

**Basappa and Others Vs. Rajshree**

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**SooperKanoon Citation :** [sooperkanoon.com/1106365](http://sooperkanoon.com/1106365)

**Court :** Karnataka Gulbarga

**Decided On :** Jan-08-2013

**Judge :** Mohan Shantanagoudar

**Appeal No. :** Criminal Petition No. 15739 of 2012

**Appellant :** Basappa and Others

**Respondent :** Rajshree

**Judgement :**

Petitioners are accused Nos.1 to 8 in P.C.No. 44/2011 pending on the file of JMFC., Muddebihal. Based on the private complaint lodged by the respondent alleging the offence under Section 494 r/w Section 34 of IPC, process is issued. Said order is called in question in this petition.

2. The complainant alleges that the first petitioner is the husband of the complainant. During the subsistence of marriage between the respondent (complainant) and the first petitioner, the first petitioner allegedly married the second petitioner viz., Basamma. Petitioners 3 to 8 and two others said to have actively participated and assisted and also instigated the second marriage between the first and second petitioners and that therefore the petitioners have committed the offence punishable under Section 494 of IPC.

3. During the course of enquiry, the complainant gave her sworn statement. Admittedly, she is not the eye witness to the alleged second marriage. According

to the complainant, her uncle Basappa Jummanna Hokrani was the eye witness. But the said Basappa Jummanna Hokrani is not examined and his sworn statement is not recorded. The statements of any of the eye witnesses are not recorded. The material on record is not sufficient to issue summons to the accused. Merely on asking, the process cannot be issued. Some prima facie material has to be produced before the Court for issuing summons, otherwise, anybody may abuse the process of law.

In view of the same, the proceedings in P.C.No. 44/2011 pending on the five of JMFC., Muddebihal are liable to be quashed and accordingly they are quashed due to lack of material.

However, it is open for the complainant to lodge fresh complaint, if she so chooses and to produce reasonable material in support of her case.

Petition stands allowed with the aforesaid observations.

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