

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 315 OF 2011.

Baliram Pandursingh Rathod ..vs.. State of Mah. and anr.

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Mr.Firdos Mirza, Adv. for the applicant.
 Mr.R.S.Nayak, APP for the State.

CORAM : A.B.CHAUDHARI AND
P.N.DESHMUKH, JJ.
DATED : AUGUST 6, 2015.

Mr.Mirza, learned counsel for the applicant, vehemently submitted that the Supreme Court in the case of **Preeti Gupta and anr. ..vs.. State of Jharkhand and anr.** reported in **(2010)7 SCC 667** had expressed anxiety over easy registration of offence under Section 498-A of the Indian Penal Code involving all the family members and relatives and that therefore, recommendation was made to the Law Commission to renew the provision of Section 498-A of the Indian Penal Code in the larger interest of the society. Mr.Mirza then submitted that the Circular dated 29th of May, 2010 issued by the Government of Maharashtra in the light of the Supreme Court judgment directing that F.I.R. in relation to offence under Section 498-A of the Indian Penal Code should not be registered directly on the basis of complaint but before that enquiry should be made. Learned counsel then submitted that the applicant is a member of police force at Amravati and was malafidely involved because of his enmity with the Commissioner of Police at Amravati.

Per contra, Mr.Nayak, learned Additional Public Prosecutor, submitted that after constitutional judgment in the case of **Lalita Kumari ..vs.. Govt. of U.P. and ors.** reported in **2013(13) SCALE 559**, the scenario has completely changed and this Court may keep in

mind extant legal position after said decision and therefore, the application should be rejected.

We have heard learned counsel for the parties and we have perused F.I.R. and the judgment in the case of *Preeti Gupta* (supra) so also Circular dated 29th of May, 2010 issued by the State Government. On perusal of the FIR we find that material exists for registration of FIR.

Insofar as registration of offence under Section 498-A of the Indian Penal Code is concerned, issue is now no more *res integra* in view of the decision of the constitution Bench judgment in the case of *Lalita Kumari* (supra).

We understand the anxiety expressed by Mr.Mirza as to relatives being brought into the net of FIR as expressed in the case of *Preeti Gupta* (supra) but then we do not have any choice except to apply the law declared in *Lalita Kumari's* case. We do not say anything further. That being so, we make the following order.

ORDER

Criminal Application (APL) No.315 of 2011 is disposed of reserving liberty in favour of the applicant to apply for discharge in the trial court after charge-sheet is filed. If such application is made, same shall be disposed of at the earliest by the competent court.

JUDGE

JUDGE

Chute.