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

CRIMINAL REVISION APPLICATION NO. 316 OF 2003

Mirabai w/o Rajendra Rohokale,
Age : 28 years, Occ. Household,
R/o Malwadi (Bhalwani),
Tq. Parner, Dist. Ahmednagar

..PETITIONER
(Orig. Complainant)

VERSUS

1. The State of Maharashtra
2. Rajendra Vishnu Rohokale,
Age : 35 years, Occ. Agri.,
R/o Malwadi (Bhalwani),
Tq. Parner, Dist. Ahmednagar

3. Reubai Vishnu Rohokale,
Age : 55 years, Occ. Agri. & Household,
R/o Malwadi (Bhalwani),
Tq. Parner, Dist. Ahmednagar

..RESPONDENTS
(Resps. No.2 & 3 – Orig. Accused)

Mr N.V. Gaware, Advocate for petitioner;
Ms R.P. Gaur, Addl. Public Prosecutor for respondent no.1;
Mr S.S. Jadhavar, Advocate for respondents no.2 & 3

CORAM : N.W. SAMBRE, J.

DATE : 12th April, 2016

ORAL JUDGMENT :

Heard Mr Gaware, learned Counsel appearing on behalf of the petitioner; Ms Gaur, learned Addl. Public Prosecutor appearing on behalf of respondent no.1 and Mr Jadhavar, learned Counsel on behalf of respondents no.2 and 3.

(2)

2. The present revision is directed against the judgment and order of acquittal rendered by learned 2nd Additional Sessions Judge, Ahmednagar on 19th July, 2003, in Criminal Appeal No.61 of 2001, thereby acquitting respondents no.2 and 3 – accused of offence punishable under section 498-A of the Indian Penal Code.

3. Facts as are necessary for deciding the present revision are as under :-

Original accused nos.1 to 4 were facing trial for having committed offences punishable under sections 498-A, 323, 504, 506 read with section 34 of the Indian Penal Code.

4. Complaint came to be lodged by P.W.1 Meerabai, who was married to accused no.1 Rajendra on 2nd June, 1990 and accused nos.2 to 4 are her father-in-law, mother-in-law and brother-in-law. Accused no.1 is veterinary doctor. It is the case of the prosecution that all the accused claimed that since the marriage was not solemnized and performed with appropriate standard, accused started illtreating the complainant. It is also claimed that the amount of Rs.25,000/- was demanded for purchasing a tractor. It is then claimed that for non-fulfilling the said demand, accused no.1 used to abuse and beat the complainant and was also made to starve. She was driven out from the house by the accused persons after beating her, which incident took place on 7th August, 1998. Report Exh.21 came to be filed with the police station, Parner on 21st October, 1998 after

(3)

delay of about two months. After completion of investigation, charge-sheet came to be filed on 9th November, 1998. The charge came to be framed against the accused. They pleaded not guilty and claimed to be tried. As there was delay of more than two months in lodging the complaint, the complainant was not referred for medical examination, as no injury could be found on her body, as such to that effect there is no medical evidence on record. It is then claimed that when she went back to her parental house, no visible injury could be noticed.

5. It is also required to be noted that the complainant begot a male child out of the above wedlock, who appears to be in the custody of the accused persons. The present applicant – complainant had taken recourse to the provisions of section 97 of the Code of Criminal Procedure, with an intention to get custody of the child which application was rejected.

6. Learned Judicial Magistrate acquitted respondents no.2 & 3 – accused by his judgment and order dated 5th November, 2011, of offences punishable under sections 323, 504, 506 read with section 34 of the Indian Penal Code, however, convicted them for offence punishable under section 498-A of the Indian Penal Code. Learned Magistrate acquitted accused nos.2 and 4 of all the charges.

7. Aggrieved by the aforesaid judgment and order of conviction, respondents no.2 & 3 preferred Criminal Appeal No.61 of 2001, which came to be allowed by the judgment and order dated 19th July, 2001,

(4)

passed by 2nd Additional Sessions Judge, Ahmednagar. Hence, this revision.

8. Mr Gaware, learned Counsel appearing on behalf of the petitioner submits that the appellate court, by ordering acquittal of respondents no.2 & 3 – accused has committed an error by re-appreciating the evidence perversely. According to him, much stress is given on complaint Exhs. 21 and 22 and oral testimony of the witnesses was incorrectly ignored.

9. Learned Counsel would then submit that the judgment of acquittal be set aside and the matter be remanded back for re-trial.

10. Learned Addl. Public Prosecutor assisted the Court in assessing evidence brought before the Court below and submits that the Court, in the factual matrix and evidence, may pass appropriate order.

11. It is required to be noted that the relationship between the accused persons was, in fact, admitted. The claim under section 97 of the Code of Criminal Procedure for custody of the child by the present petitioner is also not in dispute.

12. While proceeding ahead with the issue of subjecting the petitioner by the accused to cruelty, the contents of the complaints Exhs.20 and 22 are required to be appreciated.

(5)

13. It is then required to be noted that the complainant herself examined as P.W.1, her uncle Piraji at Exh.24 and her father Bhagchand at Exh.40. It is noted that all these witnesses have stated about the alleged cruelty as there was a demand of Rs.25,000/- for purchasing tractor by the accused persons. It is then required to be noted that after the marriage of the petitioner with accused no.1, the cousin brother of the complainant, namely, Vitthal had contested and lost the election for the post of Director of a co-operative society against accused no.3.

14. That the complaint Exh.22 was moved by the complainant to the police station, Parner, which was not produced at the time of investigation, but was produced at the time of recording her evidence. No explanation was tendered for the same. Exh.21 is a complaint dated 21st October, 1998 on the basis of which the accused persons are prosecuted. If Exhs.21 and 22 are perused and compared, a great degree of veracity is noticed. In Exh.22 which was produced at the stage of recording of evidence, the petitioner has named Savita and Sadhana as accused along with the present respondents – accused, who are her sisters-in-law. However, the said sisters-in-law are not mentioned as accused in the complaint at Exh.21. It is then claimed by the complainant that she was forced to undergo an abortion, which amounts to cruelty. However, there is hardly any material on record to accept the same. Fact remains that the evidence of witnesses Shankar, Balasaheb and Bhagchand is silent on the above aspects as regards veracity in the contents of complaints Exh.21 and 22.

(6)

15. So far as the allegation of demand of Rs.25,000/- for purchase of tractor is concerned, while evaluating the same, on perusal if both the complaints at Exhs.21 and 22, it is noted that in Exh.22 the demand was towards the outstanding payment of Doctor. In fact, there is no mention about the demand of money for purchase of tractor in Exh.22. However, in her evidence at Exh.20 the complainant has stated about demand of Rs.25,000/- for purchase of the tractor. Apart from above, it is required to be noted that before filing Exhs.21 and 22, no history about cruelty or illtreatment as alleged could be noticed. It is then required to be noted that proceedings for restitution of conjugal rights were initiated in 1998 vide H.M.P. No.234 of 1998. A judicial note of the said proceedings was taken by the Court below wherein accused no.1 has made efforts for re-union. The inference from the events as are narrated *qua* Exhs.21 and 22 and the fact that the present petitioner was denied, custody of the son prompts the Court to take a view that it is out of frustration, the complaint in question came to be filed, which has resulted into initiation of prosecution. In this background, keeping in mind the scope of revisional jurisdiction, particularly in the matter of acquittal of respondents no.2 and 3 – accused, no error of jurisdiction or failure to exercise jurisdiction is noticed.

16. In view thereof, revision sans merit and stands dismissed.

(N.W. SAMBRE, J.)

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