

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
MOTOR VEHICLE COURT, NAGPUR.

MHNG030058092001

RCC No.3110014/ 2001
State -Vs- Kamlakar & 5



ORDER BELOW EXH.207
(Passed on 03.12.2024)

1. This is an application filed for issuance of directions under Section 173 of the Code of Criminal Procedure 1973 for further investigation in the matter. Application is supported with affidavit.
2. It is contention of the applicant that, he is the real brother of the informant of the present case i.e. Shila Kamlakar Raut who died on 14.05.2020. It is further contended that, said Shila Raut was married with Kamlakar Raut on 24.06.1990. Both of them did not have any child during said marriage. It is also averred that the original complainant is the wife of accused No.1. Said accused No.1 threatened the original complainant that, as the complainant did not concessive any child hence, he will going to marry Ms.Yamuna @ Jumud Mukund Wagh, age 35 Yrs. R/s Zingabai Takli, Godhni Road, as she was teacher in his school. It is also averred that, during the complainant saw the photograph of the marriage of accused No.1 with said Yamuna @ Kumud Mukund Wadh, hence said report was lodged on 13.10.2000.
3. On the basis of report chargesheet came to be filed against accused persons on 17.01.2001 vide RCC No.14/2001, State Vs. Kamlakar, in which charge came to be framed on 15.10.2011 by then presiding officer vide Exh.25. Since then, no evidence is came to be recorded by the prosecution.
4. It is further contended that, due to the constant harassment

made by the accused No.1 the original complainant lodged the report and during pendency said complainant married with Yamuna @ Kumud Wagh and also Yamuna Mukund Wagh married with Sanjay Raut on 19.07.2000 at that time Sanjay Raut was 25 years old and Yamuna was 30 years old. It is further contended that, said Yamuna gave divorce to her husband in the year 2006 and gave her son in adoption to the accused No.1. There are also instances where Yamuna gave her son in adoption to the accused No.1 by executing adoption deed but said deed did not mentioned in the divorce petition. It is further contention of applicant that, prosecution must carried out further investigation and to find out who is the father of Anurag Kamalar Raut by doing DNA test and also give directions for registration of offence under section 494 of IPC.

5. Say of opposite party was called. They filed their say vide Exh.210 and strongly opposed the application.

6. Heard both the sides. Ld. Advocate Shri S.D.Deoras for present applicant argued that, in view of the Cri.Writ Petition No.420/2015 Hiraben w/o Ganesh Choudhari Vs. State of Mah. decided on 26.03.2015, the charge under section 494 of IPC can be leveled against the accused. He also relied on Appex Court Judgment in the case of ***Ushaben Vs. Kishorbhai Chunilal Talwada & Ors., Cr.Appeal No.562/2012*** decided on 23.03.2012.

7. Ld. Advocate for accused argued that, the court can not take cognizance of offence under section 494 of IPC as the cognizance of the said offence can be taken by court on the complainant or aggrieved person. He put his reliance on Appex Court Judgment in ***Randhirsingh Rana Vs. State of Delhi Administration, Cr.Appeal No.248/1989***, decided on 20.12.1996. ***Prithwis Kumar Nag Vs. State of West Bengal 1998 Cri.L.J. 3502***, Appex Court Judgment in ***Mulakala Malleshwara Rao and Anr Vs. State of Telangana & Anr.***, decided on 29 August 2024, ***K Ravi Vs. State of***

Tamilnadu & Anr., decided on 29 August 2024, ***CBI Vs. Hemendra Reddy & Anr.***, decided on 28.4.2023. He also relied on ***Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & Ors.***, decided on 02 February 2017.

8. It is admitted position that, the report was lodged on 13.10.2000 and chargesheet is filed on 17.01.2001. Thereafter, charge came to be framed against accused on 15.10.2011 vide Exh.25. Thereafter, matter was posted for evidence. One application for directions of further investigation were filed vide Exh.77 on 01.11.2014 which came to be rejected on 21.07.2018, also the complainant filed one Cri.Writ Petition No.320/2024 and it is withdrawn by complainant on 25.04.2024 and again present application is filed. As per application complainant prayed for DNA Test of Master Anurag Kamlakar Raut which can not be granted in this petition. Again further prayer of applicant is that to investigate and register an offence against accused No.1 and others including Yamunabai for offence under section 420, 494, 463, 474 r/w 34 of IPC which can not be granted at this juncture.

9. In present is matter was posted for evidence at that time this application is came to be filed on record. Complainant put his reliance ***Hiraben w/s Ganesh Choudhari Vs. State of Maharashtra cited supra.*** In that case chargesheet came to be filed for offence under section 498A,323,504,506 r/w 34. Thereafter charge was framed and application for alteration of charge under section 494 was moved by prosecution which was rejected by Ld. Trial Court and it was affirmed by Hon'ble Bombay High Court. This citation is applicable to the present case.

10. In ***Ushaben Vs. Kishorbhai*** cited supra, offence under section 494 was leveled but it was turned down by Hon'ble Gujrat High Court and again Appex Court held that, police can investigate the complaint in accordance with law. But in present case offence under section 494 is not leveled against accused, therefore, this citation is not applicable to the

present case.

11. Ld. Advocate for accused relied on ***Randhirsing Rana Vs. State of Delhi Administration***. This case relating to the power of magistrate to order to further instigation su-moto, which was held that, Magistrate does not have any power su-moto to order further investigation. Present case is not applicable to the case in hand as the facts are different.

12. Again he put his reliance in ***Prithwis Kumar Nag Vs. State of West Bengal*** cited *supra*. In that case it was held by Hon'ble Calcutta High Court, that police can further investigate only after permission from magistrate.

13. Again ***Mulakala Malleshwara Rao and Anr Vs. State of Telangana & Anr.***, this case is relating delay tactics, and lastly ***K.Ravi Vs. State of Tamilnadu and Anr.*** In this case it was held that, charge can be framed at any time before the judgment is pronounce.

14. In case in hand it is a fact that, present case pending for evidence of prosecution. The informant in the present case is reported to be died on 14.05.2020. Considering authority cited as discussed above I am of the considered view that, the application is not tenable therefore require to be rejected. Hence, I proceed to pass following order.

ORDER

Application is rejected.

(Pronounced in the Open Court.)

Nagpur.

Date : 03/12/2024

(M.D.Birhari)

J.M.F.C.(Motor Vehicle Court)

Nagpur.