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

CRIMINAL REVISION APPLICATION NO.157 OF 2015

Jyoti Madhav Khodke
Alias Jyoti Ukanda More,
Age: 37 years, Occ: Housewife,
R/o. Ward No. 12, Ambedkar
Nagar, Mehkar, Tal. Mehkar,
District Buldhana.

..APPLICANT

VERSUS

1. The State of Maharashtra,
2. Madhav Dharmaji Khodke,
Age: 44 years, Occ: Service,
R/o. Paradh, Tal. Bhokardan,
District Jalna.
3. Suman Dharmaji Khodke,
Age: 42 years,
R/o. Paradh, Tal. Bhokardan,
District Jalna.
4. Indubai Pralhad Gawai,
Age: 40 years, Occ: Business,
R/o. Deulgaon Vaysa,
Tal. Lonar, Dist. Buldhana.
5. Sanjay Devkinandan Ambhore,
Age: 36 years, Occ: Service,
R/o. Mahora, Tal. Jafrabad,
District Jalna.
6. Devkinandan Gyanuji Ambhore,
Age: 65 years, Occ: Agri.,
R/o. Keshavnagar, Tal. Risod,
District Washim.
7. Rajaram Dharuji Jamdhade,
Age: 75 years, Occ: Agri.,
R/o. Mahagaon, Tal. Risod,
District Washim.

..RESPONDENTS

Mr Balraj Kulkarni, Advocate holding for Mr Prakash Salsingikar, Advocate
for applicant;
Mr N.T. Bhagat, Addl. Public Prosecutor for respondent No. 1

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CORAM : N.W. SAMBRE, J.

DATE : 20th SEPTEMBER, 2016

ORAL ORDER :

Pursuant to a complaint preferred by the present applicant, C.R. No.20 of 2009 was registered with Paradh police station and respondents no.2 to 7 were prosecuted for offences punishable under sections 498-A, 323, 504 read with section 34 of the Indian Penal Code and under sections 3 and 4 of Dowry Prohibition Act, in Regular Criminal Case No.161 of 2009.

2. It is the case of the prosecution that the present applicant – original complainant Jyoti married to respondent no.2 Madhav on 13th June, 2000 and it is claimed that since 2000 to 2008 the applicant resided together with respondent no.2 and a daughter was born out of the said wedlock. However, in the intervening period there was demand of dowry of Rs.2,00,000/- by respondents-accused for purchase of house, out of which P.W.4 Ukhanda, father of the applicant, had paid an amount of Rs.50,000/-.

3. As all the respondents subjected the applicant to cruelty and in view of the assault on her, resulting into causing minor injuries, offence punishable under sections 498-A and 323 of the Indian Penal Code came to be registered.

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4. After completion of necessary investigation, the charge-sheet came to be filed against the respondents – accused.

5. In support of the case, applicant – complainant examined herself as P.W.1 at Exh.47, P.W.2 Santosh at Exh.50, P.W.3 Sangita at Exh.56, P.W.4 Ukhanda at Exh.57, P.W.5 Arjun at Exh.58, P.W.6 Kishor at Exh.61, P.W.7 Pushpa at Exh.64 and P.W.8 Shankar, the Investigating Officer at Exh.66.

6. It is to be noted that P.W.2 Santosh, P.W.3 Sangita and P.W.4 Ukhanda are, respectively brother, sister and father of complainant Jyoti. P.W.5 Arjun and P.W.6 Kishor are friends of P.W.4 Ukhanda.

7. It is claimed that in view of poor financial condition of P.W.4 Ukhanda, father of the complainant Jyoti, the demand of dowry of Rs.2,00,000/- could not be met with, however, an amount of Rs.50,000/- was borrowed by Ukhanda and paid to respondents-accused. So far as respondents no.3 to 7 are concerned, they are claimed to be the relatives of respondent no.2 Madhav and it is established through evidence that they were not residing with him.

8. After scrutinizing the evidence; oral and documentary as was brought on record, the learned Judicial Magistrate First Class rendered a judgment of acquittal on 18th August, 2012, which was further confirmed in Criminal Appeal No.67 of 2012 by learned Ad hoc Additional Sessions

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Judge-3, Jalna, vide judgment and order dated 1st July, 2015. As such, present revision by applicant - original complainant.

