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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 6243 OF 2019**

Mr. Subhash Vitthal Ahire

.... Petitioner.

V/s

The State of Maharashtra & Anr.

.....Respondents

Mr. Rajesh A. More for the Petitioner.

Mr. S.V. Gavand, APP for the Respondents/State.

Mr. Tukaram Shendge i/b Anupama Kolekar for Respondent No.2.

PSI Nangare, Chaturshrungi Police Station, present.

**CORAM: NITIN W. SAMBRE &
RAJESH S. PATIL, JJ.**

DATE: AUGUST 24, 2023

P.C.:-

1] Prayer is for quashing of FIR in Crime No. 0824 dated 27.09.2019 registered with Chatursrungi Police Station for the offence punishable under Sections 376, 493, 494, 496 of the Indian Penal Code.

2] Genesis of the offence alleged against the Petitioner is, Respondent/complainant, a widow, was working as an academican, so also the Petitioner. During the time of student days of the complainant, Petitioner was tutoring the complainant. After the death of the husband of the complainant on 24.02.2006, Petitioner started

visiting the complainant and, at times, provided moral support. Petitioner, thereafter, made the complaint to understand that he is not getting along with his wife and likely to divorce her. Subsequently, he made the complainant to believe that he has divorced his wife and performed second marriage on 18.06.2014 with the complainant. After marriage on 18.06.2014 with the complainant, Petitioner continued to stay with her upto 31.01.2016. In the intervening period, it is the case of the complainant that she twice carried pregnancy from the Petitioner, however same was terminated. Thereafter, Petitioner abandoned the complainant, which led to causing inquiry in the matter, when she realized that Petitioner has misrepresented her that he is a divorcee and under the false promise performed the marriage and established physical relationship. Further inquiry revealed that Petitioner thereafter started residing with his first wife. As such offence came to be registered for sexual exploitation i.e. under section 376, bigamy etc.

3] We have heard Mr. More, learned Counsel appearing on behalf of the Petitioner, learned APP assisted by the Counsel for the

complainant.

4] Submissions of Mr More are, divorce proceedings by the Petitioner against his wife were initiated way back in 2010 and were immediately withdrawn, which fact was well within the knowledge of the Respondent-complainant. According to him, fact that the Petitioner has never divorced his first wife was well within the knowledge of the Respondent-complainant. During certain domestic inquiry in the Educational Institution, Respondent-complainant has taken a stand about having knowledge of such existing relation of the Petitioner with his first wife. Mr. More would urge that, Petitioner, considering that Respondent-complainant was in hardship, provided her social, financial and physical support and thus relation, if any, was consensual. Mr. More would urge that Petitioner is not disputing his second marriage with the complainant and that being so, there is no question of offence under Section 376 of the IPC.

5] The learned APP assisted by the learned Counsel for the complainant would try to support the case of the prosecution based on

the investigation carried out till this date.

6] We have perused the investigation papers with the aid of the learned APP

7] Fact about death of husband of the Respondent-complainant and the Petitioner's marriage with Respondent-complainant on 18.06.2014 during subsistence of his first marriage is a fact which is neither disputed by the Petitioner nor by Respondent-complainant. Once such relationship and factual matrix is not disputed, this Court has to infer satisfaction of necessary ingredients either under Section 376 or, in the alternative, under Sections 493, 494, 496 of the IPC i.e. bigamy. As far as claim of the Petitioner that his relationship with the Respondent-complainant was consensual is concerned, on one hand Petitioner is admitting that he has performed second marriage with the Respondent-complainant when his first marriage was, in fact, subsisting and on the other, he is claiming that his relation with Respondent-complainant was consensual. Such consensual relationship, if appreciated from the contents of the FIR, what can be

noticed is, Petitioner made the complainant understand that he has divorced his wife and as such has performed second marriage. In any case, in Hindu Law, during subsistence of first marriage, second marriage is not permissible and as such performance of second marriage during subsistence of first marriage amounts to offence of bigamy.

8] In the aforesaid backdrop, conduct of the Petitioner of establishing physical relationship with the Respondent-complainant when his first marriage was subsisting at this stage could be said to have satisfied the ingredients of Section 376 of the IPC. Apart from above, reliance placed by Mr. More, learned Counsel for the Petitioner on certain material during domestic inquiry by the Educational Institution is in the form of defense which cannot be gone into at this stage of the matter. There is enough material on record to infer prima facie involvement of the Petitioner in the offence alleged. That being so, Petition sans merit and same is dismissed.

(RAJESH S. PATIL, J.)

(NITIN W. SAMBRE, J.)