

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

CRIMINAL APPLICATION (APL) NO. 1287/2022

1. Atul
2. Raju
3. Sou. Rekha
4. Shubham
5. Samiksha
6. Chandrashekhar Natthuji Nimgade,
7. Sou. Mangala Chandrashekhar Nimgade,

... APPLICANT(S)

// VERSUS //

1. The State of Maharashtra
Through Police Station Officer,
Police Station,
Jaripatka, Nagpur
2. XYZ
In Crime No. 505/2022
registered by the Police Station Officer,
Police Station, Jaripatka, Nagpur NON-APPLICANT(S)

Ms. Manju M. Ghatode, Advocate for the applicants
Mr. S.M. Ghodeswar, APP for non-applicant no. 1
Mr. S.G. Karmarkar, Advocate for non-applicant no. 2

**CORAM : SUNIL B. SHUKRE AND
M. W. CHANDWANI, J.J.**

DATED : 30/11/2022

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

Heard.

2. Perused the First Information Report (FIR) and the statements of relevant witnesses with the assistance of the learned Counsel for the applicants, learned APP and the learned Counsel for non-applicant no. 2.

3. Although, it is the contention of the learned counsel for the applicants that the allegations made in the FIR and the material collected during the course of investigation by Police when taken together and taken at their face value, no prima facie case for offences punishable under Sections 376(2)(n), 377, 498-A, 494, 294, 323, 504

and 506 of the Indian Penal Code, 1860 (for short the “IPC”) r/w. Section 34 of the IPC is made out, we find, agreeing with the submissions made across the bar on behalf of the State and non-applicant no. 2, that there is very strong prima facie case against each of the applicants for the offences which have been registered against them vide Crime No. 505/2022 at Police Station, Jaripatka, Nagpur.

4. The FIR as well as the statements of relevant witnesses, apparently show that each of the applicant nos. 1 to 5 have prima facie treated non-applicant no. 2, the complainant, consistently with severe cruelty, so much so that her husband i.e. applicant no. 1 did not spare her even when she was carrying pregnancy and forcibly committed repeated acts of sexual intercourse with her with vengeance. The result was that the complainant i.e. non-applicant no. 2 miscarried the fetus and lost her child. In fact, the complainant had pleaded with her husband not to indulge in those acts because of the condition of the complainant but, her husband was relentless and prima facie behaved in a savage manner with her. This material further shows that each of these applicants, on every occasion of friction between husband and wife, had prima facie taken the side of the husband, and prima facie encouraged and instigated him in continuing with his atrocious and cruel behaviour towards his wife. There is prima facie material further showing that all the relatives of the husband, who are applicants here have at one point

or the other, indulged in meting out cruel treatment in various ways to non-applicant no. 2, the details of which are to be found not only in the FIR but also in the statements of witnesses.

5. The cruelty prima facie handed out to non-applicant no. 2 did not stop at physically torturing non-applicant no. 2 but, it went beyond the physical state of pain in the sense that the husband i.e. applicant no. 1 with impunity performed marriage with another woman and that was done with the active aid and assistance of the rest of the applicants. When a husband performs the second marriage while his first marriage is alive, a question arises as to whether such act on the part of husband would amount to cruelty within the meaning of Section 498-A of the IPC. As per explanation to Section 498-A of the IPC, cruelty means; any wilful conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (mental or physical) of the woman. It also includes harassment caused with a view to coercing the woman or any person related to her to meet any unlawful demand for any property or valuable security. Here, we are concerned with wilful conduct of such a nature which has caused or which is likely to cause danger to health of non-applicant no. 2. Marrying another woman by the husband during existence of his first marriage is something which is most likely to cause trauma and grave injury to the mental health of the first wife, unless it has been done with

the consent of the first wife. If the act of performance of second marriage during subsistence of the first marriage is not interpreted as amounting to cruelty contemplated under Section 498-A of the IPC, it would frustrate the legislative intent to prevent the torture to a woman by her husband or by relative of her husband and, therefore, that interpretation has to be adopted which sub-serves the object sought to be achieved by the Legislation. Useful reference in this regard may be made to the cases of *B.S. Joshi and ors. Vs. State Of Haryana and anr. [2003 Cri L.J. 2028 (SC)]* and *Reema Aggarwal Vs. Anupam and ors. [(2004) 3 SCC 199]*. By these parameters, we find here that the second marriage performed by applicant no. 1 while his first marriage with non-applicant no. 2 was on, prima facie amounted to cruelty. It has been further prima facie aggravated here when the applicant no. 1 made a false representation to other woman with whom he performed marriage during subsistence of the present marriage with non-applicant no. 2 that his first wife had died and the rest of the applicants i.e. both his parents, his siblings and also aunt joined in chorus with applicant no. 1. They falsely told the second woman that the first wife of applicant no. 1 had died. All these details have been graphically stated by the second woman in her statement recorded under Section 161 of the Criminal Procedure Code, 1973 (for short the "Cr.PC."). She has also informed the police that she too had lodged a criminal complaint against applicant no. 1

which was registered by Police Station, Imamwada, Nagpur for certain cognizable offences. Although, it is not known as to exactly which are those offences but, the fact remains that even the second wife of applicant no. 1 has lodged a criminal report against him.

