



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

CRIMINAL WRIT PETITION NO. 1573 OF 2023

- 1] Suresh S/o Ashroba Hoge
Age: 35 years, Occ. Agriculture
R/o. Nagar Jawala, Tq. Manwat, Dist. Parbhani
- 2] Seema Suresh Hoge
Age: 30 years, Occ. Household
R/o. Nagar Jawala, Tq. Manwat, Dist. Parbhani
- 3] Bhagirathi @ Bhagubai W/o Ashroba Hoge
Age: 65 years, Occ. Household,
R/o. Nagar Jawala, Tq. Manwat, Dist. Parbhani
- 4] Siddheshwar S/o Ashroba Hoge
Age: 30 years, Occ. Agriculture
R/o. Nagar Jawala, Tq. Manwat, Dist. Parbhani
- 5] Subhash s/o Nivruti Dhumal
Age: 48 years, Occ. Agriculture
R/o. Shevaga, Tq.Partur, Dist. Jalna
- 6] Kalinda W/o Subhash Dhumal
Age: 45 years, Occ. Household,
R/o. Shevaga, Tq.Partur, Dist. Jalna
- 7] Ayodha w/o Gajanan Hoge
Age: 30 years, Occ. Household,
R/o. Nagar Jawala, Tq. Manwat, Dist. Parbhani
- 8] Gangadhar s/o Sahebrao Hoge
Age: 53 years, Occ. Agriculture
R/o. Nagar Jawala, Tq. Manwat, Dist. Parbhani
- 9] Sambhaji @ Sambhu s/o Wamanrao Kharat
Age: 57 years, Occ. Agriculture
R/o. Kathala, Tq. Mantha, Dist. Jalna
- 10] Kamal Sambhudev Kharat
Age: 53 years, Occ. Household
R/o. Kathala, Tq. Mantha, Dist. Jalna

- 11] Namdeo s/o Waman Kharat
Age: 48 years, Occ. Agriculture
R/o. Kathala, Tq. Mantha, Dist. Jalna
- 12] Dilip s/o Waman Kharat
Age: 45 years, Occ. Agriculture
R/o. Kathala, Tq. Mantha, Dist. Jalna
- 13] Babaaheb s/o Kisanrao Kharat
Age: 51 years, Occ. Agriculture
R/o. Kathala, Tq. Mantha, Dist. Jalna
- 14] Malanbai w/o Namdeo Kharat
Age: 45 years, Occ. Agriculture
R/o. Kathala, Tq. Mantha, Dist. Jalna
- 15] Bharat s/o Digambar Kharat
Age: 43 years, Occ. Agriculture
R/o. Kathala, Tq. Mantha, Dist. Jalna
- 16] Babasaheb s/o Kisanrao Kale
Age: 81 years, Occ. Agriculture
R/o. Kanphodi, Tq. Mantha, Dist. Jalna
- 17] Sheshkala w/o Babasaheb Kale
Age: 75 years, Occ. Nil
R/o. Kanphodi, Tq. Mantha, Dist. Jalna
- 18] Ankush s/o Ramrao Dhumal
Age: 69 years, Occ. Agriculture
R/o. Shevaga, Tq. Partur, Dist. Jalna
- 19] Gayabai w/o Ankush Dhumal
Age: 65 years, Occ. Household
R/o. Shevaga, Tq. Partur, Dist. Jalna
- 20] Vishnupant s/o Radhakishan Ugale
Age: 50 years, Occ. Agriculture
R/o. Shevaga, Tq. Partur, Dist. Jalna
- 21] Muktabai w/o Vishnupant Ugale
Age: 47 years, Occ. Household,
R/o. Shevaga, Tq. Partur, Dist. Jalna

22] Milind @ Balu s/o Bhanudas Joshi
Age: 70 years, Occ. Priest (Guru)
R/o. Wai, Tq. Mantha Dist. Jalna

... **Petitioners**

VERSUS

1. The State of Maharashtra

.... **Respondents**

2. Yashodabai w/o Suresh Hoge
Age: 32 years, Occ. Household,
R/o. At present : C/o. Narayan s/o Sheshrao
Khalapure, At Post Bamani,
Tq. Partur,ist. Jalna

Mr. Bharat G. Londhe, Advocate for the Petitioners
Mr. S. M. Ganachari, APP for the Respondents State,
Mr. S. V. Patil, Advocate for Respondent No.2.

