Judge by an order dated 2<sup>nd</sup> May 2020, directed the police to carry out investigation. The investigation was carried. Statement of persons came to be recorded, including of the complaint, her brother and her father. The police, on inquiry, recorded that no offence is made out and submitted a report to the Court. The learned Judge, however, issued process against the accused persons. These petitioners challenged order of issuance of process by filing a revision.

6. The learned Advocate Mr. Deshmukh vehemently argued that no ingredients are made out of the offence looking to the report submitted by the police. He submits that when the police has submitted a report specifically stating that no offence is committed, still the Magistrate issued a process without recording any justification for taking different view from the police report. He further submits that looking to the statements recorded of the witnesses shows that there is no specific statement made as to how the marriage was performed. It is vaguely stated that the accused No.1 and 2 performed the marriage. For an

offence under Section 494, there has to be a specific allegation. It is only, thereafter, the Court could have issued a notice. He submits that even the learned Sessions Judge has not discussed as to on what basis the Court has come to the conclusion. He thus prays for allowing the writ petition.

7. In support of his submission, the learned Advocate for the petitioner relied upon the judgment in the case of ***Abhijit Pawar V Hemant Madhukar Nimbalkar and Anr.***<sup>1</sup>

8. The learned Advocate Mr. Shaikh vehemently opposed the petitioner. He submits that looking to the complaint itself it is seen that all the particulars of performance of the marriage are given in the complaint. There is clear averment about the chanting of *Mangalashtaka* and taking rounds around the holy fire. The role of each of the accused is specifically shown. It is specifically alleged that the present petitioners were distributing the *Akshada* to the guests. The present petitioner No.1 happens to be the real sister of the accused No.1 and therefore, had

1 AIR 2017 SC 299

complete knowledge that the marriage being performed was the second marriage of the accused No.1 while his first marriage was still in existence. He thus prays for rejection of the writ petition.

9. In support of his submission, the learned Advocate for Respondent relied upon the judgment in the case of *Kunwarjee Jivraj Lodhaya Vs. Bhagchand Motilal Raka*<sup>2</sup>

10. This Court has heard the parties. So far as the complaint is concerned, it is seen that the details and the particulars of the marriage ceremony are given. The learned Court, therefore, issued a direction to the police to submit a report. The police, after recording statement, submitted its report. It is specifically recorded that no details could be gathered showing that accused No.1 and 2 were married. It is further recorded that the complainant could not give any details during inquiry to prove the marriage between accused Nos. 1 and 2. The learned Judge while passing the order of issuance of process, has only stated that the Court had gone through the material and it *prima facie* appears that the

<sup>2</sup> LAWS(Bom)1991-11-3

marriage has taken place. It is observed that the accused No.1 and 2 are residing in shared household. The accused No. 3 to 7 were present at the time of alleged marriage.

11. From the order, however, it is not clear as to on what basis learned Magistrate recorded the conclusion that the accused No.1 and 2 are residing in shared household. Assuming that they stayed in a shared household, it would not lead to any conclusion that they are residing together only after the marriage. It is also not clear as to on what basis the Court concluded that the accused No.3 to 7 were present. When there was specific report of the police recording a conclusion that there is no material to prove the offence, it was necessary for the trial Court to discuss as to what lead the Court to conclude or satisfy itself. No such satisfaction is found.

12. Looking to the order passed by the learned Sessions Judge, no discussion as to what lead the Court to come to the conclusion that the order passed by the learned Magistrate is legal and proper. It is only

stated that the order passed by the learned Magistrate is legal, proper and correct and no interference is called for. Prior to that, the Court has only considered as to what is observed by the trial Court in the order.

13. In the case of ***Abhijit Pawar*** (supra) the Hon'ble Apex Court had observed that the Court must record its satisfaction about the *prima facie* case. It was a case under Section 7 of the Press Act. However, what is material is the observation that the Court has to show its satisfaction in the order.

14. So far as judgment in the case of ***Kunwarjee Lodhaya*** (supra) is concerned, there is no question about its proposition. However, in the said judgment it is observed that the learned Magistrate has to satisfy himself upon the facts discovered or unearthed by the police, there is sufficient material for him to take cognizance of the offence and issue process, the Magistrate may do so without reference to the conclusion drawn by the investigating officer. It is further stated that the Magistrate is not bound by the opinion of the police officer about the offence has

been made out or not. There is no opinion about this.

15. In the present case, as this Court as already observed, order of the Magistrate does not show an application of mind. The learned Sessions Judge has also not discussed the case in sufficient details. As already observed, though in the complaint, there are averments about the second marriage. However, while recording the statements before the police and the Court, there are no particulars of second marriage given. For all these reasons, this Court is satisfied that a case is made out to allow the writ petition by setting aside the impugned order passed by the learned Sessions Judge. The writ petition, therefore, stands allowed in terms of prayer clause (C) to the extent of present accused persons.

**[KISHORE C. SANT, J.]**