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

**CRIMINAL APPLICATION NO. 4729 OF 2014
IN/WITH
CRIMINAL APPLICATION NO. 4725 OF 2014**

Sau. Sujata Kailas Kasar,
Age: 34 years, Occ: Household,
R/o. Shri Ramesh Pandurang Kasar,
Gayatri Krupa, Ward No. 2, Jamathi
Road, At and Post Bodwad,
Tal. Bodwad, Dist. Jalgaon. ..APPLICANT

VERSUS

Shri. Kailas Shantaram Kasar,
Age: 42 years, Occ: Business,
R/o. Kailas Mental, Near Chavadi,
Dharangaon, Dist. Jalgaon & ors ..RESPONDENTS

Mr M.M. Bhokarikar, Advocate for applicant;
Mr U.B. Patil, Advocate for respondent Nos.1 to 3;
Mr K.D. Mundhe, A.P.P. for respondent No. 4

CORAM : N.W. SAMBRE, J.

DATE : 19th SEPTEMBER, 2016

ORDER :

In view of no objection to the prayer for
condonation of delay and for the reasons stated in
the application being Criminal Application No. 4729
of 2014, delay caused in preferring Criminal
Application No. 4725 of 2014 stands condoned. The

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application is allowed.

2. With the consent of the parties, Criminal Application No. 4725 of 2014 is taken out for final disposal at admission stage.

3. The facts as are necessary for deciding the present application for grant of leave to file appeal are as under :-

Present applicant-wife claimed to have married to respondent No.1-accused on 9th July, 2000 as per Hindu rituals. Respondent Nos. 2 and 3 are father in law and mother in law of the applicant, who were residing at Jalgaon.

4. It is claimed by the present applicant that the applicant lodged complaint in the form of Regular Criminal Case No. 299 of 2006 for an offence punishable under Section 498-A read with Section 34 of the Indian Penal Code, as there was a demand of Rs.25,000/- towards the dowry and as same

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was not fulfilled, the applicant was subjected to cruelty.

5. In Regular Criminal Case No. 299 of 2006 as was preferred by the present applicant, learned Judicial Magistrate, First Class (Court No.7) Jalgaon ordered acquittal on 25th March, 2013. As such, present application.

6. Mr. Bhokarikar, learned Counsel for the applicant would strenuously urge that looking to the history of litigation between the parties, the Court must infer that the ingredients of Section 498A are very much satisfied. So as to substantiate his contention, he has invited my attention to another complaint case being No. 2986 of 2007 initiated in the Court of Judicial Magistrate, First Class, Bhusawal by the father of present applicant namely Ramesh for an offence punishable under Sections 323, 504 read with Section 34 of the Indian Penal Code. Mr. Bhokarikar, learned Counsel for the present

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applicant would urge that present respondent Nos. 1 and 2 were convicted by learned Magistrate in the said matter for an offence punishable under Section 323, 504 read with Section 34 of the Indian Penal and were ordered to pay fine of Rs.500/-. According to him, a bond of good behaviour was directed to be executed by the accused persons. In addition to above, Mr. Bhokarikar, would invite my attention to the very incident as is narrated in the complaint i.e. incident dated 2nd November, 2005 when the parents of the present applicant were called by the accused persons and quarrel ensued at the behest of accused No.1. According to him, the testimony of the complainant, her father Ramesh and her cousin Sharad voluminously speak about involvement of the present respondents in the crime in question and as such, according to him, the Court below by acquitting, committed an error, as such, leave to file appeal needs to be granted.

7. While countering the above referred submissions, learned Counsel for the respondents-

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accused would urge that the order of conviction for an offence punishable under Sections 323 and 506 of the Indian Penal Code was set aside by learned Sessions Judge in an appeal preferred against the said conviction being Criminal Appeal No. 116 of 2014, which was decided on 30th June, 2014. In addition, he would urge that there is decree for restitution of conjugal rights and also dissolution of marriage. It is only with an intention to harass the present respondents, the complaint case came to be filed. According to him, there is no case for considering for grant of leave, particularly having regard to the scope thereof and as such, he would urge that leave to file appeal be refused.

8. With the assistance of respective Counsel, it is required to be observed that the complainant-applicant adduced the evidence at Exhibit-30, her father at Exhibit-37 and her cousin Sharad at Exhibit-46 and defence of the accused persons was that of denial.

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9. The evidence of all three witnesses was duly considered by learned Magistrate. Learned Magistrate noted that after the marriage, for about five to six months, it is claimed that the applicant was maintained properly and it is thereafter was illegal demand of Rs.20,000/- and after satisfaction thereof, another demand of Rs.25,000/- was made. Learned Magistrate then proceeded to analyze the evidence of respective parties. The admissions given by the complainant and her witness, particularly as regards place of the stay of accused Nos. 2 and 3 i.e. father in law and mother in law is required to be appreciated. It is then to be noted that the demand of dowry of Rs.20,000/- and Rs.25,000/- has not been reflected in the evidence of complainant's witness Sharad. Apart from above, the fact remains that while dealing with the proceedings for restitution of conjugal rights being Hindu Marriage Petition No. 133 of 2006 to counter the claim raised by present applicant for divorce came to be rejected. While

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dealing with the restitution proceedings, it was observed that it was present applicant, who has parted with the company of accused persons.

10. One more fact of which this Court is also required to take note of is, the summons in Hindu Marriage Petition No. 133 of 2006 was received on 7th June, 2006 and after about period of six weeks, present claim came to be lodged by the present applicant, which *prima facie* required to be inferred as by way of afterthought.

11. So far as the evidence of three witnesses is concerned, CW-2 father of complainant, CW-3 Sharad, cousin of the complainant since are related to the complainant, their evidence was properly and in diligent manner was looked into by learned Magistrate. Learned Magistrate noted the important inconsistencies and has proceeded to dismiss the claim of the complainant for an offence punishable under Section 498A of the Indian Penal Code.

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12. Having taken overall view of the matter, particularly in the light of observations made by learned Magistrate, in my opinion, no case for grant of leave to file appeal is made out. Leave to file appeal stands refused. As such, the application fails and stands dismissed.

(N.W. SAMBRE, J.)

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