6. The learned Counsel for the applicants submits that non-applicant no. 2 in the FIR has only stated about the performance of second marriage during the subsistence of first marriage of Atul i.e. applicant no. 1 by way of hearsay evidence, as she has stated that she learnt about the same from somebody else. This statement, which was in the nature of hearsay evidence now has turned itself, prima facie, into piece of admissible evidence with recording of the statement of second woman with whom applicant no. 1 solemnized his second marriage. This woman has confirmed the fact that by resorting to deceptive means and suppressing the material facts from her, applicant no. 1 induced her in performing marriage with him. She has also stated in about few months into her marriage with applicant no. 1, that applicant no. 1 admitted to her that his first wife was alive, which fact was personally verified by this woman and found to be correct. We, therefore, we do not find any substance in the said submission of the learned Counsel for the applicants.

7. It is further submitted by the learned Counsel for the applicants that the second woman with whom applicant no. 1 performed his second marriage was an educated woman and was expected to make inquiry about the deeds, character, background and actions of applicant no. 1, perhaps suggesting that while applicant no. 1 could do anything, could also be reckless, but the second woman can ill-afford to do it; that she only has to make enquiry and find for herself if the applicant no. 1 was worthy of being her consort or not. In other words, according to her, it was the responsibility of the woman to not trust such a man and first know about him only upon making inquiry about his character, background and history, before agreeing to marry him. The argument does not impress us. Reasons are not too far to seek. In India marriage is considered to be a sacrament wherein each of the parties to marriage is expected to act honestly and remain faithful to each other. They must not suppress from each other any material facts which may have a bearing upon the marital bond. It is only when they conduct themselves in a clean and faithful manner that a bond of trust, love and affection is forged between them. No marriage can remain a sacrament, if parties to the marriage do not come clean about their past and do not trust, respect and love each other. Here in this case, applicant no. 1 has, prima facie, breached the trust of second woman with whom he performed his

second marriage during subsistence of his first marriage and also of his first wife, the non-applicant no. 2. The argument is, in our considered opinion, outlandish and hence, rejected.

8. It is further submitted by the learned Counsel for the applicants that the investigation carried out by the Police, in this case, is faulty, as no sufficient material has been collected, no photograph has been clicked and no statements of independent and relevant witnesses have been recorded. On going through the statements of witnesses, at least at this stage, we find that there is hardly any inadequacy or lacuna in the investigation made by the Police. If any inadequacy is discovered later-on, the Investigation Officer would be at liberty to make further investigation in the matter and file supplementary charge-sheet with the permission of the concerned Court. The argument, therefore, can not be accepted and it is rejected.

9. It is also submitted by the learned Counsel for the applicants that applicant nos. 5, 6 and 7, relatives of the husband, had never given their consent for performance of second marriage by applicant no. 1 while his first marriage was alive. On going through the charge-sheet, we have not come across statement of any witness who agrees that there was opposition made by applicant nos. 5, 6 and 7 to the second marriage of applicant no. 1 with another woman, rather the statements of

witnesses show that all of them had prima facie actively encouraged the applicant no. 1 to perform the second marriage, they themselves had arranged the second marriage, they were present at the time of solemnization of his second marriage and had even falsely informed the second woman that first wife of applicant no. 1 was dead. Therefore, such argument cannot be accepted and is rejected. If at all it is to be made, it may be made at the time of trial, where it can be appreciated properly in the light of recorded evidence by the trial Court.

10. It would be now clear that an attempt made by the applicants to invoke inherent power of this Court under Section 482 of the Cr.P.C. is nothing but an abuse of process of law and, therefore, this application deserves to be dismissed with exemplary costs.

11. The application is dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousands only) to be deposited by the applicants in the account of High Court Legal Services Sub-Committee, Nagpur within a period of four weeks from the date of the order, failing which, the Secretary, High Court Legal Services Sub-Committee, Nagpur shall take steps for realising the amount of costs by considering it as fine imposed by this Court.

(M. W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)