

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

CRIMINAL REVISION APPLICATION NO.13 OF 2004

Purushottam s/o Dagadu Birhade ...Petitioner

VERSUS

The State of Maharashtra & anr. ...Respondents

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Shri Vijay Sharma, advocate for petitioner
Shri R.V.Dasalkar, A.P.P. for respondent no.1
Shri A.R.Rathod, advocate for respondent no.2

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CORAM : N.W.SAMBRE, J.

DATED : 4th October, 2016

PER COURT :-

The present petitioner along with other accused persons was convicted in Regular Criminal Case No. 332 of 1995 for the offences punishable under Sections 498-A, 324 r/w 34 of the Indian Penal Code.

2. In Appeal, the learned Additional Sessions Judge, Jalgaon, vide judgment and order, dated

5.1.2004, partly allowed the same and maintained the conviction of the present petitioner for an offence punishable under Section 498-A and 324 of the Indian Penal Code, as he was directed to undergo simple imprisonment for three years and fine.

So far as other accused persons are concerned, they were acquitted of the offences with which they were charged. As such, the present Revision against the conviction by the petitioner/accused no.1.

3. Complainant-Alka has filed an affidavit, dated 29.1.2004 stating as under.

That she married to the petitioner on 25.3.1994 and as their marital relations were not cordial, she lodged first information report on 12.8.1995 against the petitioner and his family members, resulting into registration of crime for offences punishable under Sections 498-A, 324 r/w 34 of the Indian Penal Code. She has then stated that the deed of divorce is executed with the

consent of the parties and is registered before the Sub-Registrar at Jalgaon on 9.2.1996, in which she has accepted to have received one time alimony of Rs.50,000/- and has agreed to withdraw the present criminal prosecution. She has also given up her claim in entirety for alimony, etc. She has then added that after registration of divorce deed, she has got remarried and is blessed with children and is leading happy married life with the second husband.

4. Heard learned counsel for the respective parties.

5. Learned counsel for the petitioner Shri Sharma would urge that the petitioner has already suffered imprisonment for a period from 28.8.1995 to 29.12.1995 when he, for the first time, was arrested after registration of the crime. According to him, after his conviction was upheld by the appellate Court on 5.1.2004, he was taken into custody and thereafter was released some time

on 30/31.1.2004. Mr. Sharma submits that the petitioner has spent about 5 months behind the bars pursuant to the order of conviction. Inviting my attention to the judgment of the Apex Court in the matter of **B.T.Jayaram vs State of Karnataka**, reported in (2008) 14 SCC 530, he would submit that once the parties have already entered into settlement and the complainant has in categorical terms stated about putting the differences to an end, the payment of one time alimony, the complainant married for second time and leading her happy married life, no fruitful purpose would be served so as to achieve the object of criminal law by sending the present petitioner further behind bars.

6. Per contra, the learned A.P.P. while opposing the claim would urge that the observations, as are recorded by both the Courts below, particularly relying upon the documents i.e. letters Exhs. 51 to 54, which speak volumes about the cruelty and the injuries caused by the

present petitioner to the victim, the conviction is just and proper and the Revision needs to be dismissed.

7. Having bestowed my thoughts to the submissions made, it is required to be noted that the complainant Alka and the present petitioner and his family members have settled their differences and the petitioner has already suffered imprisonment to the extent of five months. Apart from above, it is required to be noted that the incident took place way back in 1995 and the present petitioner and the complainant have settled in their respective lives.

8. So far as merits of the matter are concerned, the conviction, as is ordered by both the Courts below, being based on cogent evidence, does not call for any interference.

9. As regards aspect of imprisonment is

concerned, in my opinion, in the factual background, as narrated herein above, the substantive sentence against the petitioner can be reduced to certain extent. Accordingly, the substantive sentence of imprisonment of three years is reduced to that of two years. Since the petitioner has already undergone sentence of five months, he shall execute a bond of good behaviour pursuant to the provisions of Section 360 of the Code of Criminal Procedure before the Probation Officer. Any departure from the contents of the bond by the present petitioner will entail this Court to pass appropriate orders against him, as to the mode and manner of the remaining sentence.

10. The Revision, as such, stands partly allowed in above terms.

(N.W.SAMBRE, J.)

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