

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

CRIMINAL REVISION APPLICATION NO.118 OF 2015

Sakhubai w/o. Vithal Waghmode ..Applicant
Age. 32 years, Occ. Household,
R/o. Doiphadwadi, Tal. Georai,
At present R/o. Shindewadi,
Tal. Georai, Dist. Beed.

Versus

1. Vithal @ Baba Sampat Waghmode ..Non-applicants
Age. 35 years, Occ. Agriculture,
2. Aashrabai w/o. Sampat Waghmode
Age. 59 years, Occ. Household,
3. Sampat Sahebrao Waghmode
(Accused No.3 died-Abated)
4. Saibai w/o. Sahebrao Waghmode
Age. 75 years, Occ. Nil,
5. Laxman Sampat Waghmode
Age. 25 years, Occ. Agriculture,
6. Shivkanya Sampat Waghmode
Age. 23 years, Occ. Nil,

All above R/o. Doiphadwadi,
Tal. Georai, Dist. Beed.
7. Babasaheb Kondiba Hake,
Age. 57 year, Occ. Nil,
8. Kuntabai w/o. Babasaheb Hake,
Age. 55 years, Occ. Household,

9. Kondiba Babasaheb Hake,
Age. 33 years, Occ. Agri.,
10. Rukminibai w/o. Kondiba Hake,
Age. 29 years, Occ. Household,

Accused Nos.7 to 10 all are
R/o. Chavanwadi, Tal. Georai,
Dist. Beed.

11. State of Maharashtra,
Through Police Station, Chaklamba,
Tal.Georai, Dist. Beed.

Mr.Ram B. Deshpande, Advocate for the applicant.

Mr.S.J. Salunke, Advocate for respondent Nos.1,2,4 to 10.

CORAM : Z.A. HAQ, J.

DATED : 13.12.2016

ORAL JUDGMENT :-

. Heard.

02. Rule. Rule made returnable forthwith.

03. The applicant/complainant has challenged the judgment passed by the learned Magistrate acquitting non-applicant Nos.1 to 10/accused of the offence punishable under sections 498-A, 323, 504, 506 read with section 34 of the Indian Penal Code. The applicant/ complainant has also challenged the judgment passed by the Sessions Judge dismissing the appeal filed by the State of Maharashtra and maintaining the judgment by which the accused are

acquitted.

04. The submission on behalf of the applicant is that the accused were charge-sheeted for offence punishable under sections 498-A, 323, 504, 506 read with section 34 of the Indian Penal Code and for offence punishable under sections 4 & 5 of the Dowry Prohibition Act and process was also issued accordingly, however, the learned Magistrate has not adverted to the charges levelled against the accused for the offence punishable under sections 4 & 5 of the Dowry Prohibition Act. It is submitted that the learned Sessions Judge has also failed to appreciate this aspect. It is prayed that the impugned judgment passed by the learned Magistrate and maintained by the Sessions Court cannot be sustained and are required to be set aside and the matter has to be remitted to the learned Magistrate for re-trial.

05. The learned Advocate for the accused has taken preliminary objection to the maintainability of the revision application on the ground that the applicant/ complainant being the victim has remedy under section 372 of the Criminal Procedure Code. On merits of the matter it is submitted that the judgment passed by the Magistrate acquitting the accused and maintained by the Sessions Court does not require any interference. It is

argued that the prayer for re-trial cannot be granted, as it is not a fit case to order re-trial.

06. The submission made on behalf of the accused regarding maintainability of this revision application under section 397 of the Criminal Procedure Code cannot be accepted as the judgment passed by the learned Magistrate acquitting the accused was challenged by the State of Maharashtra in appeal before the Sessions Court, which is dismissed and the applicant has challenged the appellate judgment also.

07. The learned Magistrate has overlooked the fact that the accused were also charged for the offence punishable under sections 4 & 5 of the Dowry Prohibition Act. There is apparent failure on the part of the learned Magistrate to exercise the jurisdiction vested in him and therefore the judgment passed by him is unsustainable in law. The learned Sessions Judge has also failed to appreciate this aspect and therefore the judgment passed by him is also required to be set aside.

08. I am conscious that the order of re-trial should not be ordinarily passed and it should be ordered in exceptional case, but at the same time, it cannot be overlooked that the Trial Magistrate has not adverted to

the fact that the accused are charged for the offence punishable under sections 4 & 5 of the Dowry Prohibition Act.

. In the above facts and situation, the following order is passed :-

(i) The judgment passed by the learned Magistrate in R.C.C. No.76 of 2007 on 05.12.2013 is set aside.

(ii) The judgment passed by the Sessions Court in Criminal Appeal No.24 of 2013 on 13.04.2015 is set aside.

(iii) The matter is remitted to the Court of J.M.F.C. (Court No.4) Georai for fresh decision.

(iv) The prosecution shall not be permitted to lead further evidence, however, it will be open for the Court to exercise its powers and jurisdiction under section 311 of the Criminal Procedure Code, if felt necessary.

(6)

crirev118.15

(v) The parties undertake to appear before the learned J.M.F.C., Georai (Court No.4) on 16.01.2017 at 11.00 a.m. and abide by the further orders in the matter.

(vi) Rule made absolute in the above terms. In the circumstances, the parties to bear their own costs.

[Z.A. HAQ, J.]