CORAM : Y. G. KHOBRAGADE, J.

Dated : 07th December, 2024

JUDGMENT:-

1. **Rule.** Rule made returnable forthwith and with consent of the parties, heard finally at the stage of admission.

2. The Petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking to quash and set aside Criminal proceeding bearing Regular Criminal Case No. 32 of 2011 pending on the file of learned Judicial Magistrate First Class, Partur for the offence punishable under Sections 494 read with section 109 of the Indian Penal Code, 1860.

3. The present Petitioners are the original accused Nos. 1 to 22 and present Respondent No. 2 is the original complainant in RCC No. 32 of 2011. (For the sake of brevity, the parties to the present petition would be referred in their original capacity as 'Accused' and 'Complainant').

4. In nutshell, the facts giving rise to the filing of present petition are that, Respondent No.2/original Complainant filed a criminal complaint bearing RCC No. 32 of 2011 before the learned Judicial Magistrate First Class, Partur alleging that, on 20.04.2006, her marriage was solemnized with accused No. 1 as per Hindu rites and rituals at village Bamni Tq. Partur. The witness No. 5 solemnized said marriage. The matrimonial relation between her and accused No. 1 is still in existence. She was subjected to mental and physical cruelty due to non fulfillment demand of dowry of Rs. 40,000/- for the purpose of purchasing Motorcycle and she was driven out of her matrimonial house. She tried to cohabit with accused No. 1, but the accused No. 1 refused to cohabit with her. Since Witness Nos. 1 to 3 came to know that, the Accused No. 1 is likely to perform second marriage with the Accused No. 2, therefore, they have visited at the spot of marriage. It is further alleged that, during subsistence of her first marriage with the Accused No. 1, on 07.02.2011, at about 7.00 to 7.30 p.m., accused No.1 performed second marriage with accused No. 2 at Gaikhore (Shambhu Mahadeo) Temple ground in

presence of accused Nos. 3 to 21. The accused No. 22, priest has chanted the Mantras and performed the marriage between the Accused Nos. 1 & 2. In paragraph No. 5 of the complaint, the complainant described roles played by each and every accused for solemnization of marriage between accused Nos. 1 & 2. The complainant specifically alleged that at the time of said marriage, accused Nos. 3 to 22 were present and witness Nos. 1 to 3 informed the accused persons that matrimonial relations between Accused No.1 and complainant is still in existence and, therefore, they should refrain from performing the marriage of accused No. 1 with accused No. 2. However, all the accused persons issued life threat to the witnesses and directed them to leave the said place. Therefore, all the witnesses witnessed said marriage from some distance. The Accused No. 1 have performed second marriage with accused No. 2 during subsistence of first marriage of Complainant and Accused No. 1 and Accused Nos. 3 to 21 have abetted Accused No. 1 to marry with Accused No. 2, so also, the Accused No. 22 chanted the Mantras and solemnized marriage during course of subsistence of first marriage. Therefore, the accused have committed an offence punishable under Section 494 read with section 109 of the Indian Penal Code, 1860.

5. After recording the verification and being satisfied, the learned Judicial Magistrate First Class, Partur, passed an order dated 22.03.2011

and issued process against the accused persons/present Petitioners for the offence punishable under Section 494 read with section 109 of the Indian Penal Code, 1860.

6. The learned counsel appearing for the Petitioners canvassed in vehemence that Accused Nos. 16 to 19 and 22 are old aged persons. The Respondent No.2/complainant has not attributed specific roles as against each and every accused persons. The Complainant has filed the impugned proceedings after lapse of 36 days from the date of incident, so also, more than 12 years period has been lapsed, therefore, continuation of criminal proceeding as against the present petitioners/accused persons will amount to abuse of process of law and, hence, prayed to quash and set aside the same.

