

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

CRIMINAL REVISION APPLICATION NO. 361 OF 2003

Mahadeo s/o Laxman Raut,
Occ: Labour, R/o. Jamkhed,
Tq. Jamkhed, Dist. Ahmednagar.

...Applicant

versus

The State of Maharashtra.

...Respondent

.....
Mr. U.S. Malte, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 28th APRIL, 2016

ORAL ORDER :

Present revision is directed against conviction of the present applicant ordering by learned Judicial Magistrate, First Class, Jamkhed in R.T.C. No. 39 of 1995 for an offence punishable under Section 498-A read with Section 34 of the Indian Penal Code, further confirmed in Criminal Appeal No. 63 of 1997 by judgment dated 21/10/2003 delivered by Ist Adhoc Additional Sessions Judge, Ahmednagar.

2. The facts as are necessary for deciding present revision against conviction are as under :-

Originally present applicant and his mother and father namely Hausabai and Laxman were tried for an offence punishable under Section 498-A read with Section 34 of the Indian Penal Code. The prosecution story as against the present applicant is that the applicant was married to the complainant on 31/07/1992 and was blessed with a son namely Naresh. It is then claimed that though for a period of about one year, all the accused persons treated the complainant properly, however, there was consistent demand of dowry of Rs.10,000/- and the complainant was illtreated by the accused persons.

3. In support of the prosecution case for an offence punishable under Section 498-A read with Section 34 of the Indian Penal Code vide Crime No. 32 of 1995, the prosecution has examined the complainant PW-1 at Exhibit-25, her mother Parubai at Exhibit-27 as PW-2 and the Investigating Officer at Exhibit-28 as PW-3. The prosecution has relied upon the certified copy of Exhibit-1 in M.A. No. 11 of 1987 at Exhibit-33 and compromise pursis in the said proceedings at Exhibit-34.

4. Heard Mr. Malte, learned Counsel for the applicant. He would submit that complainant-victim, not being legally wedded wife

of the applicant, provisions of Section 498-A of the Indian Penal Code are not attracted against him. He would rely upon language employed in Section 498-A of the Indian Penal Code so as to substantiate his contention. He has also tried to impress upon the Court, particularly the effect of claim of victim of marriage with the applicant though her first marriage was subsisting. He has relied upon the provisions of Section 7 of the Hindu Marriage Act so as to submit that the marriage of a person having spouse living is a void marriage.

5. Mr. Malte, learned Counsel for the applicant would rely upon the judgment of the Apex Court in the matter of ***Shivcharan Lal Verma vs. State of M.P.*** reported in ***(2007) 15 SCC 369*** so as to substantiate the above referred contentions. He would then submit that in view of law laid down by the Apex Court in the matter of ***Bhaurao Shankar Lokhande vs. State of Maharashtra***, reported in ***AIR 1965 SC 1564***, the duty of proof of marriage of present applicant with victim has to be established in clear terms and there cannot be any presumption to that effect. He would submit that solemnization of the marriage in accordance with the personal law is necessary and the same is not proved by prosecution.

6. Learned A.P.P. opposed the claim of the present

applicant on the ground that the judgment delivered by learned Magistrate convicting the applicant and further confirming in appeal by learned Sessions Judge are based on the sound reasons. He would submit that both the Courts below were of the analytical mind and have acquitted father and mother of present applicant, as no evidence was found against them. Learned A.P.P., as such, submits that the revision be dismissed.

7. With the assistance, I have scanned both the judgments i.e. judgment of conviction delivered by learned Magistrate on 19/08/1997 and confirmed in appeal vide Appeal No. 63 of 1997 on 21/10/2003.

8. It is required to be noted that both the Courts below have rightly appreciated the scheme of Section 498-A of the Indian Penal Code. The wording of Section 498-A of the Indian Penal Code speaks of that of cruelty not only to the wife but speaks cruelty to a woman. Therefore, both the Courts below have inferred that whether the marriage was lawful or not, the fact remains that cruelty to woman is established, the case for conviction can be considered.

9. In the present case, what is required to be noted is, the marriage of the present applicant with that of victim and the birth of

child Naresh was not disproved by the present applicant by leading cogent evidence as accused himself has come out with such story. So far as reliance placed by learned Counsel for the applicant on the documents at Exhibit-33 and 34 is concerned, said documents were also not properly proved by the accused persons. In this background, the fact that the provisions of Section 498-A of the Indian Penal Code are not attracted as is sought to be canvassed will be of hardly any assistance. The law laid down by the Apex Court in the matter of **Shivcharan Lal Verma** (supra) will be of hardly any assistance as in the said matter, the issue felt for consideration before the Apex Court was the marriage of spouse during subsistence of marriage of first wife namely Kalindi. So far as the case in hand is concerned as is observed hereinabove, the applicant has not proved that the marriage of victim was subsisting at the time of prosecution under Section 498-A of the Indian Penal Code, as such, the said judgment will be of hardly any assistance. Apart from above, in the matter of **Bhaurao Shankar Lokhande** (supra) though reliance is sought to be placed by the applicant, the applicant has not placed on record any material in the form of evidence to demonstrate that the victim was not his legally wedded wife. Leave apart, in my opinion, the embargo as is sought to be claimed for invoking provisions of Section 498-A of the Indian Penal Code are not attracted in the present case, particularly when the present applicant has not discharged his burden.

10. The conviction of present applicant is based on the sufficient evidence, no illegality or failure to exercise jurisdiction is brought to my notice. Having re-appreciated the evidence as is brought on record to the notice of this Court, no inference is called for. The criminal revision application fails, stands dismissed.

11. At this stage, learned Counsel for the applicant submits that the applicant be granted benefit of the provisions of Probation of Offenders Act.

12. Heard learned A.P.P. on the said issue.

13. It is not in dispute that the applicant is convicted for an offence punishable under Section 498-A of the Indian Penal Code and directed to undergo for three months of simple imprisonment and to pay fine of Rs.1000/-. The accused has already paid fine amount of Rs.1000/- on 19/08/1997.

14. It is also not disputed that the accused has not committed any other similar crime.

15. In view thereof, in my opinion, it will be appropriate to

extend benefit of provisions of Sections 3 and 4 of the Probation of Offenders Act to the present applicant. The applicant shall appear before the concerned Probation Officer and shall execute bond of good behaviour. The applicant, as such, be released under the said provisions. The criminal revision application, as such, stands disposed of in above terms.

[N.W. SAMBRE, J.]

Tupe/