

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 85 OF 2000

1) Altaf Hussain Allauddin Shaikh)
resident of Sadar Bazar, Solapur)

2 Nasir Allauddin Shaikh)
Sadar Bazar, Solapur.) .. Applicants

Versus

The State of Maharashtra) .. Respondent

Mr. S. G. Kudle, Advocate for the applicant
Mr. V. B., Konde-Deshmukh, APP for the respondent-State.

CORAM:-M.L. TAHALIYANI,J.
DATED : -30/01/2015

ORAL JUDGMENT:

Heard the learned counsel for the applicants and
learned APP for the respondent State.

2 This revision application arises out of the order
passed by the learned Addl. Sessions Judge, Solapur in
Criminal Appeal No. 49 of 1996. The applicants, Altaf and

Nasir along with three others were prosecuted for the offence punishable u/s 498A r/w Section 34 of I.P.C. The learned trial Magistrate while delivering the judgment, after conclusion of trial, found accused Nos. 1,2,3 and 5 guilty of the offence punishable u/s 498A r/w Section 34 of I.P.C. The accused No. 4 was acquitted. The learned trial Magistrate sentenced all the accused to suffer RI for one year and to pay fine. The accused Nos.1, 2, 3 and 5 appealed to the Sessions Court. The learned Sessions Judge maintained the conviction of all the appellants and reduced the sentences imposed on accused Nos. 1 and 5 and made it till rising of Court, instead of one year. The sentences imposed on the applicants (accused Nos. 2 and 3) was maintained.

3 The applicants were accused Nos. 2 and 3 in the original judgment of learned trial Magistrate. They are aggrieved by the judgment and order to the extent that they have been asked to suffer RI for one year.

4 The complainant Dilshad was married to the applicant No. 1 Altaf on 12th of May, 1991 and she was staying with the applicant No. 1 Altaf and others in a joint family. It was alleged by her that she was treated well for about two to three years and thereafter applicants and other family members started ill-treating her. At this stage, it may be mentioned here that, the applicant Nos. 1 and 2 are brothers and they were staying jointly with other family members in a joint family. It is alleged by the complainant that she was being tortured and was being ill-treated. It is alleged by her that accused Nos. 1, 3 and 4 had once beaten her. The applicant No. 1 was also frequently beating her. It is stated by her in the FIR that her mother-in-law in fact wanted a servant and not a daughter-in-law. This was reiterated by the applicant No. 1 also. Similar other general allegations have been made against the applicants and other accused.

5 On the basis of these allegations FIR was

registered and after conclusion of investigation the charge-sheet was filed against five accused including the applicants. As already stated, all of them were tried by the J.M.F.C.

6 Coming to the merits of the case, it can be stated here that the whole case of the prosecution was based on the evidence of PW 1 against all the other accused. The other evidence appears to be hear say. The conviction is entirely based on the evidence of PW 1, Dilshad. I have gone through her evidence. She has not stated specific incidents, cumulative effect of which could have been cruelty within the meaning of Section 498A of I.P.C. Section 498A of I.P.C. can be reproduced as under:

“498A. Husband or relative of husband of a women subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three

years and shall also be liable to fine.

Explanation. - For the purpose of this section,
“cruelty” means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand].”

7 If one goes through the 'Explanation', which defines '*cruelty*', it can be seen that the requirements of cruelty within the meaning of Section 498A of I.P.C., are different as

compared to the simple cases of assault. To prove the offence punishable u/s 498A of I.P.C, it is necessary for the prosecution to prove (1) wilful conduct of the nature which was likely to (a) drive the woman to commit suicide or (b) to cause injury or danger to her life, limb or health or (2) harassment of the woman where such harassment is with a view (a) to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or (b) is on account of failure by her or any person related to her to meet such demand.

8 In the present case though allegations have been made against the applicants and other accused, the narration of the incident does not indicate as to on which date, and at which place, the incidents in question had occurred. All the allegations are general in nature. Moreover, PW 1 has stated that she was being tortured and ill-treated. In this regard, it may be stated here that whether a particular conduct of a

person amounts to torture or ill-treatment has to be decided by the Court. The Court needs the facts on record to decide whether it amounts to cruelty. The witness himself cannot declare that she was being tortured or subjected to ill-treatment. She has to narrate the incident in which she had suffered at the hands of her husband and relatives. In the present case, the evidence given by PW 1 is general in nature and does not specify the dates, time and places where the alleged incidents had occurred.

9 The evidence is not sufficient to prove that there was wilful conduct on the part of the applicants which was of such a nature that it was likely to drive PW 1 to commit suicide or cause grave injury or danger to her life. The evidence also does not prove that harassment to PW 1 Dilshad was with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet

such demand. The PW 1 at one place in her evidence has stated that her mother-in-law accused No. 1 Raziabi Allaudin Shaikh had insisted that PW 1 should take loan of '*unemployed educated youths' scheme*' for purchasing plot and autorickshaw for applicant No. 1. She also said that, if PW 1 did not get the loan she should bring the money from her parents. PW 1 refused to take loan and, therefore, she was being ill-treated. This, in my opinion, will not amount to harassment with a view to coercing the complainant / PW 1 to meet unlawful demand. If this evidence is accepted to be true and correct it does not prove the offence punishable u/s 498A of I.P.C. It is obvious from the evidence that PW 1 Dilshad was being asked to take loan under the scheme which was applicable to her. The plot and autorickshaw would have been property of the family. Further statement of PW 1 that she was told that if she failed to get the loan she should bring money from her mother, also does not amount to unlawful demand *inasmuch as* the amount was

not demanded by way of dowry.

10 The rest of the allegations are very vague and general in nature and do not amount to the offence punishable u/s 498A of I.P.C.

11 For all these reasons, I pass the following order:

 The revision application is allowed. The judgments and orders passed by the learned trial Magistrate and appellate Court are set aside. The applicants are acquitted of the offence punishable u/s 498A r/w Section 34 of I.P.C. Their bail bonds shall stand cancelled.

(JUDGE)

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