7. In support of these submission, the learned counsel appearing for the Petitioners relied on the following case laws:

- (i) Judgment dated 15.05.2024 passed by the Hon'ble Supreme Court in SLP (Criminal) No.8529/2019, S. Nitheen & ors. Vs. State of Kerala & another;*
- (ii) Chand Dhawan Vs. Jawahar Lal & others, (1992) 3 Supreme Court Cases, 317;*
- (iii) Malan w/o Rama and others Vs. State of Bombay and another, AIR 1960 Bombay 393;*
- (iv) Judgment dated 16.12.2016 passed by this Court in Criminal Application No.3141 of 2007, Vitthal s/o Tulshiram Jadhav and others Vs.Sau. Babita w/o Vitthal Jadhav;*

(v) Yashwant Bhavdu Patil & others Vs. State of Maharashtra, 2006 All M.R. (Cri) 2479.

8. Per contra, the learned counsel appearing for Respondent No.2/Complainant canvassed in vehemence that the marriage of complainant solemnized with accused No. 1 on 20.04.2006 and said matrimonial cord is still in existence. However, because of raising domestic violence and cruelty on account of non fulfillment of demand of dowry, the complainant was driven out from her matrimonial house and since then, she is residing with her parents. However, during subsistence of her marriage, the accused No. 1 performed second marriage with Accused No. 2 on 07.02.2011. Accused Nos. 3 to 21 who are close relatives of accused Nos. 1 and 2 though having knowledge of subsistence of marriage of the complainant and Accused No. 1 they have actively participated in the solemnisation of second marriage. So also, the complainant has specifically attributed the role played by each and every accused in performing of second marriage between Accused Nos. 1 & 2. The complainant specifically made averment in the complaint that, the Accused Nos. 2 to 21 have abetted the Accused Nos. 1 and 2 to get marry. Therefore, considering the scope of section 109 of Indian Penal Code, 1860 all the accused persons have committed an offence under section 494 of the Indian Penal Code, 1860. Therefore, the learned trial Court after considering the averments made in the complaint, after recording of

the verification and after being satisfied about commission of offence issued process to the accused persons on 22.03.2011. Therefore, impugned order is just, legal and proper and no substantial grounds have been set out for quashing of proceedings as against the present petitioners/accused persons to set aside the order of issuance of process, hence, prayed for dismissal of the petition.

9. Having regard to submissions canvassed on behalf of both the sides, I have gone through the petition paper book. Needless to say that fact of existence of marriage between Petitioner/Accused No. 1 and Respondent No. 2/complainant is not disputed by the Petitioners/Accused. It is not contention of the Petitioners that the cord of marriage between Accused No. 1 and Complainant is not intact and they are not having knowledge about subsistence of first marriage between the Accused No. 1 and Complainant or the marriage between Accused No. 1 & complainant dissolved by deed of divorce or decree of divorce has been passed by the competent Court.

10. The learned counsel for the Petitioners though relied on judgment in case of **S. Nitheen & ors.**, cited supra, however, on perusal of said judgment, it appears that said judgment deals with initiation of proceeding for the offence punishable under section 494 read with section 34 of the Indian Penal Code. The Hon'ble Supreme Court observed in

paragraph Nos. 14 to 16 as under:

"14. At the outset, we may note that the complaint was filed alleging commission of the offence punishable under Section 494 read with Section 34 IPC. However, post recording pre-charge evidence, the learned JMFC passed an order dated 28th May, 2018 directing framing of charge against all the accused persons for the offence punishable under Section 494 IPC.

15. The essential ingredients of offence under Section 494 IPC, as explained by this Court in the case of Gopal Lal v. State of Rajasthan¹, are as follows:

"3. The essential ingredients of this offence are:

(1) that the accused spouse must have contracted the first marriage

(2) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and

(3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed."

16. A bare perusal of the penal provision would indicate that the order framing charge is erroneous on the face of the record because no person other than the spouse to the second marriage could have been charged for the offence punishable under Section 494 IPC simplicitor. However, this is a curable defect, and the charge can be altered at any stage as per the provisions of Section 216 CrPC.

