

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE**  
**FIR/ORDER) NO. 7198 of 2013**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

DAKSHBEN MAFATLAL PATEL....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

Appearance:

MR RAXIT J DHOLAKIA, ADVOCATE for the Applicant(s) No. 1

HCLS COMMITTEE, ADVOCATE for the Respondent(s) No. 2

MR SHAILESH C SHARMA, ADVOCATE for the Respondent(s) No. 2

MS RITA CHANDARANA, APP for the Respondent(s) No. 1

**CORAM: HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI**

**Date : 07/07/2016**

**ORAL JUDGMENT**

1. This application is filed under Section

482 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), wherein the applicant has prayed that the complaint being Miscellaneous Application No.531 of 2012 registered with 7<sup>th</sup> Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Surat for the offences punishable under Sections 494, 504, 506(2) and 114 of Indian Penal Code and the process issued thereunder be quashed and set aside qua the applicant.

2. Heard learned advocate Mr.Raxit Dholakia for the applicant, learned APP Ms.Rita Chandarana for respondent no.1-State of Gujarat and learned advocate Mr.Shailesh Sharma for respondent no.2-original complainant.

3. Learned advocate Mr.Dholakia appearing for the applicant submitted that the complaint being Miscellaneous Application No.531 of 2012 is filed against the present applicant and four others under Sections 494, 504, 506(2) and 114 of Indian Penal Code inter alia alleging that the accused no.1-Mukeshbhai Patel and the original complainant had entered into a wed-lock on 7.3.1997 and in spite of that marriage being in existence, the accused no.1 got married to the present applicant-accused no.2 and thereby the applicant has committed offences punishable under Section 494 of Indian Penal Code. Learned

Magistrate has passed the order of issuance of process against the present applicant and other accused.

4. Learned advocate Mr.Dholakia mainly contended that the offence punishable under Section 494 of Indian Penal Code is not applicable qua the present applicant. The same is applicable to the accused no.1 even if it is believed that accused no.1 got married to the accused no.2-present applicant. He, thereafter, submitted that there is no allegation against the applicant that she has abused the complainant. He therefore submitted that no material is produced along with the complaint that the accused no.1 got married to accused no.2. It is further submitted that after the order of acquittal is passed by learned Magistrate on 1.5.2012 in Criminal Case which was filed under Sections 498A, 323, 506(2) and 114 of Indian Penal Code against the husband and in-laws of the complainant, on 13.6.2012 i.e. within a few days of the order of acquittal, the impugned complaint is filed. Therefore, it is nothing but a gross abuse of the process of the Court wherein the present applicant is falsely implicated. He, therefore, prayed that the impugned complaint be quashed and set aside qua the applicant.

5. Learned advocate for the applicant placed reliance on the decision rendered by the Allahabad High Court in the case of *Rupa & Others V/s State of U.P. & Another*, reported in 2013 *LawSuit(All)2139*.

6. Learned advocate for the respondent no.2-original complainant submitted that the ingredients of the alleged offences are made out in the impugned complaint and therefore this Court may not exercise the powers under Section 482 of the Code.

7. Learned APP Ms.Chandarana has supported the submissions canvassed on behalf of learned advocate for respondent no.2.

8. I have considered the submissions canvassed on behalf of learned advocates for the parties. I have gone through the material produced on record. Section 494 of Indian Penal Code provides as under:

"494. Marrying again during lifetime of husband or wife- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception - This section does not extend to

any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge."

9. From reading the aforesaid section, it is clear that the complaint under Section 494 of Indian Penal Code can be filed against the husband and not against the present applicant who is alleged to have got married with accused no.1. The complainant has not produced any material suggesting that the accused no.1 got married to the present applicant. Thus, ingredients of alleged offences are not made out against the applicant.

