

(1978) 06 BOM CK 0039**Bombay High Court****Case No:** None

Jacob Harold Aranha and
Another

APPELLANT**Vs**

Mrs. Vera Aranha and Another

RESPONDENT**Date of Decision:** June 23, 1978**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 494

Citation: (1979) CriLJ 974**Hon'ble Judges:** Dharmadhikari, J; Aggarwal, J**Bench:** Division Bench**Judgement**

Dharmadhikari, J.

Respondent No. 1 in this application filed a complaint against the petitioners u/s 494 of the I.P.C. According to respondent No. 1 she was legally married to the petitioner on 10th of May 1964. For some days thereafter they lived together and then she was forced to leave the house of her husband and go to reside with her mother. It is her case in the complaint that since then she is living with her mother. It is also her case that the petitioner No. 1 was in the habit of developing illicit intimacy with different women from time to time. Originally accused No. 2 was employed by him as a domestic servant several years back. However, she was being treated as his mistress. She also came to know that accused No. 2 had given birth to a child on or about 30th Jan, 1975. When she made inquiries in this behalf she came to know from the Church record that accused Nos. 1 and 2 had been shown as father and mother of the child in question and accused No. 1 had stated that he and accused No. 2 had married some time previously. She has further made a statement in the complaint itself that she will examine the representative from the Church for this purpose. She also stated that she will rely on the certificate issued by the Church. According to the complainant accused No. 2 gave birth to another child on 26th Dec.

1976 and she again obtained a copy of the hospital record and a copy of official certificate from the Bombay Municipal Corporation showing accused No. 1 as father and accused No. 2 as mother of the said child. According to the complainant here again accused No. 1 has told the hospital authorities that accused No. 2 is his wife. On these allegations she filed this complaint u/s 494 of the Indian Penal Code against both the accused persons. The learned Metropolitan Magistrate, 6th Court Mazgaon, Bombay after satisfying himself about the allegations made in the complaint passed an order on 3rd of March 1977 directing issue of process u/s 494 of the I.P.C. against accused No. 1 and u/s 494 read with Section 114 of the I.P.C. against accused No. 2. It is this order which is challenged before us in this application which is filed u/s 482 of the Cri. P.C.

2. The petitioners in this case have contended before us that the learned Metropolitan Magistrate committed an error in issuing process when even it is assumed that all the allegations made in the complaint are true, the complaint does not disclose any offence punishable u/s 494 of the Indian Penal Code. According to the petitioners none of the ingredients necessary to prove an offence u/s 494 of the Indian Penal Code are disclosed in the complaint. They further contended that this complaint has been filed with the sole intention of harassing him because of the previous litigation between the parties. It is the case of the petitioners before us that as essential ingredients of the offence u/s 494 are not even alleged in the complaint, the complaint does not disclose any offence at all and, therefore, the order passed by the Metropolitan Magistrate directing issue of process is not only illegal but is also without jurisdiction and is therefore liable to be quashed under inherent powers of this Court. According to the petitioners for proving an offence u/s 494 of the I.P.C. it is necessary that the complainant should allege as to when the marriage between the accused persons took place. In support of these contentions the petitioners are strongly relying upon certain decisions of the Supreme Court. However it is not necessary to make a reference to these decisions as to law on the subject is well settled.

3. It is by now well settled that at the stage of issuing process it is not the duty of the Court to find out as to whether the accused will be ultimately convicted or acquitted. The object of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. Mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand such grounds may indicate the need for proceeding further in order to discover truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or, that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then of course, the complaint is liable to be dismissed at that stage only. What the Magistrate has to determine at the

stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a *prima facie* case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true. See D.N. Bhattacharjee and Others Vs. State of West Bengal and Another,

4. Further it is also well settled that at the stage of issuing process a Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its inherent jurisdiction which is to be sparingly used. The scope of the inquiry u/s 202 is extremely limited - only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a *prima facie* case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact in proceedings u/s 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a *prima facie* case against him. The discretion given to the Magistrate in this behalf has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry u/s 202 which culminates into an order u/s 204. See Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, It is no doubt true that in this very decision the Supreme Court has enumerated certain illustrations as to when the order of Magistrate issuing process against the accused can be quashed or set aside. These illustrations are as under at p. 1537 of Cri LJ:

(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is

sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as want, of sanction or absence of a complaint by legally competent authority and the like.

5. Therefore, the case before us will have to be scrutinised in the light of these well-established principles. From the bare reading of the complaint it appears that the complaint has made specific allegations in the complaint stating that original accused Nos. 1 and 2 have gone through a second marriage. In support of these allegations the complainant is relying upon certain certificates issued by the Church Authorities as well as the statement of the present petitioner No. 1 to the effect that he and accused No. 2 had been married some time previously. In the complaint itself it is further stated by the complainant that she intended to examine the representative from the Church and wanted to rely upon the certificate issued by the Church, which shows the name of the child. The complainant is also relying upon another fact that accused No. 2 gave birth to another child on 26-2-1976 and in this context she is relying upon the copy of the hospital records and a copy of the official certificate from the Bombay Municipal Corporation showing accused No. 1 as father and accused No. 2 as mother of the said child. According to her, here again accused No. 1 told the hospital authorities that accused No. 2 is his wife. From the complaint it is further clear that she wants to establish these facts by examining the witnesses. As to whether the admission or confession of the accused made before the hospital authorities or the representatives of the Church is relevant or not is a matter which cannot be decided at this stage. It is also stated before us by the counsel for the complainant that she is going to lead evidence to prove feature of second marriage. As to how the complainant is going to prove the offence of bigamy u/s 494 of the Indian Penal Code is a matter which must be left to the complainant herself and the complainant is entitled to have an opportunity to prove her case. It is not possible for us to accept the contentions of the petitioners that the allegations made in the complaint or the verification statement do not make even a *prima facie* case in this behalf or there is no material in the complaint or in the statement on the basis of which the Metropolitan Magistrate could be satisfied for issuing process u/s 494 of the I.P.C. against him. It is premature to judge the whole issue at this stage.

6. In the view which we have taken it is not necessary to make a detailed reference to the affidavit filed by the petitioner No. 1 on 19th June 1978. As a matter of fact by this affidavit the petitioner No. 1 wants to bring on record certain contradictions and inconsistencies in the stand now taken by the complainant and the stand taken by her in the earlier proceedings. In our opinion it is not necessary to go into this question at this stage because the petitioners will have the adequate opportunities to put forward their defence before the Metropolitan Magistrate. These previous

statements could be put to the complainant when she is in the witness box.

7. Therefore, in our opinion, in any case this is not a fit case where inherent powers of this Court u/s 482 of the Cr. P.C. could be exercised, It is well settled that these inherent powers of this Court should be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities. Having regard to the facts and circumstances of the present case, in our opinion no case has been made out for such an interference under these inherent powers.

8. In the result, therefore, the criminal application fails and is dismissed. Rule is discharged.

9. For the purpose of clarification, we want to make it clear that nothing said in this judgment will be binding upon the learned Metropolitan Magistrate and he is at liberty to decide the case on merits in accordance with law after appreciating the evidence produced before him.