17. It is a peculiar case wherein, the complainant has not sought prosecution of the appellants for the charge of abetting the second marriage by Ms. Lumina(A-1) under Section 109 IPC. The appellants herein are being roped in by virtue of Section 34 IP with the allegation that they had the common intention to commit the offence under Section 494 IPC. In order to bring home the said charge, the complainant would be required to prima facie prove not only the presence of the accused persons, but the overt act or omission of the accused persons in the second marriage ceremony and also establish

that such accused were aware about the subsisting marriage of Ms. Lumina(A-1) with the complainant.”

11. In case of **Chand Dhavan**, cited supra, in paragraph No. 9, the Hon’ble Supreme Court observed as under:

“We are, therefore, of the view that the High Court has clearly erred in reaching the conclusion that the proceedings are liable to be quashed. In the light of the allegations made in the complaint and the materials produced in support of those allegations by the appellant before the magistrate, the issue of the process to respondents 1 and 2 who are alleged to have solemnised the second marriage during the subsistence of an earlier valid marriage of the appellant is proper and when process has been issued, the proceedings have to continue in accordance with law against these respondents 1 and 2. So far as other respondents are concerned, it may be said that they had been unnecessarily and vexatiously roped in. The allegations in the complaint so far as these respondents are concerned are vague. It cannot be assumed that they had by their presence or otherwise facilitated the solemnisation of a second marriage with the knowledge that the earlier marriage was subsisting. The explanation of the first respondent that the second respondent has been functioning as a governess to look after his children in the absence of the mother who had left them implies that respondents 1 and 2 are living together. In this background, the allegations made against respondents 3 to 7 imputing them with guilty knowledge unsupported by other material would not justify the continuance of the proceedings against those respondents.”

12. In case of **Malan w/o Rama & others**, cited supra, in paragraph No. 13, the Coordinate Bench of this Court has observed as under:

“13. So far as accused No. 9 is concerned, the evidence discloses that not only he allowed his premises to be used for the

performance of the marriage, but he also further held the "antarpāt" during the performance of the marriage. In ILR 6 Bom 126, which I have already referred to, it was held that mere permission to allow one's premises to be used for the purpose of the marriage does not in itself lead to the conclusion that the person had abetted the performance of the marriage. The learned Government Pleader, however, stated that the holding of the "antarpāt" in effect amounted to an act of an intentional aid and, this act did come within the purview of Explanation 2 to section 107 aforesaid. To this, the reply of Mr. Kotwal was that even if this was so, the offence under Sec. 114 cannot be said to have been committed, because, in order that an offence under Sec. 114 may be brought home, it is necessary, first of all that the offence must fall within the purview of Sec. 109 I. P. C., and, in order that an offence under Sec. 109 may be said to be committed, it is not merely enough that there should be an act of abetment, but, in addition to that, the prosecution must prove that the offence was committed in consequence of the abetment. He contended that although accused No. 9 may have given the aforesaid intentional aid, it cannot be said that the offence of bigamy was committed in consequence of the act of holding the "antarpāt". Prima facie, this is so. However, the learned Government Pleader relied upon Explanation 2 to Sec. 107 I. P. C. That explanation, inter alia, states that an act is said to be committed in consequence of an abetment when it is committed with the aid which constitutes the abetment. The learned Government Pleader contended that the facts of the present case fall within the purview of the explanation aforesaid. The contention of Mr. Kotwal was that the test which was to be applied for the purpose of finding out whether a crime is committed in consequence of abetment or not is to determine whether the offence would or would not have been committed if the intentional aid had not been given. I do not think that I can subscribe to this view. There is nothing in the explanation aforesaid which justifies the aforesaid submission. In my opinion, in order to determine whether an act has resulted in the commission of a crime, the only important thing which has got to be found is whether the act was committed with the aid of the abettor in question, and, if it was committed with the aid, then, the act of the abettor would fall within the purview of the aforesaid explanation. Having regard to the fact that the "antarpāt" was held by accused No. 9, and it was done with the full knowledge that the marriage

