

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

CRIMINAL REVISION APPLICATION NO. 369 OF 2003

1. Sk. Rauf Sk. Usman,
Age: 22 years, Occ: Labour,

2. Masum Ali Sk. Buchanu,
Age: 30 years, Occ: Labour,

Both R/o. Nageshwar Colony,
Plot No. 8, Gat No. 446, Opposite
Poultry Farm, Jalgaon,
Taluka and District Jalgaon.

...Applicants

versus

State of Maharashtra

...Respondent

.....
Mr. Joydeep Chatterji, Advocate for applicants
Mr. A.R. Kale, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 7th APRIL, 2016

ORAL JUDGMENT :

Based on the First Information Report at Exhibit-36 lodged by one Gulnarbi w/o Sk. Raut, present applicants and other accused persons were prosecuted for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. The prosecution story against the applicants is that after

marriage with applicant No.1, family members used to beat and illtreat prosecutrix and subjected her to cruelty on the ground of demand of Rs.10,000/- from her parents.

3. After the investigation, the charge sheet came to be filed and the prosecution, in order to prove its case, has examined in all four witnesses.

4. By the judgment dated 14/09/2000, learned Judicial Magistrate, First Class, Jalgaon convicted the accused persons for an offence punishable under Section 498-A read with Section 34 of the Indian Penal Code, sentencing them to undergo rigorous imprisonment for one year and fine of Rs.1,000/- each, in default, to suffer simple imprisonment for three months. So far as applicant No.2 is concerned, he was convicted for an offence punishable under Section 323 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three months with fine of Rs.1000/-, in default, to suffer simple imprisonment for 15 days.

5. In appeal, applicant No. 2 is acquitted of the offence punishable under Section 323 of the Indian Penal Code, however, conviction under Section 498A read with Section 34 of the Indian Penal Code against the applicants herein is maintained.

6. In this background, Mr. Chatterji, learned Counsel for the applicants invited my attention to the observations made by learned appellate Court in paragraph-9 of the judgment, which reads thus:

"9. I heard Adv. Shri. H.P. Suryawanshi, for the appellants and A.P.P. Shri. V.H. Patil, for the State. At the very out-set, it is pertinent to note that the original complainant and all these appellants filed an application (ex.12) to the effect that since last 16 months, original complainant is residing with her husband-appellant No.1 and one son is also begotten to her. Hence, she wants to compromise the matter against her husband and other appellants. During the course of arguments, A.P.P. relied on the authority of our High Court cited in Vasudeo K. Dalal Vs. State of Maharashtra, reported in 2003(2) B.Cr.C. 558. But it is an order passed under Sec. 482 Cr.P.Code, under inherent powers of the Hon'ble High Court. Moreover, the parties in the above cited matter are governed by Hindu Law, and they have settled their matrimonial dispute before the Civil Court and compromise in Cri. Case was an off-shoot of settlement in the civil matters, and the Hon'ble High Court has quashed the proceeding under its inherent powers. Thus, the facts of above cited authority are not applicable to this case as the parties are Mohammedan and this Court has no inherent powers to quash and set aside the proceedings as it is not compoundable under Section 320 Cr.P.Code. However, offence punishable under Sec. 323 I.P. Code is

compoundable. Hence, I allow Exh. 22 to the extent that offence under Sec. 323 I.P. Code proved against appellant No. 4 Masumali Sk. Buchanu is compounded and he is acquitted. However, exh. 12 is rejected as far as the offence under Section 498-A r.w. 34 of I.P. Code is concerned."

7. According to him, present applicants were behind the bars in the present case for almost 15 days and this Court, in view of above referred settlement, may take lenient view, as parties have started cohabiting together.

8. He has also taken me through the observations made by both the Courts i.e. Judicial Magistrate, First Class, Jalgaon and Sessions Judge, Jalgaon, while dealing with the appeal.

9. Learned A.P.P. has not disputed the observations in paragraph-9 being part of record, however, according to him, benefit of Probation of Offenders Act should be given to the applicants.

10. Having taken overall view of the matter and having regard to the observations made in paragraph-9 of the appellate Court judgment, in my opinion, in view of the provisions of Sections 3 and 4 of the Probation of Offenders Act, benefit of the same should be given to the applicants. Hence, the following order.

: O R D E R :

(i) The present applicants shall appear before the Probation Officer within period of four weeks from today and shall execute bond that for remaining period of punishment, they shall maintain law and order and shall not indulge in any similar type of offence.

(ii) The applicants shall report to the Probation Officer once in every three months.

11. Criminal Revision Application, as such, stands disposed of, in above terms.

[N.W. SAMBRE, J.]