9. Learned Counsel appearing on behalf of the applicant would strenuously urge that the dispute, which is formed to be the basis for subjecting the applicant with cruelty, is arising out of matrimonial relations. As such, according to him, having regard to the customs and traditions as are followed in the Indian religion, the same was not divulged to any other person and was kept within four walls of the house and as such, there cannot be expectation of a strong piece of evidence, much less the evidence from the other witnesses, so as to establish the offence of cruelty and an offence punishable under section 323 of the Indian Penal Code. According to him, the degree of evidence that is required to be brought on record for making out a case for conviction, in *stricto senso*, is required to be on liberal side. He would then submit that the applicant had taken recourse to filing of complaint with Women's Grievance Redressal Cell and as such, there was delay of about one year in lodging the first information report. He would then urge that such delay is not fatal to the prosecution and should not have been taken to be the basis for the purpose of recording acquittal of the respondents-accused.

In addition, the learned Counsel would submit that the evidence as is brought on record through the testimonies of witnesses, namely, P.Ws.2 to 6 ought not to have been discarded by the learned Courts below, based on the fact that those are interested witnesses. He would urge that just

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because the said witnesses are relatives or in friendly relationship the complainant, the same cannot be the basis for non-consideration of their evidence on merits. As such, according to him, the revision deserves to be allowed.

10. With the assistance of learned Counsel, I have perused the entire findings recorded by the learned Magistrate and learned Sessions Judge. What is required to be noted *qua* the matrimonial dispute between the parties is, respondent no.2 claimed to be serving as Lecturer in an educational institution. The present applicant is an educated lady, holding qualification of M.A., B.Ed. Out of the wedlock, there appears to be a female issue born, which is claimed to be a bone of contention of subjecting the applicant to cruelty.

11. From the evidence that is brought on record, it is required to be noted that accused nos.3 to 7 were not residing with accused no.2 Madhav. The applicant herein, after her marriage, from 2000 till 2008 was residing with respondent no.2 Madhav, who had purchased certain property in her name, as is reflected from the evidence. Apart therefrom, it appears that in the proceedings initiated under the provisions of the Protection of Women from Domestic Violence Act, 2005, there is already an order of payment of maintenance to the present applicant by respondent no.2 Madhav. Respondent no.2 Madhav had instituted a suit against the applicant for restitution of conjugal rights, which was decreed, however, it appears that the present applicant had not honoured the

decree.

12. In the above referred undisputed factual matrix, the evidence as is appreciated by both the Courts below is required to be gone into only to the extent, whether in exercise of revisional jurisdiction of this court there is any scope to upset the finding of acquittal. Admittedly, P.W.5 Arjun and P.W. 6 Kishor are the friends of P.W.4 Ukhanda, father of the applicant. P.W.2 Santosh and P.W.3 Sangita are sister and brother, respectively of P.W.1 Jyoti. As such, they being interested witnesses, their evidence is not straight-away discarded by the Courts below, but was scrutinized with much care and caution. What is noted from the evidence of all these witnesses is, they were silent *qua* crucial aspect of demand of dowry of Rs.2,00,000/-. Apart from above, it is required to be observed that applicant Jyoti, in clear terms, has stated that respondents no.3 to 7 along with respondent no.2 – her husband, used to subject her to cruelty.

Of course, for attracting the provisions of section 498-A of the Indian Penal Code, necessary ingredients were brought on record, however, both the Courts below have considered the evidence on merits, so as to find out whether a case for conviction for offences punishable under sections 498-A and 323 of the Indian Penal Code was established or not. While doing so, the Courts below observed that till 2008 the applicant was residing with respondent no.2 and the complaint in question came to be lodged after a period of more than one year i.e. in 2009. The only explanation as was sought to be tendered was that the applicant had

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initially approached Women's Grievances Redressal Cell attached to police station. However, it is to be noted that there is hardly any material to that effect placed on record and as such, it is to be inferred that the delay of one year in lodging the first information report is not at all explained. In my opinion, the findings to that effect, recorded by both the Courts below, are based on evidence and do not warrant any interference.

13. Apart from above, upon analysis of evidence of P.Ws. 2 to 6, it is noted that there are no specific attributions against respondents no.3 to 7 *qua* their role in commission of offences punishable under sections 498-A and 323 of the Indian Penal Code. It is brought on record that respondents no.3 to 7 were residing at places different than that of the applicant and respondent no.2. In that view of the matter, both the Courts below have rightly recorded a finding of acquittal. I do not find any illegality or material irregularity in appreciation of evidence, as has been done by the Courts below.

14. In view thereof, no case for interference in exercise of revisional jurisdiction is made out. Criminal Revision fails and stands rejected.

(N.W. SAMBRE, J.)

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