

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 867 OF 2012

The State of Maharashtra	...	Applicant
vs.		
Shri Shivaji Namdev Patil & Ors.	...	Respondents

Mr. Arfan Sait, APP, for the applicant-State.

Mr. Sandip L. Babar for respondent Nos. 1 to 3.

Mr. P.G.Sarda i/b. Ms. Suvarna Yadav for respondent No.4.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 16th November, 2015.

P.C.

Heard the learned APP and the learned counsel for respondent Nos. 1 to 3 and the learned counsel for the original complainant.

2. Perused the records. It appears from the records that the complainant Sangita was married to original accused No.1 – Shivaji Patil on 7.5.1999. The couple blessed with two daughters i.e. Komal and Payal. At the time of marriage, accused No.1 was working in an industry at Mumbai, whereas the parents of the original accused No.1 were residing at Village Shittur. On 15.4.2006, Sangita lodged a report at Shahuwadi Police

Station alleging therein that at the time of marriage, her parents had gifted 7 tolas of gold and other valuables. She is the mother of Komal and Payal. That she was treated properly for 2 – 3 years. Thereafter, she was harassed on account of demand of money. That her father had given Rs.10,000/- to original accused No.1. That when she was at Mumbai, she was abused and assaulted by her husband. That one year prior to lodging of the FIR, she was residing with her mother-in-law in Village Shittur. Her married sister-in-law also used to visit the house and they used to abuse her. In August 2005, she had left her matrimonial abode and was residing with her parents. In November 2005, at the time of Diwali, the original accused No.1 had brought her back from her maternal house. On 22.11.2005, there was a compromise. According to her, the original accused No.1 had given an undertaking that his mother and sister would not harass her in future. That when she went to Village Shittur, her husband denuded her of all ornaments and had driven her out of the house. Hence, she was coonstrained to lodge a report.

3. The accused were charge-sheeted for the offences punishable under Sections 498A, 323, 504 read with Section 34 of Indian Penal Code. The case was registered as RCC No.44 of 2006. The learned Judicial

Magistrate, First Class, Malkapur, Shahuwadi had convicted the accused for the offences with which they were charged by a judgment and order dated 7.8.2006. Being aggrieved by the said judgment and order, the accused had filed Criminal Appeal No.153 of 2008 before the District Judge at Kolhapur. The learned District Judge by a judgment and order dated 11.11.2011 was pleased to acquit the accused of all the charges levelled against them. Hence, this application seeking leave to appeal.

4. Upon perusal of the substantive evidence of the complainant, it is clear that no specific case was made out against the accused for the offence punishable under Sections 498A, 504, 323 read with Section 34 of IPC. The complainant has not referred to any demand of Rs.1 lakh by the original accused No.1 in the first information report. In the FIR, it is specifically stated that she was being harassed on account of suspicion. All that is stated in the first information report is that 3 years prior to the lodging of the FIR, her father had given Rs.10,000/- to the original accused No.1. That she has stated in the examination-in-chief that she was assaulted by accused No.1. That her hand was fractured. She had informed her parents about the same. However, nobody visited her. There is no medical certificate, injury certificate or any other record to indicate that she had been assaulted by original accused No.1. She has admitted in the cross-

examination that on 22.11.2005, she had executed a Non-judicial Stamp on which she had specifically stated that she would not leave her matrimonial house without informing the members of the family. She had also given an undertaking that she would return all the ornaments worn by her at the time of leaving the house. That she would behave properly. She has relied upon the Non-judicial Stamp executed by the original accused No.1, wherein he had stated that his mother and sister would not harass or ill-treat her in the matrimonial house.

5. It is pertinent to note that she had left the matrimonial house in August 2005. The stamp was executed in November, 2005. According to her, on the very next day of executing the bond she was driven out of the matrimonial house. It is clear that she had withdrawn herself from the matrimonial house sometime in August 2005 and had thereafter joined the company of the accused only for one day on 22.11.2005. The first information report is lodged on 15.4.2006. There is no plausible explanation for the inordinate delay in lodging the FIR.

6. In the cross-examination, material omissions are elicited. From the tenor of the cross-examination, it is clear that the complainant has neither given the nature of ill-treatment meted out to her nor has given the

dates on which she was ill-treated. The substantive evidence appears to be omnibus.

7. The learned counsel for the respondent has placed on record the judgment passed by the Judicial Magistrate, First Class, Malkapur, Shahuwadi in Regular Criminal Case No.44 of 2006 dated 2.8.2008 which would indicate that the complainant had also initiated proceedings against the present respondents under Section 494 read with Section 34 of IPC and under Sections 3, 4, 5 and 6 of Child Marriage Restraint Act alleging therein that the accused No.1 had subsequently got married to a minor. The said judgment and order has not been challenged and has attained finality. The said case was initiated subsequently i.e. on 3.7.2006, whereas the first information report in the present case is lodged on 15.4.2006.

8. The learned Sessions Judge has appreciated the evidence on record in its proper perspective. The learned Sessions Judge has rightly arrived at a conclusion that no case is made out for the offence punishable under Section 498A of IPC. Besides improvement in the substantive evidence, there are material omissions and contradictions which go to the root of the matter. The learned appellate Court has recorded justifiable

reasons for acquitting the accused persons. Hence, no interference is warranted. This is not a fit case for allowing the application seeking leave to appeal. Hence, the application seeking leave being sans merit, stands rejected.

(SMT.SADHANA S.JADHAV, J.)