

(1995) 03 BOM CK 0037

In the Bombay High Court

Case No : Criminal Application No. 1094 of 1993

Suresh Kapse and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-03-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 182, 2, 482
Penal Code, 1860 (IPC) — Section 109, 494, 495

Citation : (1995) 3 BomCR 488 : (1995) 97 BOMLR 295 : (1996) CriLJ 1782 :
(1995) 1 DMC 649

Hon'ble Judges : A.D. Mane, J

Bench : Single Bench

Advocate : S.S. Choudhary, for the Appellant; S.G. Bhapkar, Additional Public
Prosecutor and D.V. Tele, for the Respondent

Judgement

1. This is an application filed by the original accused for quashing not only the criminal proceedings but also order made by the learned Magistrate issuing process against them for offence punishable u/s 494 read with section 109 of the Indian Penal Code.

2. Respondent No. 2 is the legally married wife of applicant No. 1. She filed her private complaint being case No. 323 of 1993 in the court of Chief Judicial Magistrate, Osmanabad, on July 14, 1993. In her complaint she has alleged that the applicant no. 1 performed second marriage illegally with applicant no. 2 with active assistance of the applicants No. 3, 4 and 5. It has further been alleged that the applicants No. 10, 17, 18, 20 and 21 who are inter se related between the applicants nos. 2 and 10 actively participated in actual performance of the second marriage at village Pimpalgaon (Amba) Taluka and District Latur in Nilkantheswar Mandir on December 19, 1992, at about 11 am. In case of other applicants it has been merely stated that they were either present or associated with the actual ceremony performed for the second marriage of the applicants Nos. 1 and 2.

3. The learned Chief Judicial Magistrate, by his order dated July 21, 1993, issued the process against the applicant No. 1 u/s 494 of the Indian Penal Code and against the applicants Nos. 2 to 21 u/s 494 read with section 109 of the Indian Penal Code.

4. Mr. S. S. Choudhary learned counsel appearing for the applicants, in the first place, submitted that the Court of Chief Judicial Magistrate at Osmanabad has no jurisdiction to entertain the complaint and take cognizance of the offences alleged. Secondly he has submitted that there is no sufficient ground which can be said to have been made out by the complainant to proceed with the case. Lastly it has also been submitted that on plain reading of the complaint it can be said that the ingredient of the alleged offence had not been made out against some of the accused persons.

5. To consider the question of jurisdiction it may be stated that the competency of a forum to take cognizance injury into, and trial of an offence as denied in section 2 of the Code is determined by the place in which the offence may have been committed. There cannot be any dual opinion that crimes in their nature are local and the jurisdiction of the criminal court is local. Section 177 of the Code of Criminal Procedure (for short, the Code) therefore, provides that every offence shall ordinarily be tried and inquired into by the court within whose local jurisdiction it was committed. Sub-section (2) of section 182 of the Code, is however, an exception to the above rule which reads as under :-

"182(1)

(2) Any offence punishable u/s 494 or section 495 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage, (or the wife by the marriage) has taken up permanent residence after the commission of the offence."

It is, therefore clear from sub-section (2) of Section 182 of the Code that in cases of bigamy the Magistrate would have jurisdiction to try and entertain complaints in three different situations viz. (1) the Magistrate having jurisdiction (a) the place where the offence is committed; (b) the place where the offender last resided with him or his spouse and (c) the place where the wife by the first marriage has taken up permanent residence after commission of the offence.

6. In the present case the complainant has given her address of village Kolegaon in Taluka and District Osmanabad where admittedly her parents reside. In her complaint she has specifically stated that prior the second marriage the applicant along with parents and uncles attempted to kill the complainant by fire for which they were prosecuted and the case is pending in appeal against their conviction. If this aspect is taken into account it cannot be doubted that the complainant has been residing at the place of her parents within the territorial jurisdiction of the Chief Judicial Magistrate, Osmanabad. In other words, from the aforesaid facts it can be said that the complainant must be deemed to have taken permanent

residence at the place of her parents. Therefore, the Magistrate having jurisdiction over the place where the complainant has taken up permanent residence after the commission of the offence would have jurisdiction to entertain the complaint. This view finds support from various decisions, for instance Tekumalla Muneiah and Others Vs. Chittari Babunuri Ammanamma and Another, . There is, therefore no substance in the first contention of Shri Choudhary, the learned Counsel for the Applicants.

7. Coming to the other two contentions of the learned Counsel for the applicants it may be stated that sec. 482 of the Code enables the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of process of any court or otherwise to secure the ends of justice. The inherent powers as much as controlled by the principles and precedents as are its express powers by the statute. If a matter is covered by an express letter of law the court cannot give go-bye to the statutory provisions and instead evolve a new provision in the grab of inherent jurisdiction (See AIR 1990 SC 1655. (sic) In the present case it appears that the learned Magistrate appears to have mechanically issued the process without prima facie finding out the case against each of the accused persons.

7-A With the assistance of the learned Counsel on both the sides I have gone through the complaint as well as the statement of the complainant on oath before the learned Magistrate. It is evident that the case prima facie can be said to have been made out for offence of bigamy or abatement thereof as against the accused Nos. 1 to 5, 10, 17, 18, 20 and 21. In case of other accused there is no evidence worth the name to show that they were directly, or indirectly involved in the commission of the alleged offence. Mere allegations on their presence were not enough. Nor is there any positive indication in the complaint that any of them contributed in any form in performance of the second marriage of the applicants Nos. 1 and 2. It seems to me that in the circumstances the criminal prosecution against them was a mere farce and the order issuing process against them requires to be quashed.

8. In the result, the application partly succeeds. The application of the applicants Nos. 1 to 5, 14, 17, 18, 20, and 21 i.e. original accused Nos. 1 to 5, 10, 14, 17, 18, 20 and 21 is hereby rejected. The application of the applicants Nos. 6, 7, 8, 11 to 13, 15, 16 and 19 is allowed. The criminal prosecution and the order issuing process against them are hereby quashed and set aside. Rule is accordingly made partly absolute.

9. Application Partly allowed.