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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.70 OF 2004

Ramrao s/o Shivaji Panghate,
Age: 30 years, Occ: Labour,
R/o. Thana, Tq. Soygaon. ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr P.F. Patni, Advocate for applicant;
Mr K.D. Munde, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 19th OCTOBER, 2016

ORAL JUDGMENT :

Present criminal revision application is against the judgment and order passed by learned Judicial Magistrate, First Class, Soygaon, District Aurangabad, on 29th January, 2001, in Regular Criminal Case No. 196 of 2000, convicting the applicant-accused for offence punishable under Section 498-A of the Indian Penal Code, ordering rigorous imprisonment for one year with fine of Rs.500/-, in default to suffer further rigorous

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imprisonment for one month, which was further partly modified in Criminal Appeal No. 17 of 2001 vide judgment and order dated 9th February, 2004 by learned Sessions Judge, Aurangabad reducing imprisonment of the applicant from one year to six months.

2. The prosecution case as appears against the present applicant is that the applicant was married to complainant Sunita some time in 1995. There was a demand of Rs.10,000/- for investment in the business of construction from the accused persons, which was not fulfilled, as such, deceased Sunita was subjected to mental and physical cruelty. As a consequence, complaint was lodged on 29th May, 1996, resulting into registration of Crime No. 50 of 1996. The applicant along with his mother Bayajabai was charged for offence punishable under Sections 498A, 323, 504, 506 read with Section 34 of the Indian Penal Code and charge came to be framed against them at Exhibit-12. Both of them pleaded not guilty and claimed to be tried.

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3. In support of prosecution case, the prosecution has examined complainant Sunita - P.W. No. 2 at Exh. 29, her mother Janabai P.W. 3 at Exh. 30, P.W. 4 Rajaram, Janabai's brother-in-law at Exh. 33 alongwith other independent witnesses Punjaram and Fakirrao, Police Patil.

4. Mr Patni, learned counsel for applicant, while trying to make out a case for grant of acquittal would urge that the offence in question came to be registered on 29th May, 1996. He would submit that apart from the issue of unexplained delay in lodging first information report as could be apparent from the entry in the station diary being entry No.149, he would harp upon the evidence of P.W. 3-Janabai, mother of victim Sunita. From the said testimony, he would urge that the said witness has admitted that Sunita has visited her paternal house almost five times. It is then claimed that Sunita has not suffered any injuries and Section 97 of Code of Criminal Procedure was

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taken recourse by the parents of Sunita against the present applicant. It is then claimed that Sunita used to go for answering nature's call and also for fetching water from public hand pump when she has not narrated the alleged ill-treatment to anybody. According to him, there is exaggeration in the narration in the F.I.R. He would submit that the alleged incident is claimed to have taken place on 28th May, 1996 and offence is registered on 30th May, 1996.

5. Learned A.P.P. opposed claim of the applicant on the ground that both the Court below have concurrently held that the accused has committed offence punishable under Section 498A of Indian Penal Code as he has practised cruelty on Sunita. According to him, there is enough material on the record to infer that the accused is prima facie involved in the commission of crime in question.

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6. On the rival submissions, I have proceeded to analysed the evidence as is brought on record. P.W. No. 1 Punjaram, uncle of Sunita is examined at Exh. 27, who has stated that he is residing adjoining to Sunita's father Rajaram. According to him, on the date of complaint, complainant Sunita narrated him about alleged ill-treatment and demand of Rs. 10,000/-. He has also narrated that Police Patil Fakirrao is his uncle. Complainant P.W.2 Sunita is examined at Exh. 29. I her cross-examination, she has stated that amount of Rs. 25,000/- was given as dowry however, the source thereof was unable to be explained by her. She, in her cross-examination admits that she is unable to narrate the date on which she was assaulted by the accused. According to her, she has not narrated the alleged ill-treatment to her mother and maternal uncle. She then claimed that at no point of time, her parents or maternal uncle asked the accused not to harras her. She admits that she had not narrated about the alleged ill-treatment to anybody, though she was given medical treatment in

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the hospital at village Dhad. According to her, because of assault, she started limping and was required to take treatment. She claimed that the accused used to beat her daily. She claimed that the police referred her to the hospital when she tried to lodge complaint. According to her, P.W.1 Punjaram, police patil and Rajaram went inside the police station to lodge complaint which bears her thumb impression.

7. From the said statement, it could be apparent that the complaint that was filed against the accused was not lodged by Sunita on her own. However, same was lodged by P.W. 1 Punjaram and Rajaram, who were inside the police station.

8. The mother of Sunita also tow the same line i.e. the complaint was lodged by P.W.1 Punjaram and Rajaram and she was sitting outside the police station alongwith her daughter Sunita, who put her thumb impression on the complaint. Other witness P.W.4 Rajaram, who is examined at

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Exh. 33, has stated that P.W.1 Punjaram and P.W.3 Janabai went inside the police station. He claimed that Sunita also went inside the police station and he did not go inside the police station. There appears to be material contradiction qua lodging of complaint in the present case by PW-1 Punjaram, PW-2 Sunita, PW-3 Janabai and PW-5 Fakirrao.

9. Taking cumulative effect of above referred evidence, it is really hard to believe that the applicant used to beat complainant Sunita and as such, is guilty of offence punishable under Section 498-A of the Indian Penal Code, when the fact remains that she visited her maternal house about five times, she used to visit public hand pump for fetching drinking water every day and also used to go for answering nature's call along with other ladies, still she has not narrated the alleged illtreatment to anybody.

10. Though it is claimed that victim Sunita was given certain medical treatment, however,

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neither Doctor is examined nor any medical evidence to that effect is brought on record so as to substantiate the case.

11 In the above referred back ground, in my opinion, the evidence as is brought on record so as to infer that victim Sunita was subjected to cruelty by the accused is not proved beyond reasonable doubt. As such, the applicant is entitled for acquittal. In view thereof, Criminal Revision Application is allowed. Hence, I pass the following order:-

: O R D E R :

1. The Judgment and order passed by learned Judicial Magistrate, First Class, Soygaon, District Aurangabad, on 29th January, 2001 in Regular Criminal Case No. 196 of 2000 and the judgment and order passed by learned Sessions Judge, Aurangabad, on 9th February, 2004 in Criminal Appeal No. 17 of 2001 are quashed and set aside.

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2. Applicant Ramrao Shivaji Panghate is acquitted of offence punishable under Section 498-A of the Indian Penal Code in Crime No. 50 of 1996 registered with Police Station, Soygaon. His bail bond stands cancelled.

3. Fine amount, if paid, be refunded to the applicant.

4. The applicant be set at liberty forthwith, if not required in any other case.

5. Criminal Revision Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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