was a void marriage, in my opinion, the act of accused No. 9 does fall within the purview of Explanation 2 to Sec. 107 I. P. C. Mr. Kotwal contended that the act of holding the "antarpatri" was done prior to the performance of the marriage, and, therefore, it should not be regarded as an act of intentional aid. This argument ignores Explanation 2 to Sec. 107 I. P. C. That explanation states in specific terms that an act of abetment may take place prior to the commission of the offence. Therefore, I have no doubt whatsoever that the act of accused No. 9 falls within the definition of the word "abetment" in Sec. 107 I. P. C. In order that Explanation 2 to Sec. 107 may apply, it is necessary to determine whether an aid was given and whether with that aid the act or the offence was committed. In my opinion, the aforesaid act, which has been brought home against accused No. 9. was an act of aid and, with that aid, accused No.11 committed the offence of bigamy. Therefore, in my opinion, so far as accused No. 9 is concerned, the offence of abetment has been brought home against him and he was rightly convicted. Therefore, the revision application of accused No. 9, will be rejected, and so far as the revision application of the other accused is concerned, the same will be accepted."

13. In case of **Vitthal Tulshiram Jadhav and others**, cited supra, no specific role was assigned against the applicants/original accused, but only allegation was made against accused No. 5 about simply distribution of sacred rice. Under this circumstances it has been held that mere distribution of sacred rice in the alleged incident, prima facie does not attract the provision of Sections 494 and Section 109 IPC.

14. In case of **Yashwant Bhavdu Patil**, cited supra, the Co ordinate Bench of this Court has held that mere presence at the commission of a crime does not amount to intentional aid, unless it was intended to have

that effect. Being present and being aware that an offence is about to be committed does not constitute an abetment unless the person thus present holds some position of rank or influence such that his countenancing what takes place may, under the circumstances, be held a direct encouragement.

15. Reverting back to the present case it appears that, marriage between the Respondent No.2/complainant and Accused No. 1 was solemnized on 20.04.2006 as per prevailing rites and rituals in their society at village Bamni Tq. Partur. The Witness No. 5 solemnized said marriage. The matrimonial relation between the complainant and accused No. 1 is still in existence. It is not case of the Petitioners/Accused that, the Accused No. 1 obtained decree of divorce from the competent Court against the complainant and their marriage has been dissolved at any time before. The complainant specifically made averment in complaint that, during subsistence of her marriage with the Accused No. 1, second marriage performed by the Accused No. 1 with Accused No. 2 on 07.02.2011.

16. The complainant made specific averments in paragraph No. 5 of the complaint which reads as under:

“५. हे की, वरील स्थळी रोजी, व दिवशी आरोपी नं. १ ते २२ हे तेथे हजर होते. साक्षीदार नं. १ व ३ यांनी आणि साक्षीदार नं. २ यांनी आरोपी नं. १ व २ यांना आणि इतर आरोपींना फिर्यादी व आरोपी नं. १ चे लग्नाचे नाते अद्याप कायम आहे व तुम्ही

