

(1993) 02 GUJ CK 0017
In the Gujarat High Court

Amitkumar Muljibhai Brahmbhatt and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 114, 114 , 494

Citation : (1993) 1 GLR 661

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The petitioners have moved this Court u/s 482 of the Criminal Procedure Code, 1973 ("the Cr.P.C" for brief) for quashing the criminal complaint inter alia lodged against them by respondent No. 2 herein in the Court of the Metropolitan Magistrate of Court No. 3 at Ahmedabad charging all the accused including the petitioners named therein as accused Nos. 3 and 4 with the offence punishable u/s 494 read with Section 114 of the Indian Penal Code, 1860 ("the I.P.C." for brief).

2. The facts giving rise to this petition are not many and not much in dispute. Respondent No. 2 claims to have married one Mukeshkumar Chhatrasinh some 7 years ago. According to her, during the subsistence of her marriage with her husband, he contracted a second marriage with one Gitaben Bhailalbhai Barot who is arraigned as accused No. 5 in the complaint. According to respondent No. 2, the other accused including the mother of the husband and the father of accused No 5 and the present petitioners and one Ratilal Ishwarbhai abated the commission of the offence by the husband of respondent No. 2. With these allegations, she lodged one complaint before the Metropolitan Magistrate of Court No. 3 at Ahmedabad. It came to be registered as Criminal Case No. 664 of 1991. It appears that the learned Metropolitan Magistrate issued process against all the accused including the present petitioners. The present petitioners have invoked the powers of this Court u/s 482 of the Cr. P. C. for quashing the complaint lodged by respondent No. 2 as aforesaid qua them on the ground that the

complaint does not disclose commission of any offence by them.

3. A copy of the complaint is annexed as Annexure "A" to this petition. The petitioners herein are arraigned as accused Nos. 3 and 4. It appears that they have been roped in on the ground that they were present at the time of the second marriage. It may be mentioned that the complaint merely mentions that these petitioners knew that the marriage between the complainant and accused No. 1 was subsisting at the time of the second marriage. It is nowhere suggested in the complaint that these petitioners were present at the time of the complainant's marriage with accused No. 1 at the relevant time. It is difficult at this stage to attribute the knowledge of the first marriage to the present petitioners. Besides, as aforesaid, the present petitioners are charged with the abatement of bigamy merely on the ground that they were present at the time of the second marriage. A vague allegation is made in the complaint that they directly or indirectly brought about the second marriage of accused No. 1 with accused No. 5. It would be difficult to fasten any criminal liability to these petitioners only on the strength of such vague allegation and on their mere presence at the time of the second marriage.

4. In this connection a reference deserves to be made to the ruling of the Supreme Court in the case of Smt. Chand Dhawan Vs. Jawahar Lal and others, That was also a case of bigamy. The accused succeeded in getting the proceedings quashed before the High Court of Punjab and Haryana. On appeal to the Supreme Court, the judgment of the High Court quashing the proceedings was quashed only qua the two main accused and not qua those who were arraigned as the accused on the ground of their mere presence at the time to the second marriage. The relevant observations are in para 9 of the reported ruling at page 322. They read 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.

(Emphasis supplied)

This ruling of the Supreme Court is on all fours applicable in the present case.

5. A reference also deserves to be made to the ruling of the Bombay High Court in the case of *Malan and Others Vs. State of Bombay and Another*, . It was also a case of the criminal proceedings for bigamy. Certain accused were sought to be roped in only on the ground of their presence at the time of the second marriage. It has been held therein:

Mere presence at the commission of a crime even with the awareness that a crime was being committed is not in itself an intentional aid.

6 The ruling of the Supreme; Court in the case of *Dhanalakshmi Vs. R. Prasanna Kumar and Others*, as relied on by Shri Gupta for respondent No. 2 is of not much assistance in this case. It appear that in that case the complaint together with the statement, on oath of the complainant prima facie disclosed ingredients of the offence of bigamy. It appears that all the other accused were not merely involved on the ground of their presence alone at the time of the second marriage. In that view of the matter, the aforesaid ruling of the Supreme Court in the case of *Mrs. Dhanalakshmi (supra)* is distinguishable on its own facts.

7. The ruling of the Supreme Court in the case of *K.M. Mathew Vs. State of Kerala and another*, is also distinguishable on its own facts. It does lay down as a rule of law that the trial Magistrate does have a power to drop the proceedings even after the process is issued if the trial Court is approached by the accused for the purpose. It however does not lay down as a rule of law that no proceedings for quashing a complaint can be entertained even if the complaint does not prima facie disclose commission of any offence by the concerned accused.

8. In view of my aforesaid discussion, I am of the opinion that no offence is found to have been committed by the present petitioners so far as Criminal Case No. 664 of 1991 is concerned. The criminal proceedings against them therefore deserve to be quashed.

In the result, this petition is accepted. The proceedings by means of Criminal Complaint No. 664 of 1991 pending before the Metropolitan Magistrate of Court No. 3 at Ahmedabad are hereby quashed qua these petitioners. This judgment of mine will preclude the trial Court to proceed against the present petitioners u/s 319 of the Cr.P.C. if necessary. Rule is accordingly made absolute.