10. In the case of Rupa & Others (supra), the Allahabad High Court has held in paragraphs 38, 39, 40, 41, 44, 45 as under:

"38. Now the question arises as to whether the applicants can be prosecuted for the offence under section 494 IPC or not. Section 494 IPC is as follows:-

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Section 494 IPC applies to a person who, having a husband or wife living, remarries. In the facts of the instant case, the allegation is that Rajesh Kumar Deorar remarried during subsistence of his first marriage with opposite party no.2. In these circumstances, only Rajesh Kumar Deorar can be prosecuted for the offence punishable under section 494 IPC. The person, with whom second marriage is performed in violation of section 494 IPC, has not been made liable for punishment in this Section.

The contention of learned counsel for opposite party no.2 is that even though the applicants cannot be prosecuted directly for the offence punishable under section 494 IPC, they can be prosecuted for having abetted Rajesh Kumar Deorar for committing an offence under section 494 IPC with the help of section 114 IPC.

Abetment is defined in section 107 as follows:-

"107 IPC. Abetment of a thing - A person abets the doing of a thing, who -  
First.- Instigates any person to do that thing; or  
Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or  
Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing."

39. Explanation 1.- A person who, by wilful representation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

40. Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

41. For abetment of an offence, it is necessary that the abettor must have either instigated any person to do such an offence or must have engaged in a conspiracy for doing such an illegal act. In the instant case, there is no allegation against the applicants that they instigated Rajesh Kumar Deorar to commit an offence punishable under section 494 IPC. There is no allegation that the applicants engaged themselves in any criminal conspiracy to commit an offence under section 494 IPC. It is the case of applicant no.1 that she did not know about any prior marriage of Rajesh Kumar Deorar with opposite party no.2. Her presence at the time of incident dated 7.12.2010 has been falsified as held earlier. In the absence of any knowledge of prior marriage of Rajesh Kumar Deorar, the applicants cannot be held guilty for the offence under section 494 IPC read with section 109 or 114 IPC. Xxxxxxx

44. In the instant case, there is no evidence to show that there was any intentional abetment on the part of the applicants to commit an offence under section 494 IPC. Mere presence of applicants no.2,3 & 4 at the time of marriage of applicant no.1 with Rajesh Kumar Deorar does not make them criminally liable without any criminal intent on their part.

45. In these circumstances, this Court is of the opinion that Rajesh Kumar Deorar and his family members as well as Chhotey Singh and Ram Sajan, who were present at the house of Rajesh Kumar Deorar on 7.12.2010, may be presumed to have the knowledge of alleged earlier marriage of Rajesh Kumar Deorar with opposite party no.2 and may be prosecuted for

the offence punishable under section 494 IPC or its abetment, but as far as applicants are concerned, there is no material to suggest that they had any prior knowledge of the alleged marriage between the opposite party no.2 and Rajesh Kumar Deorar and, therefore, they cannot be prosecuted the offence under section 494 IPC read with section 109 or 114 IPC".

11. In the present case, no material is produced by the complainant in support of her allegations that the present applicant got married to accused no.1. It is also not stated when the marriage has taken place. Thus, in absence of any material, it cannot be said that the present applicant has, in any way, abetted accused no.1. Even assuming that such marriage has taken place in the year 2005, the impugned complaint has been filed on 13.6.2012 and that too when learned Magistrate has acquitted the original accused no.1 and in-laws in the complaint which was filed under Sections 498A, 323, 506(2) and 114 of Indian Penal Code by an order dated 12.5.2012.

12. In view of the aforesaid facts and circumstances of the present case, this Court is of the opinion that the complainant has abused the process of the Court and therefore in the interest of justice, this Court is inclined to exercise the powers vested under Section 482 of



the Code.

13. In view of the aforesaid discussion, this application is allowed. The complaint being Miscellaneous Application No.531 of 2012 registered with 7<sup>th</sup> Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Surat and the process issued thereunder are quashed and set aside qua the present applicant. Rule is made absolute.

Srilatha

(VIPUL M. PANCHOLI, J.)

