

RCC No.3110014/2001

ORDER BELOW EXH.171

(Passed on 04th November, 2023)

1. This is an application filed by the prosecution under section 91 of the Criminal Procedure Code for issuance of directions/summons for production of documents mentioned in the application
2. The prosecution has come with a case that the informant who is legally wedded wife of accused No.1 had alleged in her report that accused No.1 and accused No.6 have contracted second marriage during subsistence of her marriage with accused No.1. It is further contended in the application that accused No.1 has committed an offence under section 494 of the Indian Penal Code by performing second marriage during subsistence of the first marriage. It is further contended that though there is allegation to that effect in the FIR, police have not registered an offence under section 494 of the Indian Penal Code. Therefore, no charge under the said section was framed by this court.
3. The prosecution had previously filed an application below Exh.77 praying for further investigation but the said application came to be rejected vide order dtd.21.07.2008 wherein learned Magistrate hold that the court can alter or add charge on sufficient ground at any time before pronouncement of judgment. It is further contended that it has come to know that out of wedlock of accused Nos.1 and 6 a son namely Anurag was born on 29.05.2002. He is taking education in school of scholar, Wanadongri, Nagpur where in the records of school accused No.1 is shown as father of child Anurag. It is further contended that accused No.6 is not a wife of Sanjay but Rekha is a wife of Sanjay.

By way of this application, the prosecution wanted to bring on record documents mentioned in the application in order to prove that accused Nos. 1 and 6 had contracted marriage during subsistence of first marriage and thereby committed an offence under section 494 of the Indian Penal Code. Hence, this application.

4. Accused by filing say below Exh.175 resisted the application.

5. Perused the application, say filed thereon and the documents filed on record.

6. Heard both sides.

7. As mentioned earlier the prosecution wanted to bring on record the fact that accused Nos.1 and 6 have committed an offence under section 494 of the Indian Penal Code by performing marriage during subsistence of first marriage of accused No.1 with the informant. In order to prove the fact of marriage, the prosecution strongly relied upon school admission register of Anurag Kamlakar Raut, application form, birth certificate etc.

8. First of all it is necessary to mention here that before asking the court to direct production of documents under section 91 of Criminal Procedure Code it is a duty of the prosecution to show relevance of the documents. For that purpose, it is necessary to have a look over a document which is produced below Exh.103/1, which is adoption deed. Upon perusal of said adoption deed, it is prima facie seen that Sanjay and Yamuna was husband and wife and Anurag was their son. It is further seen that they both have given Anurag into

adoption to accused No.1 Kamlakar by said adoption deed dtd.21.02.2006. This document clearly shows that Anurag who is as per the story of the prosecution son of accused No.1 and accused No.6, is in reality a son of Sanjay and accused No.6. It is further seen that accused No.1 Kamlakar is adoptive father of Anurag.

9. Further from a document i.e. birth certificate of Anurag which is produced on record by the prosecution itself, it is clearly seen that Anurag is son of Sanjay and Yamuna and not of accused No.1 and Yamuna. Therefore, from those documents, it is clearly seen that Anurag is a son of Sanjay and Yamuna. Accused No.1 is not natural father of Anurag. On the other hand, it is seen that he is adoptive father who has taken the Anurag in adoption on 21.02.2006. Further, said fact is also made clear from a document i.e. birth certificate of Anurag. Therefore, the application made by the prosecution is devoid of any merit. The allegation made therein that accused No.1 performed marriage with Yamuna during subsistence of first marriage and Anurag is their son out of the said wedlock is devoid of any merit. For this reason, documents sought to be summoned by the prosecution by way of this application are neither necessary nor desirable for the just decision of the case. Documents are not at all relevant for the decision of the case. Even though the informant has made allegation in the FIR regarding second marriage of accused No.1, but said allegation does not stand in view of documents namely adoption deed and birth certificate of Anurag. No doubt, accused No.1 is shown as father of Anurag on school admission register and application form but at the same time it needs to be taken into consideration that said documents are of the year 2009. Adoption deed was executed in the year 2006 therefore, it is but natural that after adoption adoptive father tags his name as a father of adoptive son. For this reason, the documents on

which the prosecution relied upon is of no assistance/help to the prosecution.

10. The prosecution has relied upon following judgments :-

- *Nitya Dharmananda @ K Lenin & Anr .Vs. Gopal Sheelum Reddy, Criminal Appeal No.2114 of 2017.*
- *Jawahar Radhakrishan Khandewal .Vs. Rajendra Kalambe, Criminal Writ Petition No.960/2015.*
- *Ms. Kusum Harsora .Vs. The State of Maharashtra, Criminal Writ Petition No.775 of 2019.*
- *Prashant @ Rohit Tandon Vs. State of Maharashtra, Crim. Revision No.203 of 2003.*

11. No doubt that the ratio given in the above said judgments is true but the said ratio does not apply to the fact of this case because the documents which the prosecution is asking for production of summons are not at all relevant. For this reason, the ratio laid down in the above said citations do not come to the help of the prosecution.

12. In view of the above discussion, I came to conclusion that this application is devoid of any merit and therefore, needs to be rejected. Accordingly, I proceed to pass the following order.

ORDER

Application stands rejected.

Sd/-

Nagpur.
Date:- 04/11/2023.

(J.M.Agnihotri)
Judicial Magistrate F.C. (M.V.)
Court, Nagpur.

Certificate

I affirm that, the contents of this PDF file – Judgment/order is same word to word as per the original judgment/order.		
a) Name of the Stenographer	:	Sau. K.D.Raut (Gr.III)
b) Name of the Court	:	Judicial Magistrate F. C., M. V. Court, Nagpur.
c) Judgment/order signed by P. O. on	:	04.11.2023
d) Judgment/order uploaded on	:	06.11.2023