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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.559 OF 2015

Loknath Yadav and Ors.

...Applicants

Versus

The State of Maharashtra

...Respondent

Mr.H.S.Deshpande, for the Applicants.

Mr.A.S.Shitole, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 22nd JUNE, 2016

P.C:-

1. Heard learned Counsel for the applicants and the learned A.P.P.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission. Learned APP waives service on behalf of Respondent - State.
3. The applicant no.1 is the father-in-law, applicant no.2, the mother-in-law and applicant no.3 is the sister-in-law of the complainant.

4. The facts in brief giving rise to the filing of the aforesaid application are as under:-

Poonam Yadav (complainant – now deceased) lodged a complaint on 1st March, 2007 as against the applicants and co-accused – Rajesh, alleging offences punishable under Sections 498-A, 406, 494 r/w 34 of the Indian Penal Code. The said complaint was registered with the Mira Road Police Station vide C.R.No.87 of 2007. After investigation, charge-sheet was filed and the case was committed to the Court of Sessions and numbered as Sessions Case No.498 of 2013. The aforesaid applicants filed an application seeking their discharge under Section 227 of the Code of Criminal Procedure on several grounds. After hearing the parties, the learned Assistant Sessions Judge, Thane, by his Judgment and Order dated 3rd November, 2015 was pleased to partly allow the said application. By the said order, the applicants were discharged from the offences punishable under Sections 406 and 494 of the Indian Penal Code, but were directed to face trial for the offence punishable under Section 498A of the Indian Penal Code. The applicants have impugned the aforesaid order, only to the extent, that it directs the applicants to face trial for the offence punishable under Section 498A of the Indian Penal Code.

5. Learned Counsel for the applicants submitted that after the aforesaid CR, being C.R.No.87 of 2007 was lodged by Poonam Yadav (complainant – now deceased) with the Mira Road Police Station, another complaint/FIR was lodged by Poonam Yadav's mother on 14th March, 2007, which was registered vide C.R.No.104 of 2007 alleging offences punishable under Sections 498A, 494 and 306 r/w 34 of the Indian Penal Code. He submitted that after investigation, police filed a charge-sheet in C.R.No.104 of 2007 and as the offences were sessions triable, committed the case to the Court of Sessions and the same was numbered as Sessions Case No.312 of 2008. He submitted that the applicants have been discharged from the said case by this Court i.e. the case which was instituted on a complaint lodged by Poonam Yadav's mother, registered vide C.R.No.104 of 2007. He relied on the order dated 18th December, 2013 passed by this Court (Coram:Smt.R.P.SondurBaldota,J.) in Criminal Revision Application No.405 of 2013 in particular paras 5 and 6 of the said order. He submitted that in the present case, i.e. C.R.No.87 of 2007, the complainant – Poonam Yadav (now deceased) has stated that although the applicants were staying separately, they had visited her house and had abused her and asked her to divorce her husband (original accused no.1.) He submitted that the said

statement of the complainant - Poonam Yadav (now deceased) is contradictory to the statements of the neighbours, who have clearly stated that the applicants had never visited the residence of the complainant - Poonam Yadav (now deceased). He submitted that even taking the prosecution case as it is, no offence as alleged under Section 498A of the Indian Penal Code is disclosed as against the applicants.

6. Learned APP opposed the application. He does not dispute the fact, that the applicants were discharged from C.R.No.104 of 2007, which was registered at the behest of Poonam Yadav's mother, for the alleged offences punishable under Sections 498A, 494 and 306 of the Indian Penal Code. He however submitted that the applicants were essentially discharged from the said case, as the applicants could not be prosecuted twice for the same offences.