आरोपी नं. १ चे आरोपी नं. २ बरोबर दुसरे लग्न करू नका, अशी विनंती केली असता, सर्व आरोपींनी साक्षीदार नं. १ ते ३ यांचेकडे दुर्लक्ष केले, व साक्षीदारास तेथुन दुर जाण्यास सांगितले आणि घटना स्थळावर थांबल्यास जिवे मारण्याच्या धमक्या दिल्या. म्हणून साक्षीदार हे थोड्या दुर अंतरावर जाऊन थांबले आणि आरोपी नं. १ च्या दुसऱ्या लग्नाचा विधी आरोपी नं. २ बरोबर होणाऱ्या दुसऱ्या लग्नाचा विधी व सभारंभ पाहिला. आरोपी नं. २२ ने आरोपी नं. १ व २ यांचा दुसऱ्या लग्नाचा विधी करून घेतला, आरोपी नं. २२ ने व आरोपी नं. ८ ने आरोपी नं. १ व २ यांच्या दुसऱ्या लग्नाची मंगळआष्टके म्हंटली, आरोपी नं. १२ व १३ यांनी अंतरपाट धरला, आरोपी नं. २० हा आरोपी नं. १ च्या मागे उभा राहीला, आरोपी नं. १८ हा आरोपी नं. २ च्या मागे उभा राहीला. आरोपी नं. २१ व आरोपी नं. १४ यांनी आरोपी नं. १ व २ यांना मळवट भरला, आरोपी नं. ६ व १० ह्या आरोपी नं. १ व २ यांच्या बाजूला हातात दिवा व तबक घेऊन उभ्या होत्या. आरोपी नं. ४ हा आरोपी नं. १ बरोबर सोकाण्या म्हणून होता. आरोपी नं. ५ व आरोपी नं. ११ यांनी आरोपी नं. १ व २ यांना चौरंग आणि पाटावर उभे केले. बाकी आरोपींनी आणि सर्व आरोपींनी आरोपी नं. १ चे आरोपी नं. २ बरोबर होणाऱ्या दुसऱ्या लग्नाच्या अक्षदा टाकल्या. आरोपी नं. १ व २ यांनी एकमेकांना हार घातले, आरोपी नं. २२ ने अग्नी पेटवून आरोपी नं. १ व २ यांचेकडून सप्तपदी करून घेतली, आरोपी नं. १ व २ यांनी होमाभवती मंत्रयुक्त सात फेऱ्या मारल्या. आरोपी नं. १५ व आरोपी नं. १९ यांनी आरोपी नं. १ चे आरोपी नं. २ बरोबर दुसरे लग्न जमविण्यास सहकार्य केले, आरोपी नं. ३ ते २२ यांना आरोपी नं. १ चे फिर्यादी बरोबर लग्न झालेले आहे, असे माहीत असतांना आणि आरोपी नं. १ चे फिर्यादी बरोबर लग्नाचे नाते कायम असतांना व याची माहिती आरोपी नं. २ ते २२ यांना असतांना आरोपी नं. ३ ते २२ यांनी आरोपी नं. १ व २ यांचे दुसरे लग्न करण्यास आरोपी नं. १ व २ यांनी यांना प्रोत्साहन दिले, आणि सहकार्य केले. म्हणून आरोपीं विरुद्ध फिर्याद सादर करण्यांत येत आहे.”

17. Therefore, it prima facie depicts that prior to solemnization of second marriage between Accused Nos. 1 and 2, the Witness Nos, 1, 2 and 3 have given understanding to all the accused/petitioners about

subsistence/existence of matrimonial relations between Accused No.1 and Respondent No.2/ complainant. However, all the accused persons issued life threat to the witnesses, therefore, witnesses stood at some distance and witnessed the marriage ceremony between the Accused Nos. 1 and 2. The averments made in paragraph No. 5 of the complaint itself suggest that the complainant has attributed specific roles played by each and every accused while performing second marriage between accused No. 1 & 2.

18. Section 107 of the Indian Penal Code, 1860 defines of abetment as under:

107. Abetment of a thing.—

A person abets the doing of a thing, who -

(First)— Instigates any person to do that thing; or

(Secondly)— Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly)— Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.— *A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.*

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, willfully

represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.— *Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”*

Section 109 of the Indian Penal Code, 1860 provides as under:

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.— *An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.*

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

19. On perusal of contents of complaint, it prima facie appears that the Accused Nos. 3 to 21 have abetted the Accused Nos. 1 and 2 to

perform second marriage during subsistence of first marriage between Accused No. 1 and Respondent No.2/complainant. Therefore, material placed on record suggests that there are sufficient material to frame charges as against accused persons and continuation of proceeding against the petitioners/accused does not amount to abuse of process of law. Further, substantial grounds are existing for prosecution of the present petitioners/accused persons as per the observations made by the Hon'ble Supreme Court in case of **S. Nitheen** and judgment passed by this court in case of **Malan w/o Rama**, *cited supra*.

20. In view of the above discussion, I do not find any substance to interfere with the criminal proceeding filed against the accused persons as well as the order of issuance of process for the offence under sections 494 and 109 of Indian Penal Code, 1860. Therefore, present petition is liable to be dismissed. Accordingly, Criminal Writ Petition is dismissed. Rule is discharged.

(Y. G. KHOBRAGADE, J.)

JPChavan