



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.618 OF 2024

Sadhana Gorakh Dive .Vs. State of Maharashtra and anr.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms Garima Jain, Adv. h/f Mr. S.V. Sirpurkar, Adv. for applicant.

Mr. A.G. Mate, A.P.P. for non-applicant/State.

Mr. M.S. Gupta, Advocate for non-applicant No.2.

CORAM : ANIL S. KILOR, J.

DATED : 10/03/2025

1. The order issuing process against the applicant in a complaint filed by Smt. Shalini Kundan Raut, the wife of Accused No.1, is the subject matter of challenge in this application.

2. The complainant made the applicant as accused No.4 and alleged that the complainant's husband performed second marriage with the applicant during the subsistence of her marriage with the accused No.1.

3. The learned counsel for the complainant raises an objection to the tenability of the application. However, the same has been rejected as there is no complete bar to entertain the present proceeding particularly, when it is noticed that the order of issuing process amounts to abuse of process of law for the reason that the allegations against the applicant are that she has committed offence under

Section 494 of the Indian Penal Code (hereinafter referred to as “IPC”).

4. The language of Section 494 of the IPC, makes it clear that whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife constitutes an offence under Section 494 of the IPC. The exception to Section 494 of the IPC, further makes it clear that, the said section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction.

5. The High Court of Karnataka in the case of *Smt. Revathi ..vs.. Smt. Netravathi*, in **Criminal Petition No.5678 of 2018**, while construing Section 494 in paragraph No.8 has observed thus :

“8. A perusal of the above, indicates beyond doubt that a person who can be prosecuted under Section 494 of IPC is the erring husband or wife who marries again during the lifetime of his or her spouse and during the subsistence of the marriage. The petitioner herein who was arrayed as accused No.2 on the ground that she was the second wife of accused No.1 could certainly not be prosecuted for an offence under Section 494 of IPC. In that view of the matter, the criminal prosecution initiated against the petitioner / accused No.2 cannot be continued as that would result in an abuse of the process of law.”

6. Admittedly, in the present matter, the applicant alleged to have performed the second marriage with the husband of the complainant.

7. It is the case of the complainant that during the subsistence of complainant's marriage with accused No.1, the accused No.1 performed the marriage with the accused No.4, applicant. In the circumstances, in view of the above referred well settled principles of law, no offence will attract against the applicant under Section 494 of the IPC. In that view of the matter, the order of issuance of process against the applicant is erroneous and the error cannot be permitted to continue.

8. In the circumstances, the impugned order dated 04.03.2020 passed by the learned 7th Judicial Magistrate First Class, Nagpur, in Regular Criminal Case No.814 of 2020, is hereby quashed and set aside and the application is **allowed** in above referred terms.

JUDGE