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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.692 OF 2002.**

The State of Maharashtra	]	
at the instance of Sarkarwada Police Statin	]	... Appellant.
Nashik	]	

V/s.

1. Sunil Eknath Handge	]	
age: 26 years	]	
	]	
2. Dattatraya Eknath Handge,	]	
age: 29 years,	]	<u>Respondents</u>
	]	Original
3. Smt. Haushabai Eknath Handge	]	Accused
Age: 41 years,	]	Nos
	]	1, 3 to 5
4. Smt.Nandabai Dattatraya Handge,	]	
age: 23 years,	]	
	]	
all are residing near Someshwar Temple	]	
Gangapur road, Nashik	]	

Mr. H. J. Dedia, APP for the appellant Stat
Mr. M.S. Karnik a/w Mr. A.S. Pandire, adv for resposdent Nos 1 to 4.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th DECEMBER, 2015.

ORAL JUDGMENT.: [Per : Dr. Shalini Phansalkar-Joshi,J.]

1. The State has preferred this appeal, challenging the acquittal

of respondents, for the offence punishable under Sections 498A and 506 read with Section 34 of the Indian Penal Code, as recorded by the learned Judicial Magistrate First Class, Court No.1 Nashik, vide his judgment and order dated 8th March, 2002, in R.C.C.No.186 of 1998

2. Brief facts of the appeal can be stated as follows :-

The marriage of P.W.1 Sangeeta with respondent No.1 was performed on 10th May, 1997 at Lasalgaon. Respondent Nos 2 to 4 were relatives of respondent No.1 being his mother, brother and brother's wife. After the marriage, Sangeeta went to reside in the house of respondents. Initially for a period of 1 ½ month, she was treated properly. Thereafter a demand of Rs.50,000/- was made from her parents in order to repay the loan amount. As the said demand was not satisfied, she was subjected to harassment and illtreatment. She was also driven out of the house. After delivery of her daughter on 9th February, 1998, she has ultimately lodged complaint against respondents on 8th may, 1998.

3. On her complaint, C.R.No.116 of 1998 came to be registered against respondents at Sarkarwada Police Station. During the

course of investigation, statements of witnesses were recorded. Respondents were arrested and further to completion of investigation, chargesheet came to be filed against respondents.

4. In support of its case, prosecution examined in all five witnesses. P.W.1 is Sangeeta, the wife of respondent No.1., P.W.2 Tukaram is her father, P.W.3 Jyoti is her sister and P.W.4 , Md Khan driver on the jeep of her father and lastly P.W.5 PSI Madhukar Wani,

5. On appreciation of their evidence, the trial Court found that there was inordinate delay in lodging the complaint which was affecting bonafides of the prosecution case. The delay was not properly explained and hence the trial Court extended benefit of doubt to the respondents and acquitted them of both the offences charged against them.

6. This judgment of the trial Court is challenged in this appeal by learned APP for State, submitting that there is consistent evidence of P.W.1 Sangeeta supported with the evidence of P.W.2 her father and P.W.3 Jyoti about the demand of Rs.50,000/- and on that count

harassment and illtreatment. It is urged by the learned APP that in case of offence under Section 498A of PC, there can hardly be evidence of any third person or strangers as whatever illtreatment takes place within the four corners of the house and therefore the evidence in such case is naturally near and dear one. According to him, trial Court should have relied upon said evidence and convicted the respondent.

7. Per contra, learned counsel for respondent has pointed out that here allegations are not only of general nature, but after last incident dated 3.1.1998, complaint is lodged on 8.5.1998 that too after respondent No.1 has filed petition for restitution of conjugal rights against P.W.1 which clearly points out that lodging of complaint was an after thought and on this sole ground, itself the trial Court was justified in acquitting respondents.

8. At the outset itself, learned counsel for respondents has struck a note of caution by submitting that as this Court is sitting in an appeal against judgment of acquittal, the scope of interference is limited. Only if the findings recorded by the trial court are found to be perverse i.e. being not borne out from the evidence on record, then only this Court

can justifiably interfere in the said findings. Otherwise merely because two reasonable views are possible and this Court arrives at a different view than the view taken by the trial Court, this Court cannot substitute its own view. According to him, in the present case, the view taken by the trial Court is a possible, probable and reasonable view. I find much substance in the submission of learned counsel for respondents.

9. Here, there is evidence of P.W.1 Sangeeta, P.W.2 her father Tukaram and P.W.3 her sister Jyoti, have deposed that there was demand of Rs.50,000/- and to satisfy said demand, P.W.1 Sangeeta was subjected to harassment. However, according to their evidence, last incident when according to them, P.W.1 Sangeeta was assaulted and driven out of the house for failure to satisfy the demand of Rs.50,000/-, took place on 3.1.1998. If really respondents had assaulted P. W. 1 Sangeeta , in the presence of her father and sister that too with marks of injury on her person, as deposed by P.W.3 Jyoti, it does not appear probable that they would wait for 5 months to lodge complaint. The explanation offered by these witnesses for delay in lodging complaint is also not consistent. As per P.W.1 Sangeeta, on account her delivery that took place on 9th February, 1998, there was delay in lodging complaint; whereas

according to P.W.2 Tukaram, complaint was not lodged immediately as they had hope that respondent No.1 may take her for cohabitation; and according to P.W.3 Jyoti, complaint was not lodged immediately as they wanted P.W. 1 Sangeeta to reside with respondents.

10. It is pertinent to note that as admitted by these witnesses, only after respondent No.1 has filed petition for restitution of conjugal rights, complaint is lodged with police. Thus, the delay in lodging of the complaint and different reasons given by each witness to explain the delay has proved fatal to the prosecution case. It gives colour of complaint being lodged as after thought, as P.W.1 Sangeeta did not want to cohabit with respondent No.1. As admitted by her, she was more educated than respondent No.1. Suggestions are also put up to the witness that P.W.2 Tukaram wanted respondent to stay in his house and work as driver on the jeep which he has newly purchased by him. This was the defence taken by the respondent in this case.

11. Having regard to the unexplained delay in filing complaint and the particular facts of the case that the complaint was lodged only as counter blast to the petition for restitution of conjugal rights filed by

respondent No.1, it has to be held that the finding arrived at by the trial Court is borne out from the evidence on record. The view taken by the trial Court is possible and probable view of the matter and in such situation in this appeal, this Court is refraining itself from making any interference in the same. Therefore, the appeal stands dismissed. Bail bonds of respondents stand cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed judgment.