7. Perused the charge-sheet, in particular, the statement of the complainant - Poonam Yadav (now deceased) and the statements of the neighbours and other witnesses. A perusal of the statement of the complainant - Poonam Yadav (now deceased) dated 1st March, 2007 shows,

that she was residing with her husband – Rajesh at Mira Road East, whereas, the applicants were residing at Bhayandar East; that she was going around with Rajesh (husband and co-accused) for about 7 years, prior to their marriage on 23rd October, 2006; that as both their families were against their marriage they got married at the Arya Samaj Mandir at Mulund; that at the relevant time, she was working with a Call Centre and Rajesh was working in a Private Company; and that as they had performed marriage against the wishes of their parents, they were not on visiting terms with them. She has stated that she belonged to the Marwadi community whereas, Rajesh hailed from Uttar Pradesh. She has further stated that after marriage, Rajesh (original accused no.1) started suspecting her character and would fight with her for trivial reasons. She has further stated that the present applicants, after learning of the intercaste marriage, had come to her residence and had asked her to divorce Rajesh (original accused no.1) and had abused and threatened her. The complainant has thereafter narrated certain incidents that had taken place after marriage, but, the said allegations pertain to accused no.1 – Rajesh. According to the complainant, Rajesh had performed second marriage with Archana, at his native place, Uttar Pradesh, as a result of which, they started quarreling frequently. The statements of the neighbours

show that Poonam Yadav had disclosed to them, that the present applicants had abused and threatened her and had asked her to divorce Rajesh. It appears that subsequently on 14th March, 2007, Poonam Yadav (complainant – now deceased) committed suicide, pursuant to which, her mother lodged a complaint as against Rajesh and the present applicants. It also appears from the record and the same is not disputed, that the applicants have been discharged from the said case, being Sessions Case No.312 of 2008 from the offences punishable under Sections 498A, 306, 494 r/w 34 of the Indian Penal Code, which was initiated by the Poonam Yadav's mother vide C.R.No.104 of 2007. It is pertinent to note, that the nature of allegations and the statements in the said CR, being C.R.No.104 of 2007 were similar in nature as against the applicants and that this Court vide order dated 18th December, 2013 while discharging the applicants from Sessions Case No.312 of 2008 which arose from C.R.No.104 of 2007 observed in paras 5 and 6, as under:-

- “5. The only allegation against the applicants is that they had demanded that the deceased divorces her husband. There are no particulars of these demands stated either by the complainant or by the neighbours. The complaint is therefore vague. In any case, even if the demand had in fact be made that

the deceased divorces her husband, the same can hardly constitute offence under Section 498A. Mr. Deshpande, the learned Advocate for the applicant points out that in fact the police could not have added the offence punishable under Section 498A Indian Penal Code in the present complaint. He points out that during her lifetime the deceased had filed complaint against the applicants and others vide C.R. No.87 of 2007 on 1st March, 2007 for the offences punishable under Sections 498A, 406, 494 read with 34 Indian Penal Code. In that complaint also everybody was arrested and later released on bail. Since there is already another crime registered being C.R. No.87 of 2007 for the same offence, the applicants, could not have been prosecuted twice for the same offence.

6. Perusal of the complaint as also the statements of the witnesses recorded by police show that there is nothing alleged against the applicants, which would constitute the offence punishable under Section 306 Indian Penal Code also. The applicants are not alleged to have done anything, which can amount to abatement of suicide. It is obvious that the complaint against the applicants for the offences described above is without any merit whatsoever and on the basis of the material on record, no charge can be framed against the applicants for the offences stated above. In the circumstances, the application is allowed in terms of prayer clause (b)."

8. In the present charge-sheet, filed in C.R.No.87 of 2007, the only allegation as against the applicants is that the applicants had gone to the complainant's house and had abused and threatened the complainant - Poonam Yadav (now deceased) and had asked her to divorce Rajesh (original accused no.1). The said statement is contradictory to the statements of the neighbours, who have specifically stated that the complainant had disclosed to them that the applicants had called and not visited her and had abused and threatened her to divorce Rajesh. A perusal of the entire charge-sheet shows that this is the only allegation as against the applicants. There are no particulars or details as to when the said incident/s had taken place. In that sense, the allegations are vague and taking the allegations as they stand against the applicants, the same would not constitute an offence punishable under Section 498A of the Indian Penal Code. The pre-requisites which are required to constitute an offence under Section 498A are not spelt out, against the applicants.

9. This being the only allegation, qua the applicants, the applicants are entitled to be discharged from the present case. Accordingly, the application is allowed and the impugned Judgment and Order dated 3rd

November, 2015 passed by the learned Assistant Sessions Judge, Thane, is quashed and set aside to the extent, that it directs the applicants to face trial for the offence punishable under Section 498A of the Indian Penal Code.

10. Rule is made absolute in above terms.
11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.