

MHAH180000452024



**R. C. C. No. 9/2024**

Jayshree Vijay Avhad

**Vs.**

Vijay Rakhma Avhad and others

**ORDER BELOW EXH. 01**

The present complaint is filed alleging that the accused committed the offences punishable under sections 494, 109 and 34 of the Indian Penal Code, 1860.

2. It is alleged in the complaint that the husband of the complainant i. e. accused No. 1 Vijay solemnized the second marriage with accused No. 2 Varsha during subsistence of his first marriage with the complainant. It is also alleged that accused No. 1 ill-treated the complainant and has driven her out of the matrimonial house along-with the daughter.

3. As the complainant has taken up permanent residence after the commission of the offence within the area in which this Court exercises its jurisdiction, the Court has jurisdiction to take cognizance of the present complaint in view of the provision mentioned under section 182(2) of the Cr. P. C., 1973. As some of the accused are residing at places beyond the area in which this Court exercises its jurisdiction and considering the nature of the allegation, the report of Rahuri Police Station under section 202 of the Cr. P. C., 1973 was also called. Perused the complaint, statements of the complainant and her witnesses under section 200 of the Cr. P. C., 1973 and report of Rahuri Police Station under section 202 of the Cr. P. C.,

1973 at Exh. 11 along-with the documents submitted therewith. Heard the Ld. Advocate for the complainant.

4. It is an established principle of law regarding issue process or summoning the accused that it is necessary for the magistrate to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. The magistrate has to carefully scrutinise the evidence brought on record and then examine if any offence is *prima facie* committed by all or any of the accused.

5. Upon careful perusal of the record, *prima facie* it can be seen that the first marriage of accused No. 1 with the complainant is subsisting. The divorce petition between them is still sub-judice. During the subsistence of the first marriage, accused No. 1 solemnized second marriage with accused No. 2. Section 494 of the Indian Penal Code, 1860 indicates that no person other than the spouse to the second marriage could have been charged for the offence punishable under the said section simplicitor. Hence, *prima facie* it is clear that there are sufficient grounds for proceeding against accused No. 1 being the erred spouse under section 494 of the I. P. C., 1860.

6. Firstly, with regard to section 109 of the Indian Penal Code, 1860 it appears that the entire record is completely devoid of any material disclosing the ingredients of the offence of abetment against the accused punishable under section 109 of the I. P. C., 1860. The husband being the principal offender can be proceeded

with under section 494 of the IPC. However, there is absolutely no whisper in the entire record of the case as to in what manner other accused have aided or instigated the husband and thereby abetted him in the commission of the offence under section 494 of the IPC.

7. So far as application of section 34 of the Indian Penal Code to the present case is concerned, recently, the Hon'ble Apex Court of India in the case of **S. Nitheen and Ors. Vs. State of Kerala and Anr., SLP (Criminal) No(s). 8529 of 2019** held as follows:-

*'In order to bring home the said charge, the complainant would be required to prima facie prove not only the presence of the accused persons, but the overt act or omission of the accused persons in the second marriage ceremony and also establish that such accused were aware about the subsisting marriage of the husband with his first wife.'*

8. The statements of accused Nos. 2, 3, 4, 10 and 11 submitted along-with the report of the Police under section 202 of the Cr. P. C., 1973 *prima facie* disclose that they all were about the fact of first marriage of accused No. 1 with the complainant. In their said statements, they themselves stated that due to dispute between accused No. 1 and the complainant, the complainant left her matrimonial house and started residing at her parental house and therefore, they decided to solemnize the marriage between accused Nos. 1 and 2. Moreover, they also stated that except accused Nos. 1, 2, 3, 4, 10 and 11 no relatives were present at the time of second marriage. Hence, *prima facie* it is clear that accused Nos. 2, 3, 4, 10 and 11 are aware about the fact of subsistence of first marriage of

accused No. 1 with the complainant and despite the same, they amongst themselves decided to solemnize the second marriage. Thus, *prima facie* record shows overt acts of accused Nos. 2, 3, 4, 10 and 11 in the commission of the offence punishable under section 34 of the Indian Penal Code, 1860. Therefore, there are sufficient grounds for proceeding against accused Nos. 1, 2, 3, 4, 10 and 11 for the offence punishable under section 494 read with section 34 of the Indian Penal Code, 1860.

9. With regard to all other accused, the entire record does not disclose any shred of allegations or material to show that they all acted as witnesses to the second marriage having knowledge about the first marriage of the complainant with accused No. 1. The complaint as well as material available on record are completely silent about any overt act on the part of accused Nos. 5 to 9, 12 and 13 in solemnization of second marriage. Hence, I *prima facie* don't find any ground to proceed against these accused. Therefore, the complaint is required to be dismissed against accused Nos. 5 to 9, 12 and 13.

10. Considering the points and material on record as discussed above, in the result, following order is passed:-

### **ORDER**

1. Issue process of summons as per section 204 of the Code of Criminal Procedure, 1973 against accused Nos. 1, 2, 3, 4, 10 and 11 for the offence punishable under section 494 read with section 34 of the Indian Penal Code, 1860 returnable on 09/01/2025.

2. The complaint is dismissed under section 203 of the Code of Criminal Procedure, 1973 against accused Nos. 5 to 9, 12 and 13.

Date: 06.11.2024  
Place: Rahuri.

**(Aditya K. Shinde),**  
Judicial Magistrate First Class,  
(Court No.04), Rahuri.